

APPROVED
FEBRUARY 12, 2015
BY GOVERNOR

CHAPTER
1
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

H.P. 96 - L.D. 138

An Act To Update References to the United States Internal Revenue Code of 1986 Contained in the Maine Revised Statutes, Decouple Federal Bonus Depreciation Deductions and Create a Maine Capital Investment Credit

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, state tax law needs to be updated to conform to federal law before the 90-day period expires to avoid delay in the processing of income tax returns for 2014; and

Whereas, legislative action is immediately necessary to ensure continued and efficient administration of the state income tax and certain other state taxes; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §111, sub-§1-A, as amended by PL 2013, c. 472, §1 and affected by §2, is further amended to read:

1-A. Code. "Code" means the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, ~~2013~~ 2014.

Sec. 2. 36 MRSA §5122, sub-§1, ¶GG, as amended by PL 2013, c. 368, Pt. TT, §3, is further amended to read:

GG. The amount claimed as a deduction in determining federal adjusted gross income that is used to calculate the credit for Maine fishery infrastructure investment under section 5216-D; ~~and~~

Sec. 3. 36 MRSA §5122, sub-§1, ¶HH, as corrected by RR 2013, c. 1, §52, is amended to read:

HH. For taxable years beginning in 2013:

- (1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-JJ for that taxable year; and
- (2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-JJ; and

Sec. 4. 36 MRSA §5122, sub-§1, ¶II is enacted to read:

II. For taxable years beginning in 2014:

- (1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-MM for that taxable year; and
- (2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-MM.

Sec. 5. 36 MRSA §5122, sub-§2, ¶LL, as repealed and replaced by PL 2013, c. 588, Pt. A, §46 and affected by §47, is amended to read:

LL. To the extent included in federal adjusted gross income and to the extent otherwise subject to Maine income tax, an amount equal to military compensation earned during the taxable year for service performed outside of this State pursuant to written military orders:

- (1) For active duty service in the active components of the United States Army, Navy, Air Force, Marines or Coast Guard by a service member whose permanent duty station during such service is located outside of this State; and
- (2) For active duty service in the active or reserve components of the United States Army, Navy, Air Force, Marines or Coast Guard or in the Maine National Guard by a service member in support of a federal operational mission or a declared state or federal disaster response when the orders are either at federal direction or at the direction of the Governor of this State; ~~and~~

Sec. 6. 36 MRSA §5122, sub-§2, ¶MM, as enacted by PL 2013, c. 368, Pt. TT, §8, is amended to read:

MM. For taxable years beginning on or after January 1, 2014, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2013 for which an

addition was required under subsection 1, paragraph HH, subparagraph (2) for the taxable year beginning in 2013.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal adjusted gross income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph HH, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph HH, subparagraph (2) for the same property; and

Sec. 7. 36 MRSA §5122, sub-§2, ¶NN is enacted to read:

NN. For taxable years beginning on or after January 1, 2015, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2014 for which an addition was required under subsection 1, paragraph II, subparagraph (2) for the taxable year beginning in 2014.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal adjusted gross income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph II, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph II, subparagraph (2) for the same property.

Sec. 8. 36 MRSA §5200-A, sub-§1, ¶Z, as amended by PL 2013, c. 368, Pt. TT, §13, is further amended to read:

Z. The amount claimed as a deduction in determining federal taxable income that is used to calculate the credit for Maine fishery infrastructure investment under section 5216-D; and

Sec. 9. 36 MRSA §5200-A, sub-§1, ¶AA, as corrected by RR 2013, c. 1, §53, is amended to read:

AA. For taxable years beginning in 2013:

(1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-JJ for that taxable year; and

(2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-JJ-; and

Sec. 10. 36 MRSA §5200-A, sub-§1, ¶BB is enacted to read:

BB. For taxable years beginning in 2014:

(1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-MM for that taxable year; and

(2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-MM.

Sec. 11. 36 MRSA §5200-A, sub-§2, ¶X, as amended by PL 2013, c. 368, Pt. TT, §16, is further amended to read:

X. To the extent included in federal taxable income, an amount equal to the refundable portion of the income tax credit under the Maine New Markets Capital Investment Program under Title 10, section 1100-Z; ~~and~~

Sec. 12. 36 MRSA §5200-A, sub-§2, ¶Y, as enacted by PL 2013, c. 368, Pt. TT, §17, is amended to read:

Y. For taxable years beginning on or after January 1, 2014, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2013 for which an addition was required under subsection 1, paragraph AA, subparagraph (2) for the taxable year beginning in 2013.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal taxable income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph AA, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph AA, subparagraph (2) for the same property-; and

Sec. 13. 36 MRSA §5200-A, sub-§2, ¶Z is enacted to read:

Z. For taxable years beginning on or after January 1, 2015, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation

deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2014 for which an addition was required under subsection 1, paragraph BB, subparagraph (2) for the taxable year beginning in 2014.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal taxable income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph BB, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph BB, subparagraph (2) for the same property.

Sec. 14. 36 MRSA §5219-MM is enacted to read:

§5219-MM. Maine capital investment credit for 2014

1. Credit allowed. A taxpayer that claims a depreciation deduction under the Code, Section 168(k) for property placed in service in the State during the taxable year beginning in 2014 is allowed a credit against the taxes imposed by this Part in an amount equal to 9% of the amount of the net increase in the depreciation deduction reported as an addition to income for the taxable year under section 5122, subsection 1, paragraph II, subparagraph (1) or section 5200-A, subsection 1, paragraph BB, subparagraph (1) with respect to that property, except for excluded property under subsection 2.

2. Certain property excluded. The following property is not eligible for the credit under this section:

A. Property owned by a public utility as defined in Title 35-A, section 102, subsection 13;

B. Property owned by a person that provides radio paging services as defined in Title 35-A, section 102, subsection 15;

C. Property owned by a person that provides mobile telecommunications services as defined in Title 35-A, section 102, subsection 9-A;

D. Property owned by a cable television company as defined in Title 30-A, section 2001, subsection 2;

E. Property owned by a person that provides satellite-based direct television broadcast services;

F. Property owned by a person that provides multichannel, multipoint television distribution services; and

G. Property that is not in service in the State for the entire 12-month period following the date it is placed in service in the State.

3. Limitations; carry-forward. The credit allowed under subsection 1 may not reduce the tax otherwise due under this Part to less than zero. Any unused portion of the

credit may be carried forward to the following year or years for a period not to exceed 20 years.

4. Recapture. The credit allowed under this section must be fully recaptured to the extent claimed by the taxpayer if the property forming the basis of the credit is not used in the State for the entire 12-month period following the date it is placed in service in the State. The credit must be recaptured by filing an amended return in accordance with section 5227-A for the tax year in which that property was used to calculate the credit under this section. The amended return must reflect the credit disallowed and the income modifications required by section 5122, subsection 1, paragraph II and section 5200-A, subsection 1, paragraph BB with respect to that property.

Sec. 15. Application. That section of this Act that amends the Maine Revised Statutes, Title 36, section 111, subsection 1-A applies to tax years beginning on or after January 1, 2014 and to any prior tax years as specifically provided by the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2014.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.