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No. 147

H.P. 103

House of Representatives, January 21, 2021

An Act To Update References to the United States Internal Revenue Code of 1986 Contained in the Maine Revised Statutes and Amend Income Tax Modifications and the Maine Capital Investment Tax Credit

(EMERGENCY)

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Received by the Clerk of the House on January 19, 2021. Referred to the Committee on Taxation pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TERRY of Gorham.

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

3 **Whereas,** state tax law needs to be updated to conform to federal law before the 90-
4 day period expires to avoid delay in the processing of income tax returns for 2020; and

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

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

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

12 **PART A**

13 **Sec. A-1. 36 MRSA §111, sub-§1-A,** as amended by PL 2019, c. 616, Pt. X, §1,
14 is further amended to read:

15 **1-A. Code.** "Code" means the United States Internal Revenue Code of 1986 and
16 amendments to that Code as of December 31, 2019 2020.

17 **Sec. A-2. Application.** This Part applies to tax years beginning on or after January
18 1, 2018 and to any prior tax year as specifically provided by the United States Internal
19 Revenue Code of 1986 and amendments to that Code as of December 31, 2020.

20 **PART B**

21 **Sec. B-1. 36 MRSA §5122, sub-§1, ¶MM** is enacted to read:

22 MM. For each taxable year beginning after December 31, 2017 and before January 1,
23 2021, an amount equal to the taxpayer's excess business loss for the taxable year
24 determined under the Code, Section 461(l), reduced by any amount of the loss included
25 in Maine taxable income for a prior tax year pursuant to paragraph H. Notwithstanding
26 the application dates contained in the Code, Section 461(l)(1)(B), Section 461(l)(1)(B)
27 applies to the calculation for the taxable year.

28 **Sec. B-2. 36 MRSA §5122, sub-§2, ¶UU** is enacted to read:

29 UU. An amount equal to the value of any prior year addition modification under
30 subsection 1, paragraph MM, but only to the extent that:

31 (1) Maine taxable income is not reduced below zero;

32 (2) The amount has not previously been used as a modification pursuant to this
33 paragraph or otherwise used to reduce Maine taxable income; and

34 (3) The taxpayer does not include the amount in computing any net operating loss
35 carryback or carryover pursuant to the Code, Section 172 for federal income tax
36 purposes.

37 **PART C**

38 **Sec. C-1. 36 MRSA §5122, sub-§1, ¶NN** is enacted to read:

1 NN. For taxable years beginning on or after January 1, 2019 and before January 1,
2 2021, the amount of the taxpayer's federal business interest deduction for the taxable
3 year that exceeds the limitation for such deduction contained in the Code, Section
4 163(j), applying a rate of 30% to adjusted taxable income for the purposes of the Code,
5 Section 163(j)(1)(B) without regard to the special rule described in the Code, Section
6 163(j)(10)(A)(i).

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

8 VV. For taxable years beginning on or after January 1, 2021, an amount equal to the
9 value of any prior year addition modification under subsection 1, paragraph NN, but
10 only to the extent that:

11 (1) Maine taxable income is not reduced below zero;

12 (2) No more than 25% of the amount is used as a modification in any taxable year;
13 and

14 (3) The amount has not previously been used as a modification pursuant to this
15 paragraph or otherwise used to reduce Maine taxable income.

16 **Sec. C-3. 36 MRSA §5200-A, sub-§1, ¶GG** is enacted to read:

17 GG. For taxable years beginning on or after January 1, 2019 and before January 1,
18 2021, the amount of the taxpayer's federal business interest deduction for the taxable
19 year that exceeds the limitation for such deduction contained in the Code, Section
20 163(j), applying a rate of 30% to adjusted taxable income for the purposes of the Code,
21 Section 163(j)(1)(B) without regard to the special rule described in the Code, Section
22 163(j)(10)(A)(i).

23 **Sec. C-4. 36 MRSA §5200-A, sub-§2, ¶HH** is enacted to read:

24 HH. For taxable years beginning on or after January 1, 2021, an amount equal to the
25 value of any prior year addition modification under subsection 1, paragraph GG, but
26 only to the extent that:

27 (1) Maine taxable income is not reduced below zero;

28 (2) No more than 25% of the amount is used as a modification in any taxable year;
29 and

30 (3) The amount has not previously been used as a modification pursuant to this
31 paragraph or otherwise used to reduce Maine taxable income.

32 **PART D**

33 **Sec. D-1. 36 MRSA §5219-NN, sub-§2, ¶F**, as repealed and replaced by PL 2017,
34 c. 211, Pt. D, §8, is amended to read:

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

37 **Sec. D-2. 36 MRSA §5219-NN, sub-§2, ¶G**, as repealed and replaced by PL 2017,
38 c. 211, Pt. D, §8, is amended to read:

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

1 **Sec. D-3. 36 MRSA §5219-NN, sub-§2, ¶H** is enacted to read:

2 H. Qualified improvement property, as defined in the Code, Section 168(e)(6), placed
3 in service after December 31, 2017 and prior to January 1, 2020.

4 **PART E**

5 **Sec. E-1. 36 MRSA §5200-A, sub-§1, ¶HH** is enacted to read:

6 HH. For taxable years beginning after January 1, 2019 and before January 1, 2020, an
7 amount equal to the difference between the taxpayer's charitable deduction as
8 determined under the Code, Section 170 excluding application of the amendments
9 made by Section 2205 of the federal Coronavirus Aid, Relief, and Economic Security
10 Act, Public Law 116-136, and the taxpayer's charitable deduction as determined under
11 the Code, Section 170 including application of the amendments made by federal Public
12 Law 116-136, Section 2205.

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

14 II. For taxable years beginning after January 1, 2020 and before January 1, 2025, an
15 amount equal to the amount by which federal taxable income was increased under
16 subsection 1, paragraph HH, but only to the extent that:

17 (1) Maine taxable income is not reduced below zero; and

18 (2) The amount has not previously been used as a modification pursuant to this
19 paragraph or otherwise used to reduce Maine taxable income.

20 **PART F**

21 **Sec. F-1. 36 MRSA §5122, sub-§1, ¶LL**, as corrected by RR 2019, c. 1, Pt. A,
22 §68, is repealed.

23 **Sec. F-2. 36 MRSA §5122, sub-§2, ¶TT**, as enacted by PL 2017, c. 474, Pt. C, §3
24 and reallocated by RR 2019, c. 1, Pt. A, §69, is repealed.

25 **Sec. F-3. 36 MRSA §5200-A, sub-§1, ¶DD**, as corrected by RR 2019, c. 1, Pt. A,
26 §72, is repealed.

27 **Sec. F-4. 36 MRSA §5200-A, sub-§2, ¶GG**, as enacted by PL 2017, c. 474, Pt.
28 C, §7 and reallocated by RR 2019, c. 1, Pt. A, §73, is repealed.

29 **Sec. F-5. Retroactivity.** This Part applies retroactively to tax years beginning on
30 or after January 1, 2018.

31 **PART G**

32 **Sec. G-1. 36 MRSA §5200-A, sub-§1, ¶FF**, as enacted by PL 2017, c. 474, Pt. D,
33 §1, is amended to read:

34 FF. An amount equal to the taxpayer's ~~global intangible low-taxed income~~ deduction
35 claimed in accordance with the Code, Section 250(a)(1)(B).

36 **Sec. G-2. Retroactivity.** This Part applies retroactively to tax years beginning on
37 or after January 1, 2020.

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

1 **SUMMARY**

2 The bill does the following.

3 Part A updates references to the United States Internal Revenue Code of 1986
4 contained in the Maine Revised Statutes, Title 36 to refer to the United States Internal
5 Revenue Code of 1986 as amended through December 31, 2020, for tax years beginning
6 on or after January 1, 2018 and for any prior tax year as specifically provided by the United
7 States Internal Revenue Code of 1986, as amended.

8 Part B requires an addition modification for taxable income for income tax purposes
9 for federal excess business losses allowed to noncorporate taxpayers pursuant to the
10 Coronavirus Aid, Relief, and Economic Security Act, or "CARES Act," for taxable years
11 beginning after December 31, 2017 and before January 1, 2021 and a subtraction
12 modification for the carry-over of this amount in future years.

13 Part C requires an addition modification for taxable income for income tax purposes of
14 the federal business interest deduction that exceeds 30% of adjusted taxable income
15 pursuant to the CARES Act for taxable years beginning on or after January 1, 2019 and
16 before January 1, 2021 and a subtraction modification for the carry-over of this amount in
17 tax years beginning on or after January 1, 2021.

18 Part D excludes qualified improvement property placed in service after December 31,
19 2017 and prior to January 1, 2020 from the Maine capital investment income tax credit.

20 Part E requires an addition modification for taxable income for income tax purposes
21 for the additional charitable contribution deduction allowed to corporations pursuant to the
22 CARES Act for taxable years beginning after January 1, 2019 and before January 1, 2020
23 and a subtraction modification for the carry-over of this amount in future years.

24 Part F updates and simplifies Maine income tax law by conforming the Maine income
25 tax with the federal net operating loss limitation, generally known as "the 80% taxable
26 income limitation," and the CARES Act suspension of the limitation. This Part and Maine's
27 conformity to the CARES Act net operating loss limitation suspension in Part A apply
28 retroactively to tax years beginning on or after January 1, 2018. Under Part F, the 80%
29 taxable income limitation applies to tax years beginning after 2020.

30 Part G expands the addition modification for the amount of the global intangible low-
31 taxed income deduction. For tax years beginning on or after January 1, 2020, the
32 modification is for the total amount of the foreign-derived intangible income and global
33 intangible low-taxed income deduction claimed in accordance with the Internal Revenue
34 Code, Section 250(a).