



132nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2025

Legislative Document

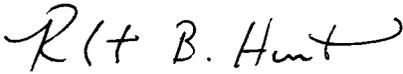
No. 1939

H.P. 1298

House of Representatives, May 6, 2025

An Act to Close Maine's Tax Loophole for Offshore Profit Shifting

Reference to the Committee on Taxation suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative MATLACK of St. George.
Cosponsored by Senator TIPPING of Penobscot and
Representative: SAYRE of Kennebunk.

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

2 **Sec. 1. 36 MRSA c. 354** is enacted to read:

3 **CHAPTER 354**

4 **WORLDWIDE COMBINED INCOME REPORTING REQUIREMENT**

5 **§2411. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Combined group.** "Combined group" means the group of all persons required to
9 file a combined return pursuant to section 2413 or 2414.

10 **2. Combined return.** "Combined return" means a tax return required to be filed for
11 a combined group containing information as required by this chapter.

12 **3. Corporation.** "Corporation" means a business entity of any kind, wherever located,
13 that is treated as a corporation for tax purposes under the laws of this State and that if it
14 were doing business in this State would be a taxpayer.

15 **4. Partnership.** "Partnership" means a business entity of any kind that is treated as a
16 partnership for tax purposes under the laws of this State.

17 **5. Person.** "Person" means an individual; firm; partnership; general partner of a
18 partnership; limited liability company; registered limited liability partnership; foreign
19 limited liability partnership; association; corporation, whether or not the corporation is, or
20 would be if it were doing business in this State, subject to chapter 817; company; syndicate;
21 estate; trust; business trust; trustee; trustee in bankruptcy; receiver; executor; administrator;
22 assignee; or business entity or organization of any kind. For purposes of being subject to
23 chapter 817, "person" also means a combined group.

24 **6. Taxable income.** "Taxable income" does not include any deductions permitted by
25 the Code, Section 250 addressing foreign-derived intangible income and global intangible
26 low-taxed income.

27 **7. Taxpayer.** "Taxpayer" means a person, a combined group or the corporate
28 members of a combined group subject to the tax imposed by chapter 817.

29 **8. Unitary business.** "Unitary business" means a single economic enterprise made up
30 either of separate parts of a single business entity or of a commonly controlled group of
31 business entities that are sufficiently interdependent, integrated and interrelated through
32 their activities so as to provide a synergy and mutual benefit that produces a sharing or
33 exchange of value among them and a significant flow of value to the separate parts.
34 "Unitary business" includes a part of a unitary business that is conducted by a person
35 through the taxpayer's interest in a partnership, whether the interest in that partnership is
36 held directly or indirectly through a series of partnerships or other pass-through entities.

37 A determination of whether a business entity is a unitary business is governed by the unitary
38 business principle as applied to the most broadly encompassing extent allowed by the
39 United States Constitution.

1 **9. United States.** "United States" means the 50 states of the United States, the District
2 of Columbia and territories and possessions of the United States.

3 **§2412. Generally**

4 The following provisions apply generally to the application of this chapter.

5 **1. Persons subject.** The worldwide combined reporting method described in this
6 chapter is required for any unitary business with a member that:

7 A. In its securities law filings with government regulators, reports more than
8 \$1,000,000,000 in gross revenues for the consolidated group;

9 B. Is subject to the federal corporate alternative minimum tax imposed by the Code,
10 Section 55, as amended by United States Public Law 117-169; or

11 C. Is in scope under Article 1.1 of the Tax Challenges Arising from the Digitalisation
12 of the Economy - Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive
13 Framework on Base Erosion and Profit Shifting (BEPS) adopted in 2021 by the
14 Organisation for Economic Co-operation and Development.

15 **2. Person electing to be subject.** A taxpayer not subject to the worldwide combined
16 reporting method under subsection 1 may elect to become subject to this method for a
17 minimum of 10 consecutive tax years as determined under rules adopted by the assessor.

18 **3. Treatment of all others.** For a taxpayer not subject to the worldwide combined
19 reporting method under subsection 1 or not electing to be subject pursuant to subsection 2,
20 50% of that taxpayer's income described in the Code, Section 951A must be apportioned
21 to the United States as income of the water's edge group. The apportionment factors of the
22 controlled foreign corporations nominally earning such income may not be included in the
23 apportionment formula.

24 **§2413. Filing requirement**

25 **1. Filing member; information required.** All members of a unitary business shall
26 file a combined return as a combined group. The return must include the income and
27 apportionment factors, as determined pursuant to section 2414, and any other information
28 required by the assessor for all members of the combined group, wherever those members
29 are located or doing business. The combined return must be filed under the name and
30 federal employer identification number of the parent corporation if the parent corporation
31 is a member of the combined group. If there is not a parent corporation or the parent
32 corporation is not a group member, the members of the combined group shall choose a
33 member to file the return. The filing member must remain the same in subsequent tax years
34 unless the filing member is no longer the parent corporation or is no longer a member of
35 the combined group. The return must be signed by a responsible officer of the filing
36 member on behalf of the combined group members.

37 **2. Liability for tax.** Members of a combined group are jointly and severally liable for
38 the tax liability of the combined group included in the combined return.

39 **3. Captive insurers.** Notwithstanding any provision of law to the contrary, a
40 combined return must include the income and apportionment factors of any captive insurers
41 that are part of the unitary business. For purposes of this subsection, "captive insurer"
42 means an insurance company that is:

- 1 A. Owned or controlled by another member of the unitary business; and
- 2 B. Used for purposes that include the insurance of risks of the parent organization or
- 3 affiliated companies.

4 **4. Additional requirements.** The assessor, by rule, may require:

5 A. A combined return to include the income and associated apportionment factors of

6 persons that are not included pursuant to subsection 1 but that are members of a unitary

7 business in order to reflect proper apportionment of income of the entire unitary

8 business;

9 B. Combination of the income and associated apportionment factors of persons that

10 are not subject to chapter 817 or would not be subject to chapter 817 if they were doing

11 business in this State; and

12 C. If the assessor determines that the reported income or loss of a taxpayer engaged in

13 a unitary business with a person that is not subject to this chapter represents an

14 avoidance or evasion of tax or an unfair representation of business activity in the State

15 by that taxpayer, on a case-by-case basis, all or part of the income and associated

16 apportionment factors of that taxpayer be included in the taxpayer's combined return.

17 With respect to the inclusion of associated apportionment factors pursuant to paragraph A,

18 the assessor may require the exclusion of one or more of the factors, the inclusion of one

19 or more additional factors that will fairly represent the taxpayer's business activity in this

20 State or the employment of any other method to effectuate a proper reflection of the total

21 amount of income subject to apportionment and an equitable allocation and apportionment

22 of the taxpayer's income.

23 **§2414. Determination of combined group income subject to tax**

24 A combined group's net taxable income is determined pursuant to this section.

25 **1. Total combined group income or loss.** Each member of the combined group shall

26 determine that member's separate income or loss, before any net operating loss deduction,

27 as follows.

28 A. For a member incorporated in the United States or included in a consolidated federal

29 corporate income tax return, the member's income or loss is the taxable income for the

30 member under the Code, on a separate entity basis, after making appropriate

31 adjustments to taxable income pursuant to section 5200-A.

32 B. All income of the unitary business must be combined even if, considered separately,

33 some of the income of the unitary business is subject to another tax. If any member of

34 the unitary business is subject to a net income tax or a tax measured by net income

35 under another provision of the laws of this State, such tax liability applies as a credit

36 against any tax liability as a result of this chapter.

37 C. A member not included in paragraph A is subject to this paragraph.

38 (1) The member's income or loss is determined from a profit and loss statement

39 prepared for that member on a separate entity basis in the currency in which the

40 member's books of account are regularly maintained, as long as the profit and loss

41 statement is:

42 (a) Subject to an independent audit;

1 (b) Adjusted to conform the profit and loss statement to the accounting
2 principles generally accepted in the United States for the preparation of such
3 statements; and

4 (c) Further modified to take into account any book-tax adjustments necessary
5 to reflect federal tax law and the tax law of this State.

6 (2) Income or loss computed pursuant to subparagraph (1) includes all income,
7 wherever derived, and is not limited to items of United States source income or
8 effectively connected income within the meaning of the Code. Items of income,
9 expense, gain or loss and related apportionment factors that are denominated in a
10 foreign currency must be translated into United States dollars on a reasonable basis
11 consistently applied year to year and entity by entity. Unrealized foreign currency
12 gains and losses are not recognized. Income apportioned to this State must be
13 expressed in United States dollars.

14 D. Notwithstanding paragraph C, in lieu of the procedures set forth in paragraph C or
15 in any case when the assessor determines that it is necessary to fairly and consistently
16 reflect the income or loss and apportionment factors of foreign operations included in
17 the unitary business, the assessor, by rule, may provide for other procedures to
18 reasonably approximate the income or loss and apportionment factors of members with
19 foreign operations. A member filing pursuant to this paragraph shall report to the
20 assessor that member's income or loss as determined using one of the following
21 methods:

22 (1) The Code, Section 55, as amended by United States Public Law 117-169 and
23 as codified as of January 1, 2023, regarding the corporate alternative minimum tax;

24 (2) The Two-Pillar Solution to Address Tax Challenges Arising from the
25 Digitalisation of the Economy as published by the Organisation for Economic Co-
26 operation and Development; or

27 (3) A method substantially similar to a method in subparagraph (1) or (2).

28 The assessor, by rule, may require what information must be used in calculating income
29 for purposes of this paragraph.

30 **2. Combination of income and loss.** Unless otherwise provided by this chapter or by
31 rules adopted pursuant to this chapter, income or loss of the members specified in
32 subsection 1 must be combined, after eliminating items of income, expense, gain and loss
33 from transactions between members of the combined group, applying the consolidated
34 filing rules under the Code and applicable federal regulations as if the combined group
35 were a consolidated filing group and as provided in this subsection.

36 A. Dividends paid by one member of the combined group to another member are
37 excluded from that paying member's income to the extent those dividends are paid out
38 of the earnings and profits of the unitary business included in the combined report in
39 the current or an earlier tax year.

40 B. Transfers between members of the combined group that partially reflect income of
41 the unitary group, such as those described in the Code, Sections 951 and 951A, are
42 excluded.

1 C. A charitable expense incurred by a member of a combined group, to the extent
2 allowable as a deduction pursuant to the Code, Section 170, must be subtracted from
3 the apportionable income of the combined group, subject to the income limitations of
4 the Code, Section 170 applied to the entire apportionable income of the group. Any
5 excess may be carried over as provided in the Code, Section 170, subject to the
6 limitations specified in the Code, Section 170.

7 **3. Determining combined income.** Combined group ordinary apportionable income
8 or loss is determined by eliminating from the amounts determined in subsections 1 and 2:

9 A. The amount of any net capital gain resulting from application of the Code, Subtitle
10 A, Chapter 1, Subchapter P; and

11 B. Any other income or loss, or item of income, expense, gain or loss, that is
12 nonapportionable.

13 **4. Determining state share of combined group income.** The State's share of
14 combined group ordinary apportionable income or loss is determined by multiplying the
15 amount determined under subsection 3 by the combined group apportionment factor as
16 determined under section 2415, subsection 1.

17 **5. Determining combined group state net capital.** The combined group state net
18 capital gain or loss from the application of the Code, Subtitle A, Chapter 1, Subchapter P
19 and the amount of any state net capital loss carry-over is determined as follows.

20 A. Each separate item of capital gain or loss for the combined group is determined in
21 accordance with the provisions requiring the computation of capital gains and losses
22 specified in section 5200-A.

23 B. Each separate item of apportionable capital gain or loss determined pursuant to
24 paragraph A is apportioned using the combined group apportionment factor determined
25 under section 2415, subsection 1, and each separate item of nonapportionable capital
26 gain or loss is allocated pursuant to the allocation and apportionment provisions of
27 section 5211.

28 C. The capital gains or losses allocated or apportioned to the State pursuant to
29 paragraph B are netted consistent with the provisions of the Code, Subtitle A, Chapter
30 1, Subchapter P.

31 D. If the amount determined in paragraph C is a net capital gain, that gain is included
32 in combined group net taxable income or loss before net operating loss deduction as
33 computed under subsection 7.

34 E. If the amount determined in paragraph C is a net capital loss, that loss may not be
35 deducted from other income but may be carried over by the combined group and used
36 to offset combined group capital gains, subject to the provisions of this Part allowing
37 a net capital loss carry-over, but only to the extent that the amount or use of such capital
38 loss carry-over is not subject to limitations under any provision of the Code or
39 applicable federal regulations or would not be subject to such limitations applied as if
40 the combined group were the consolidated group.

41 F. If the combined group capital loss carry-over must be attributed to particular
42 members of the group for purposes of determining limitations applicable to the amount
43 or use of the capital loss under paragraph E, the combined group net capital loss

1 generated for any applicable tax year must be multiplied by a fraction, the numerator
2 of which is the separate entity net capital loss, if any, of the member for that tax year
3 and the denominator of which is the total separate entity net capital losses for all the
4 members of the combined group that had net capital losses for that tax year. A
5 member's separate entity net capital loss carry-over is determined as follows.

6 (1) For each tax year in which the combined group recognized a net capital loss,
7 the combined group net apportionable gains and losses must be multiplied by the
8 member's separate entity apportionment factor determined under section 2415,
9 subsection 2, netting the resulting apportioned gains and losses as provided in this
10 subsection, then adding any nonapportionable gains and subtracting any losses
11 allocated to the State that were generated by that member.

12 (2) Members of the combined group may not be attributed total capital losses under
13 this paragraph in excess of the combined group net capital loss properly reported
14 to this State in the tax year.

15 (3) In computing the net capital loss carry-over for the member of the combined
16 group, the separate entity capital losses for all members computed under this
17 paragraph may be used to offset combined group capital gains in other tax years,
18 as allowed under the Code and law of the State, on a pro rata basis, starting with
19 the earliest tax year.

20 **6. Determination of nonapportionable items.** The amount of any combined group
21 nonapportionable items of income, expense, gain or loss not allocated under subsection 5,
22 paragraph B must be determined in accordance with sections 5200 and 5211.

23 **7. Determination of combined group state net income or loss before net operating**
24 **loss deduction.** The combined group state net income or loss before net operating loss
25 deduction is determined by combining and netting the results from subsection 4, subsection
26 5, paragraph D and subsection 6.

27 **8. Determination of combined group state net taxable income after net operating**
28 **loss deduction.** The combined group state net taxable income after any net operating loss
29 deduction is determined by deducting from the amount of combined group state net income
30 calculated under subsection 7 an allowable amount of the combined group's net operating
31 loss carry-over, determined as follows.

32 A. The allowable amount of the combined group net operating loss carry-over in any
33 tax year is the result of adding the amounts specified in subparagraphs (1) and (2) and
34 subtracting from that amount the amount determined under subparagraph (3), as
35 follows:

36 (1) The total of the combined group state losses determined under subsection 7 for
37 prior tax years to the extent such losses have not been used to offset the combined
38 group's state net income and to the extent those losses are not otherwise limited by
39 law or this subsection;

40 (2) The amount determined in subparagraph (1) is added to the net operating loss
41 carry-over of any member of the group created before the member became a part
42 of the group, but only to the extent that the net operating loss carry-over:

- 1 (a) Represents net operating losses that were properly attributed to the member
2 under paragraph B if the member was part of a separate combined group when
3 the losses were created;
- 4 (b) Represents net operating losses properly allocated or apportioned to this
5 State in the tax year created;
- 6 (c) Has not been used to offset income of any taxpayer;
- 7 (d) Would not be subject to limitations as to the amount or use applicable under
8 any provision of the Code or federal regulations, or would not be subject to
9 such limitations applied as if the combined group were the consolidated group;
10 and
- 11 (e) Is not otherwise not limited by the law of the State; and
- 12 (3) From the result of the addition of the amounts of subparagraphs (1) and (2) is
13 subtracted the net operating loss carry-over of a member of the combined group
14 attributed to that member under paragraph B that has not been used to offset income
15 and is not otherwise limited by the law of the State as of the date that member is
16 no longer part of the combined group.
- 17 B. If the combined group net operating loss carry-over must be attributed to particular
18 members of the group for purposes of determining limitations applicable to the amount
19 or use of the net operating loss carry-over under this subsection, the combined group
20 net operating loss generated for any applicable tax year must be multiplied by a
21 fraction, the numerator of which is the separate entity net operating loss, if any, of the
22 member for that tax year and the denominator of which is the total separate entity net
23 operating loss for all the members of the combined group that had net operating losses
24 for that tax year. A member's separate entity net operating loss is determined as
25 follows:
- 26 (1) Multiply the amount of combined group ordinary apportionable income
27 determined under subsection 3 by the member's separate entity apportionment
28 factor as determined under section 2415, subsection 2;
- 29 (2) Add to the amount determined under subparagraph (1) the amount of any
30 combined group net gain determined under subsection 5 multiplied by the
31 member's separate entity apportionment factor as determined under section 2415,
32 subsection 2;
- 33 (3) Add or subtract, as applicable, to or from the amount calculated under
34 subparagraph (2) the amount of any nonapportionable items of income, expense,
35 gain or loss allocated to the State under subsection 6 that were generated by the
36 member; and
- 37 (4) Add or subtract, as applicable, to or from the amount calculated under
38 subparagraph (3) any adjustments to properly reflect the member's separate entity
39 loss.
- 40 A member may not be attributed total losses under this paragraph in excess of the
41 combined group loss properly reported to the State in the tax year.
- 42 C. In computing the net operating loss carry-over for a member of the combined group,
43 the separate entity net operating losses for all members computed under subsection 5,

1 paragraph F may be used to offset combined group net income in other tax years, as
2 allowed under federal law or the law of the State, on a pro rata basis, starting with the
3 earliest tax year.

4 **9. Application of state tax credits.** If the use of a tax credit provided in this chapter
5 is limited to the Maine tax attributed to a member of a combined group, the tax that may
6 be offset by the credit is calculated as follows:

7 A. Multiply the amount of combined group ordinary apportionable income determined
8 under subsection 3 by the member's separate entity apportionment factor as determined
9 under section 2415, subsection 2;

10 B. To the amount determined under paragraph A, add the result of the multiplication
11 of any combined group net gain determined under subsection 5 by the member's
12 separate entity apportionment factor determined under section 2415, subsection 2;

13 C. Add or subtract, as applicable, to or from the amount determined under paragraph
14 B the amount of any nonapportionable items of income, expense, gain or loss allocated
15 to the State under subsection 6 that were generated by the member;

16 D. Add or subtract, as applicable, to or from the amount determined under paragraph
17 C any adjustments to properly reflect the member's separate entity loss; and

18 E. Multiply the amount determined under paragraph D by the applicable tax rate.

19 **§2415. Allocation and apportionment**

20 Unless otherwise provided in this chapter, section 5211 determines how income or loss,
21 or items making up income or loss, are allocated and apportioned to the State.

22 **1. Combined group apportionment factor.** The combined group apportionment
23 factor is determined pursuant to this subsection.

24 A. The combined group apportionment factor is a fraction determined under section
25 5211, the numerator of which includes amounts sourced to the State for the combined
26 group's unitary business, regardless of the separate entity to which that factor may be
27 attributed, and the denominator of which includes amounts associated with the
28 combined group's unitary business, wherever located.

29 B. All income and the factor of a combined group must be combined as required by
30 chapter 821 regardless of any state special apportionment system for any particular
31 entity if considered separately. A taxpayer may use the special apportionment system
32 for a particular entity with permission of the bureau if the taxpayer demonstrates by
33 clear and convincing evidence that failure to use the special formula will result in an
34 unfair representation of income produced in this State.

35 C. If any information pertinent to apportionment is disclosed as part of some other
36 regulatory regime, that information must be disclosed to the bureau. Such
37 apportionment information may be used in any apportionment calculations by the
38 taxpayer or may be required to be used by the bureau in rules or other guidance. As
39 used in this paragraph, "other regulatory regime" includes disclosures for financial
40 reporting purposes or securities law purposes, including, but not limited to, reports by
41 a financial accounting standards board relating to reporting by geographic area.

