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TAXATION

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
132ND LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 124, L.D. 191, “An Act to Support Maine Businesses by Establishing a Pass-through Entity Tax and Tax Credit”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'PART A

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

QQ. For tax years beginning on or after January 1, 2026, an amount equal to the sum of the taxpayer's distributive share of tax imposed by chapter 815, subchapter 3 and the taxpayer's distributive share of tax imposed by another state of the United States, a political subdivision of any such state or the District of Columbia that is substantially the same as the tax imposed under chapter 815, subchapter 3.

Sec. A-2. 36 MRSA §5190, first ¶, as amended by PL 2019, c. 380, §1 and affected by §5, is further amended to read:

A partnership is not subject to the tax imposed by this Part. Persons carrying on business as partners are liable for the tax imposed by this Part only in their separate or individual capacities. This section does not apply to the taxes imposed by chapters 819 and 827 ~~or~~, the tax imposed on partnership audit adjustments pursuant to subchapter 2 or the tax imposed on pass-through entities pursuant to subchapter 3.

Sec. A-3. 36 MRSA c. 815, sub-c. 3 is enacted to read:

SUBCHAPTER 3

PASS-THROUGH ENTITY TAX

§5199-A. Definitions

1 As used in this subchapter, unless the context otherwise indicates, the following terms
2 have the following meanings.

3 **1. Allowable credits.** "Allowable credits" means the total amount of any payments
4 with regard to a taxpayer that have been or will be paid to the bureau prior to the date the
5 payment against which the total amount of any payments is to be used as a credit is due
6 and that are available to offset any estimated tax liability under section 5199-H.

7 **2. Distributive share of income.** "Distributive share of income" means, with regard
8 to a qualified member that is a resident individual or resident estate or trust, the net of the
9 portion of income, gain, loss and deduction for the taxable year from the pass-through
10 entity, including guaranteed payments, entering into the qualified member's federal
11 adjusted gross income in the case of a resident individual or federal taxable income in the
12 case of a resident estate or trust. "Distributive share of income" means, with regard to a
13 qualified member that is a nonresident individual or nonresident estate or trust, the net of
14 the portion of income, gain, loss and deduction derived from or connected with sources in
15 this State, as provided by section 5142, for the taxable year from the pass-through entity,
16 including guaranteed payments, entering into the qualified member's federal adjusted gross
17 income in the case of a nonresident individual or federal taxable income in the case of a
18 nonresident estate or trust. If the qualified member is a trust, residency is determined by
19 the residency status of the trust and not by the residency status of the beneficiaries of the
20 trust. For purposes of this subchapter, the distributive share of income for a qualified
21 member is zero if the amount determined in accordance with this subsection is zero or less.

22 **3. Distributive share of tax.** "Distributive share of tax" means the tax paid by an
23 electing pass-through entity pursuant to section 5199-C multiplied by a fraction, the
24 numerator of which is equal to the qualified member's distributive share of income and the
25 denominator of which is equal to the pass-through entity taxable income.

26 **4. Electing pass-through entity.** "Electing pass-through entity" means a pass-through
27 entity that has elected for the taxable year to be subject to the tax imposed by this
28 subchapter.

29 **5. Estimated tax.** "Estimated tax" means the total amount of tax that an electing pass-
30 through entity estimates will be due for a taxable year under this subchapter, excluding the
31 estimated tax liability under section 5199-D, less any allowable credits for that taxable
32 year.

33 **6. Pass-through entity.** "Pass-through entity" means:

34 A. A partnership as defined in the Code, Section 7701(a)(2), excluding a publicly
35 traded partnership as defined in the Code, Section 7704(b); and

36 B. An entity classified as an S corporation under the Code for federal income tax
37 purposes.

38 "Pass-through entity" does not include an entity subject to tax under chapter 819.

39 **7. Pass-through entity taxable income.** "Pass-through entity taxable income" means
40 the aggregate total of distributive share of income of all qualified members for the taxable
41 year increased by the amount of the tax imposed on the pass-through entity by this
42 subchapter and by the amount of the tax imposed on the pass-through entity by another
43 state of the United States, a political subdivision of any such state or the District of
44 Columbia that is substantially the same as the tax imposed under this subchapter.

1 **8. Period of underpayment.** "Period of underpayment" means the period of time
2 from the date an estimated tax installment under section 5199-H is due until the
3 underpayment is satisfied or until the tax return to which the estimated tax installment
4 applies is due, whichever is less.

5 **9. Qualified member.** "Qualified member" means an individual, trust or estate that
6 is a direct owner, partner or shareholder in an electing pass-through entity, except that
7 "qualified member" does not include an organization exempt from tax under the Code,
8 Section 501. For purposes of this subsection, "direct owner" includes a qualified member
9 whose ownership in the electing pass-through entity is held through an entity that is
10 disregarded under the Code for federal income tax purposes.

11 **§5199-B. Election of pass-through entity tax**

12 A pass-through entity that elects to be subject to the tax imposed by this subchapter
13 shall declare that election annually on a timely filed return, including any extension granted
14 for filing the return. The election is irrevocable after the due date, including any extension
15 granted, for filing the return.

16 **§5199-C. Imposition of tax**

17 Notwithstanding any provision of law to the contrary, for every taxable year beginning
18 on or after January 1, 2026, a tax is imposed on every electing pass-through entity. For
19 each taxable year, the tax is equal to the pass-through entity taxable income multiplied by
20 the highest marginal tax rate under section 5111. The tax imposed by this section may not
21 be reduced for a pass-through entity by any of the credits in chapter 822. Notwithstanding
22 any provision of law to the contrary, for all budgetary accounting purposes, receipts from
23 the tax imposed by this section are individual income tax revenue and must be treated for
24 such purposes in the same manner as receipts from the tax imposed by chapter 803.

25 **§5199-D. Estimated tax payment of 10% on behalf of nonresident qualified members**

26 For every taxable year beginning on or after January 1, 2026, a pass-through entity
27 subject to the tax under this subchapter shall pay, in addition to the tax under section
28 5199-C, an estimated tax on behalf of its nonresident qualified members in an amount equal
29 to 10% of the amount of the tax required to be reported to each nonresident qualified
30 member for the taxable year by the electing pass-through entity in accordance with section
31 5199-G. The electing pass-through entity, no later than 30 days following the date the
32 Maine return of the electing pass-through entity is due in accordance with section 5199-E,
33 without regard to any extension, shall report to each nonresident qualified member the
34 amount of the estimated tax paid by the pass-through entity for the taxable year on behalf
35 of the nonresident qualified member. Notwithstanding any provision of law to the contrary,
36 for all budgetary accounting purposes, receipts from the tax imposed by this section are
37 individual income tax revenue and must be treated for such purposes in the same manner
38 as receipts from the tax imposed by chapter 803.

39 **§5199-E. Filing of returns**

40 **1. Filing of returns.** An electing pass-through entity shall file a return with respect to
41 the tax imposed by this subchapter on such forms as may be required by the assessor. The
42 return must contain such information as required by the assessor, including the name and
43 social security or federal identification number of each qualified member and, for the
44 taxable year, each qualified member's distributive share of income, distributive share of tax

1 paid by the electing pass-through entity pursuant to this subchapter, the amount of the
2 estimated tax paid by the entity under section 5199-D and the distributive share of tax paid
3 to another state of the United States, a political subdivision of any such state or the District
4 of Columbia that is substantially the same as the tax imposed by this subchapter. The
5 distributive share of the tax paid to another state of the United States, a political subdivision
6 of any such state or the District of Columbia that is substantially the same as the tax
7 imposed by this subchapter with respect to qualified members that are not residents of the
8 State may be reported on an aggregated basis. The return required by this subsection must
9 be filed, along with any tax due, on or before the 15th day of the 3rd month following the
10 end of the electing pass-through entity's taxable year for federal income tax purposes. The
11 return, including related schedules and worksheets, required by this subsection must be
12 filed with the bureau by electronic data submission.

13 **2. Consent required to amend returns.** Notwithstanding the requirement to file an
14 amended return pursuant to section 5227-A, an electing pass-through entity may not amend
15 a return filed under this subchapter without the written consent of, or as otherwise
16 authorized by, the assessor.

17 **§5199-F. Nonresident qualified member filing exception**

18 **1. Nonresident individual.** A qualified member of an electing pass-through entity
19 who is a nonresident individual for the entire taxable year is not required to file an income
20 tax return pursuant to section 5220, subsection 2 for the same taxable year if:

21 A. The member's entire Maine adjusted gross income, including a spouse's income in
22 the case of married individuals filing a joint federal return, is from one or more electing
23 pass-through entities;

24 B. The electing pass-through entity or entities file and pay the tax due under this
25 subchapter; and

26 C. The qualified member's credit provided by section 5219-CCC plus the estimated
27 tax amount paid by the electing pass-through entity on behalf of the nonresident
28 qualified member in accordance with section 5199-D is sufficient to satisfy the Maine
29 individual income tax liability of the member and the member's spouse for that taxable
30 year.

31 **2. Nonresident trust or estate.** A qualified member of an electing pass-through entity
32 that is a nonresident trust or estate for the entire taxable year is not required to file an
33 income tax return pursuant to section 5220, subsection 4 for the same taxable year if:

34 A. The member has its entire Maine-sourced income, as determined pursuant to section
35 5142, for the taxable year from one or more electing pass-through entities;

36 B. The member would have been required to include income described in paragraph
37 A as Maine taxable income if it were to file an income tax return for that year;

38 C. The member has not distributed any of its Maine-sourced income, as determined
39 pursuant to section 5142, for the taxable year to its beneficiaries as distributable net
40 income;

41 D. The electing pass-through entity or entities file and pay the tax due under this
42 subchapter; and

1 E. The member's credit provided by section 5219-CCC plus the estimated tax amount
2 paid by the electing pass-through entity on behalf of the nonresident qualified member
3 in accordance with section 5199-D is sufficient to satisfy the Maine income tax liability
4 for that taxable year.

5 **§5199-G. Reporting tax to members**

6 For purposes of the credit under section 5219-CCC, the electing pass-through entity,
7 no later than 30 days following the date the Maine return of the electing pass-through entity
8 is due in accordance with section 5199-E, shall report to each qualified member that
9 member's distributive share of tax. Each member report must clearly identify the member's
10 name and federal employer identification number or social security number, the member's
11 ownership interest in the entity, whether the member was a resident or nonresident of the
12 State during the taxable year, each member's distributive share of income and the
13 distributive share of tax paid to another state of the United States, a political subdivision of
14 any such state or the District of Columbia that is substantially the same as the tax imposed
15 by this subchapter and any other information that may be required by the assessor.

16 **§5199-H. Estimated tax installment payments**

17 Estimated taxes are required with respect to the tax imposed under section 5199-C in
18 accordance with the provisions of this section.

19 **1. Requirement to pay estimated tax.** Every person subject to taxation under this
20 subchapter shall make payment of estimated tax as required by this section. The
21 requirement to make estimated tax payments is waived if:

22 A. The electing pass-through entity's estimated tax liability is less than \$1,000 for the
23 taxable year; or

24 B. The electing pass-through entity had less than \$1,000 tax liability under this
25 subchapter, excluding the estimated tax liability under section 5199-D, for the
26 preceding taxable year.

27 **2. Amount of estimated tax to be paid.** Every electing pass-through entity required
28 to make payment of estimated tax under this subchapter is liable for an estimated tax that
29 is no less than the smaller of:

30 A. An amount equal to the electing pass-through entity's tax liability under this
31 subchapter, excluding the estimated tax liability under section 5199-D, for the
32 preceding taxable year, if that preceding year was a taxable year of 12 months; and

33 B. An amount equal to 90% of the electing pass-through entity's tax liability under this
34 subchapter, excluding the estimated tax liability under section 5199-D, for the current
35 taxable year.

36 **3. Due dates for estimated tax installments.** An installment payment is due the 15th
37 day of the 4th, 6th, 9th and 13th month following the beginning of the electing pass-through
38 entity's taxable year.

39 **4. Amount of installment.** The amount of estimated tax to be paid in a taxable year
40 by an electing pass-through entity must be paid in installments by the dates established in
41 subsection 3. The amount of the estimated tax must be paid in 4 equal installments unless
42 the taxpayer establishes by adequate record the actual distribution of tax liability and
43 allowable credits, or both, in which case the amount of the installment payments must be

1 adjusted accordingly and be determined in accordance with the portion of the electing pass-
2 through entity's estimated tax liability applicable to that portion of the electing pass-through
3 entity's taxable year completed by the close of the month preceding the installment's due
4 date less estimated tax payments already made for the taxable year.

5 **5. Penalty.** A penalty accrues automatically on underpayments of the required
6 installment amount for the period of underpayment at the rate provided pursuant to section
7 186. For cause, the assessor may waive or abate all or part of the penalty.

8 **6. Short taxable year.** For a taxable year of less than 12 months, the estimated tax
9 must be paid in full by the 15th day of the last month of the taxable year. For payment dates
10 falling within the short taxable year, payment must be made as provided in subsection 3.

11 **7. Installments paid in advance.** At the election of the electing pass-through entity,
12 an installment of estimated tax may be paid prior to the date prescribed for its payment.

13 **§5199-I. Interest on refunds prohibited**

14 Notwithstanding any provision of this Title to the contrary, interest may not be paid by
15 the assessor on an overpayment of the tax imposed by this subchapter.

16 **Sec. A-4. 36 MRSA §5217-A,** as amended by PL 2003, c. 391, §9 and c. 673, Pt.
17 JJ, §4 and affected by §6, is repealed and the following enacted in its place:

18 **§5217-A. Income tax paid to other taxing jurisdiction**

19 A resident individual is allowed a credit against the tax otherwise due under this Part,
20 excluding the tax imposed by section 5203-C, equal to the amount determined in subsection
21 1 plus the amount determined in subsection 2, as limited by subsection 4.

22 **1. Individual income tax.** For individual income tax, the credit is the amount of
23 income tax imposed on that individual for the taxable year by another state of the United
24 States, a political subdivision of any such state, the District of Columbia or any political
25 subdivision of a foreign country that is analogous to a state of the United States with respect
26 to income subject to tax under this Part that is derived from sources in that taxing
27 jurisdiction.

28 **2. Distributive share.** If another state of the United States, a political subdivision of
29 any such state, the District of Columbia or any political subdivision of a foreign country
30 that is analogous to a state of the United States imposes an income tax on an individual,
31 trust or estate that is substantially similar to the income tax imposed on such an individual,
32 trust or estate under this Part, the credit is equal to the amount of the individual's distributive
33 share of tax imposed on a pass-through entity that is substantially similar to the tax imposed
34 under chapter 815, subchapter 3, reduced by any refundable credits to the extent the
35 refundable credits reduce the income tax imposed on the individual, trust or estate below
36 zero, with respect to income subject to tax under this Part that is derived from sources in
37 that taxing jurisdiction.

38 **3. Sourcing of income.** In determining whether income is derived from sources in
39 another jurisdiction described in subsections 1 and 2, the assessor may not employ the law
40 of the other jurisdiction but shall instead assume that a statute equivalent to section 5142
41 applies in that jurisdiction.

42 **4. Credit limitation.** The credit, for any of the specified taxing jurisdictions described
43 in subsections 1 and 2, may not exceed the proportion of the tax otherwise due under this

1 Part, excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine
2 adjusted gross income derived from sources in that taxing jurisdiction bears to the
3 taxpayer's entire Maine adjusted gross income; except that, when a credit is claimed for
4 taxes paid to both a state and a political subdivision of a state, the total credit allowable for
5 those taxes does not exceed the proportion of the tax otherwise due under this Part,
6 excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine
7 adjusted gross income derived from sources in the other state bears to the taxpayer's entire
8 Maine adjusted gross income.

9 **Sec. A-5. 36 MRSA §5219-CCC** is enacted to read:

10 **§5219-CCC. Credit for pass-through entity tax paid**

11 A qualified member, as defined in section 5199-A, subsection 9, is allowed a credit
12 against the tax imposed by this Part equal to 90% of the amount of the tax required to be
13 reported to the qualified member for the taxable year by an electing pass-through entity, as
14 defined in section 5199-A, subsection 4, in accordance with section 5199-G. The credit
15 authorized by this section is refundable. A credit is not allowed under this section unless
16 the electing pass-through entity paid the tax imposed under chapter 815, subchapter 3 and
17 provided sufficient information on the pass-through entity tax return as prescribed by the
18 assessor to identify that qualified member and the qualified member's distributive share of
19 the tax paid by the electing pass-through entity. The provisions of section 5219-G,
20 subsection 2 may not be applied to the credit allowed under this section.

21 **Sec. A-6. 36 MRSA §5228, sub-§1, ¶B**, as amended by PL 2007, c. 438, §105, is
22 further amended to read:

23 B. "Estimated tax" means the total amount of tax that a person estimates will be due
24 for a taxable year under this Part, exclusive of a withholder's liability for taxes withheld
25 and the tax imposed by chapter 815, subchapter 3, less any allowable credits for that
26 taxable year.

27 **Sec. A-7. 36 MRSA §5231, sub-§1-A**, as amended by PL 2023, c. 441, Pt. C, §7
28 and affected by §11, is further amended to read:

29 **1-A. Federal extension.** When an individual, estate or trust is granted an extension
30 of time within which to file a federal income tax return for any taxable year, an extension
31 to file the taxpayer's income tax return with respect to the tax imposed by this Part is
32 automatically granted for an equivalent period from the date prescribed for filing the return.
33 When a taxable corporation, an electing pass-through entity under chapter 815, subchapter
34 3 or a financial institution subject to the tax imposed by chapter 819 is granted an extension
35 of time within which to file its federal income tax return for any taxable year, an extension
36 to file the taxpayer's income tax, pass-through entity tax or franchise tax return with respect
37 to the tax imposed by this Part is automatically granted for an equivalent period from the
38 date prescribed for filing the return plus 30 days.

39 **Sec. A-8. Appropriations and allocations.** The following appropriations and
40 allocations are made.

41 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**
42 **Revenue Services, Bureau of 0002**

1 Initiative: Provides one-time funding for administrative expenses to update the State's tax
2 and administration system for a new optional account type for pass-through entities.

3	GENERAL FUND	2025-26	2026-27
4	All Other	\$0	\$438,771
5			
6	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$438,771</u>

7 **Sec. A-9. Application.** This Part applies to taxable years beginning on or after
8 January 1, 2026.

9 **PART B**

10 **Sec. B-1. Fund established.** The Pass-through Entity Tax Stabilization Fund,
11 referred to in this Part as "the fund," is established within the Department of Administrative
12 and Financial Services as an Other Special Revenue Funds account for the purpose of
13 stabilizing the revenue impact of the pass-through entity tax established in the Maine
14 Revised Statutes, Title 36, chapter 815, subchapter 3 on the General Fund.

15 **Sec. B-2. Transfer to Pass-through Entity Tax Stabilization Fund.**
16 Notwithstanding any provision of law to the contrary, on or before June 30, 2027, the State
17 Controller shall transfer \$28,000,000 from the unappropriated surplus of the General Fund
18 to the fund.

19 **Sec. B-3. Transfer from Pass-through Entity Tax Stabilization Fund.**
20 Notwithstanding any provision of law to the contrary, on or before June 30, 2028, the State
21 Controller shall transfer \$28,000,000 from the fund to the unappropriated surplus of the
22 General Fund.'

23 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
24 number to read consecutively.

25 **SUMMARY**

26 This amendment strikes and replaces the bill. Part A enacts a pass-through entity tax
27 for tax years beginning on or after January 1, 2026. The tax applies to each taxable year
28 that the pass-through entity elects to be subject to the tax. The tax is equal to the distributive
29 share of income of all qualified members multiplied by the highest marginal individual
30 income tax rate, which is currently 7.15%. Qualified members may claim a refundable
31 income tax credit equal to 90% of their distributive share of the pass-through entity tax
32 paid. Part B establishes an Other Special Revenue Funds account for the purpose of
33 reimbursing the General Fund for net losses in revenue from the pass-through entity tax in
34 the 2nd and subsequent years of the tax.

35 **FISCAL NOTE REQUIRED**

36 **(See attached)**