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TAXATION

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STATE OF MAINE HOUSE OF REPRESENTATIVES 132ND LEGISLATURE FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to H.P. 601, L.D. 936, “An Act to Amend the Laws Regarding the Mining Excise Tax”

Amend the bill by inserting after section 1 the following:

'Sec. 2. 5 MRSA §453-A, as amended by PL 1999, c. 668, §3, is further amended to read:

§453-A. Board of trustees

The Mining Excise Tax Trust Fund Board of Trustees, as established in section 12004-G, subsection 33-B and referred to in the chapter as the "board," consists of 5 members, ~~at least one of whom must be a resident of the unorganized territory.~~

1. Appointment; qualifications. The members of the board are appointed by the Governor and are subject to review by the joint standing committee of the Legislature having jurisdiction over taxation matters and to confirmation by the Legislature, except that the Governor may not appoint any members to the board until such time as funds accrue to the Mining Excise Tax Trust Fund. The Governor shall ensure that members of the board have at least the following qualifications:

A. At least one member must be experienced in the application of hydrology and groundwater science;

B. At least one member must be experienced in the application of soil and air pollution science;

C. At least one member must be experienced in public health science;

D. At least one member must be a representative of a municipal or county government in which metallic mining occurs; and

E. At least one member must be a resident of the unorganized territory.

2. Terms. ~~Of the initial members one serves a term of one year, one serves a term of 2 years, one serves a term of 3 years, one serves a term of 4 years and one serves a term of 5 years. Upon the expiration of the initial terms, members~~ Members are appointed to serve

1 staggered 5-year terms. Members may be reappointed. Members serve until their
2 successors are appointed and qualified.

3 **3. Vacancies.** A vacancy is filled for the expiration of the term to which the member
4 has been appointed.

5 **Sec. 3. 5 MRSA §454-A, sub-§5,** as amended by PL 1999, c. 668, §4, is further
6 amended to read:

7 **5. Biennial report and annual plan.** Upon appointment of the board members
8 pursuant to section 453-A, subsection 1, the board shall prepare:

9 A. A biennial report to be submitted to the Governor ~~and the Legislature, to the joint~~
10 ~~standing committee of the Legislature having jurisdiction over taxation matters and to~~
11 ~~the joint standing committee of the Legislature having jurisdiction over mining and~~
12 ~~mineral extraction matters.~~ The report must include an audited financial statement of
13 the fund and a listing of activities undertaken by the board in the preceding biennium.
14 The report must be submitted 30 days prior to the convening of each first regular
15 session of the Legislature; ~~and~~

16 B. An annual general plan of expenditures and activities of the coming year. The
17 general plan must be submitted to the Legislature for approval 30 days prior to the
18 convening of each regular session; ~~and~~

19 C. If an incident or event requires the response of the board and the expenditure of
20 funds by the board, a report must be made to the joint standing committee of the
21 Legislature having jurisdiction over taxation matters and to the joint standing
22 committee of the Legislature having jurisdiction over mining and mineral extraction
23 matters within 90 days of the expenditure.

24 **Sec. 4. 5 MRSA §455, sub-§2,** as enacted by PL 1981, c. 711, §2, is amended to
25 read:

26 **2. Uses.** Funds may be used as follows:

27 A. To purchase and develop land or other real property interests for park and
28 recreational uses;

29 B. To purchase wildlife habitats, marine habitats and unique natural areas; ~~or~~

30 C. To restore the quality of marine waters, lakes, rivers and streams; ~~or~~

31 D. To restore the quality of lands, geographic and topological features and soils.'

32 Amend the bill by striking out all of section 5 and inserting the following:

33 **'Sec. 5. 36 MRSA §603, sub-§10,** as amended by PL 2025, c. 113, Pt. D, §14, is
34 further amended to read:

35 **10. Tax situs.** The tax situs of tangible personal property is at the ~~mine~~ mining site if
36 that property is:

37 A. Owned, leased or otherwise subject to possessory control of a mining company;
38 and

39 B. On route to or from, being transported to or from or destined to or from a ~~mine~~
40 mining site.

1 Except as otherwise provided in this subsection, the tax situs of tangible personal property
2 leased to a mining company is in the place where the property is situated.

3 For the purposes of this subsection, the definitions of section 2855 apply.'

4 Amend the bill by striking out all of section 31 and inserting the following:

5 'Sec. 31. 36 MRSA §2857, as enacted by PL 1981, c. 711, §10, is amended to read:

6 **§2857. Returns**

7 **1. Annual return.** A mining company shall file, on or before the date the mining
8 company's state income tax return is due to be filed, an annual return on a form specified
9 by the ~~State Tax Assessor~~ assessor for each tax year.

10 **2. Form and contents.** The return ~~shall~~ must indicate:

11 A. The tax due;

12 B. The estimated tax payments made; and

13 ~~C. Credits provided under section 2858; and~~

14 D. Information relating to ~~the value of facilities and equipment~~, gross proceeds, ~~net~~
15 ~~proceeds~~ or other relevant information as the ~~State Tax Assessor~~ assessor may ~~by rule~~
16 require.

17 **3. Payments.** A mining company shall pay the tax due, less estimated tax payments
18 ~~and credits~~, at the time its annual return is due without extensions.

19 **4. Extensions.** The ~~State Tax Assessor~~ assessor may grant a reasonable extension of
20 time for filing a return, declaration, statement or other document or payment of tax or
21 estimated tax required by this chapter on such terms and conditions as ~~he~~ the assessor may
22 require. The An extension for filing a return, declaration, statement or other document
23 under this chapter may not exceed 8 months, except that, when a mining company is
24 granted an extension of time within which to file a federal income tax return for the tax
25 year, an extension to file the mining company's return with respect to the tax imposed by
26 this chapter is automatically granted for an equivalent period from the date prescribed for
27 filing the return under this chapter plus 30 days. If an extension of time is granted for
28 payment of an amount of tax under this chapter, the assessor may require the taxpayer to
29 furnish a bond or other security in an amount not exceeding twice the amount for which
30 the extension of time for payment is granted, on terms and conditions as the assessor may
31 require.

32 **5. Computation.** In computing a mining company's tax, gross proceeds ~~and net~~
33 ~~proceeds~~ shall must be computed as if each ~~mine-site~~ mining property were a separate
34 taxpayer. To the extent the mining property is located both in this State and in one or more
35 other states or Canadian provinces, the gross proceeds must be allocated or apportioned in
36 a reasonable manner between the proceeds derived from minerals mined in this State and
37 the proceeds derived from minerals mined in the other jurisdictions. The State Tax
38 Assessor assessor may distribute, apportion or allocate on a reasonable basis gross
39 proceeds, deductions, credits or allowances between or among mining companies or mine
40 sites mining properties, if such distribution, apportionment or allocation is necessary to
41 prevent evasion of taxes imposed by this chapter, or to reasonably reflect clearly the gross
42 or net proceeds of any mining company or mine-site from mining activity in the State. For

1 purposes of this subsection, "mining property" has the same meaning as "property" as
2 defined in Section 614 of the Code.

3 **6. Requirement to file amended Maine returns.** The requirement to file an amended
4 Maine return is governed by this subsection.

5 A. A taxpayer shall file an amended Maine return as required by this subsection when
6 the taxpayer files an amended federal return affecting the taxpayer's liability under this
7 chapter, the Internal Revenue Service changes or corrects any item affecting the
8 taxpayer's liability under this chapter or for any reason there is a change or correction
9 affecting the taxpayer's liability under this chapter.

10 B. The amended Maine return required pursuant to paragraph A must be filed within
11 180 days from the final determination date of the change or correction or the filing of
12 the amended federal return. For purposes of this paragraph, "final determination date"
13 means, when the taxpayer files an amended federal return affecting the taxpayer's
14 liability under this chapter, the date on which the earliest of the following events occurs
15 with respect to a taxable year for federal income tax purposes:

16 (1) The taxpayer has made payment of an additional income tax liability resulting
17 from a federal audit, the taxpayer has not filed a petition for redetermination or
18 claim for refund for the portions of the audit for which payment was made and the
19 time for filing a petition for redetermination or refund claim has expired;

20 (2) The taxpayer receives a refund from the United States Treasury that resulted
21 from a federal audit;

22 (3) The taxpayer signs federal Internal Revenue Service Form 870-AD or another
23 Internal Revenue Service form consenting to a deficiency or accepting an
24 overassessment;

25 (4) The taxpayer's time for filing a petition for redetermination with the United
26 States Tax Court expires;

27 (5) The taxpayer and the Internal Revenue Service enter into a closing agreement;

28 (6) A decision from the United States Tax Court, a United States District Court, a
29 federal court of appeals, the United States Court of Federal Claims or the United
30 States Supreme Court becomes final; and

31 (7) The taxpayer files an amended return or similar report pursuant to the Code,
32 Section 6225(c).

33 C. The amended Maine return filed pursuant to this subsection must indicate the
34 change or correction and the reason for that change or correction. The amended return
35 constitutes an admission as to the correctness of the change unless the taxpayer includes
36 with the return a written explanation of the reason the change or correction is erroneous.
37 If the taxpayer files an amended federal return, a copy of the amended federal return
38 must be attached to the amended Maine return under this chapter.

39 D. The assessor may require additional information to be filed with the amended Maine
40 return filed pursuant to this subsection. The assessor may prescribe exceptions to the
41 requirements of this subsection.'

42 Amend the bill by inserting after section 31 the following:

1 'Sec. 32. 36 MRSA §2857-A is enacted to read:

2 **§2857-A. Accounting periods and methods of accounting**

3 **1. Accounting periods.** The determination of a tax year is subject to the following.

4 A. If a taxpayer's tax year is changed for federal income tax purposes, the taxpayer's
5 tax year for purposes of the tax imposed by this chapter must be similarly changed.

6 B. Notwithstanding paragraph A and section 2855, subsection 15, if the assessor makes
7 a determination of jeopardy and terminates the taxpayer's reporting period under
8 section 145, the tax must be computed for the period determined by that action.

9 **2. Method of accounting.** The method of accounting used by a taxpayer is subject to
10 this subsection.

11 A. For purposes of the tax imposed by this chapter, a taxpayer's method of accounting
12 must be the same as the taxpayer's method of accounting for federal income tax
13 purposes. If a method of accounting has not been regularly used by the taxpayer, gross
14 income from mining for purposes of this chapter must be computed under a method
15 that in the opinion of the assessor fairly reflects gross proceeds.

16 B. If a taxpayer's method of accounting is changed for federal income tax purposes,
17 the taxpayer's method of accounting for purposes of this chapter must be similarly
18 changed.

19 C. In computing a taxpayer's gross proceeds for any tax year under a method of
20 accounting different from the method under which the taxpayer's gross proceeds for
21 the previous year were computed, there must be taken into account those adjustments
22 that are determined to be necessary solely by reason of the change in order to prevent
23 amounts from being duplicated or omitted.'

24 Amend the bill by inserting after section 32 the following:

25 'Sec. 33. 36 MRSA §2859, as repealed and replaced by PL 1985, c. 691, §§27 and
26 48, is repealed and the following enacted in its place:

27 **§2859. Estimated tax requirements**

28 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
29 following terms have the following meanings.

30 A. "Allowable credits" means the total amount of payments by a taxpayer that have
31 been or will be paid to the bureau prior to the date the payment against which they are
32 to be used as a credit is due and that are available to offset any tax liability estimated
33 under this chapter.

34 B. "Estimated tax" means the total amount of tax that a person estimates will be due
35 for a tax year under this chapter, after subtracting allowable credits for that tax year.

36 C. "Period of underpayment" means the period of time from the date an estimated tax
37 installment is due until the underpayment is satisfied or until the tax return to which
38 the estimated tax installment applies is due, whichever is less.

39 **2. Requirement to pay estimated tax.** A person subject to taxation under this chapter
40 shall make payment of estimated tax as required by this chapter. The requirement to make
41 estimated tax payments is waived if:

1 A. The person's tax liability pursuant to this chapter reduced by allowable credits for
2 the tax year is less than \$1,000 for the tax year; or

3 B. The person had less than \$1,000 tax liability under this chapter for the immediately
4 preceding tax year.

5 **3. Amount of estimated tax to be paid.** A person required to make payment of
6 estimated tax under this chapter is liable for an estimated tax that is no less than the lesser
7 of:

8 A. An amount equal to the person's tax liability under this chapter for the immediately
9 preceding tax year, if that preceding year was a tax year of 12 months; and

10 B. An amount equal to 90% of the person's tax liability under this chapter for the
11 current tax year.

12 **4. Amount of installment.** The amount of estimated tax to be paid in a tax year by a
13 taxpayer is to be paid in installments by the dates established in this section. The amount
14 of the estimated tax is to be paid in 4 equal installments unless the taxpayer establishes by
15 adequate record the actual distribution of tax liability and allowable credits, or both, in
16 which case the amount of the installment payments must be adjusted accordingly and be
17 determined in accordance with the portion of the taxpayer's estimated tax liability
18 applicable to that portion of the taxpayer's tax year, completed by the close of the month
19 preceding the installment's due date, less estimated tax payments already made for the tax
20 year.

21 **5. Due dates for estimated tax installments.** An estimated tax installment payment
22 calculated pursuant to subsection 4 is due the 15th day of the 4th, 6th, 9th and 13th month
23 following the beginning of the taxpayer's tax year.

24 **6. Penalty.** A penalty accrues automatically on underpayments of the required
25 installment amount pursuant to subsection 4 for the period of underpayment at the interest
26 rate provided pursuant to section 186. For cause, the assessor may waive or abate all or any
27 part of the penalty.

28 **7. Short taxable year.** For a tax year of less than 12 months, the estimated tax must
29 be paid in full by the 15th day of the last month of the tax year. For payment dates falling
30 within the short taxable year, payment must be made as provided in subsection 5.

31 **8. Installments paid in advance.** At the taxpayer's election, an installment of
32 estimated tax required pursuant to subsection 4 may be paid prior to the date prescribed for
33 its payment.'

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

SUMMARY

37 This amendment updates procedures related to the tax filings and accounting
38 requirements of ongoing mining operations.

39 The amendment creates specific criteria for the appointments of members to the Mining
40 Excise Tax Trust Fund Board of Trustees, which oversees the Mining Excise Tax Trust
41 Fund, and alters and expands the reporting duties of the board.

3 **FISCAL NOTE REQUIRED**
4 **(See attached)**