

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
H.P. 601 - L.D. 936

An Act to Amend the Laws Regarding the Mining Excise Tax

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

Sec. 1. 1 MRSA c. 31, as amended, is repealed.

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

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

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

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

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

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

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

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

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

2. Uses. Funds may be used as follows:

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

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

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

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

Sec. 5. 14 MRSA §6662, sub-§1, ¶C, as enacted by PL 1983, c. 189, is amended by amending subparagraph (2) to read:

(2) Payment of ~~any the~~ excise tax under Title 36, ~~sections 2851 to 2865~~ section 2856;

Sec. 6. 36 MRSA §271, sub-§2, ¶A, as amended by PL 2019, c. 401, Pt. A, §4, is further amended by repealing subparagraph (6).

Sec. 7. 36 MRSA §271, sub-§10, ¶A, as enacted by PL 2009, c. 571, Pt. WWW, §7, is amended to read:

A. The filing fee for a petition for an appeal of current use valuation under the tree growth tax law, chapter 105, subchapter 2-A, the farm and open space tax law, chapter 105, subchapter 10, or the working waterfront land law, chapter 105, subchapter 10-A or a petition for an appeal relating to section 2865 is \$75.

Sec. 8. 36 MRSA §603, sub-§10, as amended by PL 2025, c. 113, Pt. D, §14, is further amended to read:

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

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

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

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

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

Sec. 9. 36 MRSA §655, sub-§1, ¶S, as amended by PL 2019, c. 440, §1, is repealed.

Sec. 10. 36 MRSA §655, sub-§1, ¶S-1 is enacted to read:

S-1. Unextracted minerals. For purposes of this paragraph, "minerals" has the same meaning as in section 2855, subsection 9;

Sec. 11. 36 MRSA §656, sub-§1, ¶I, as enacted by PL 1983, c. 555, §3, is repealed.

Sec. 12. 36 MRSA §656, sub-§1, ¶I-1 is enacted to read:

I-1. Unextracted minerals. For purposes of this paragraph, "minerals" has the same meaning as in section 2855, subsection 9.

Sec. 13. 36 MRSA §2013, sub-§1, ¶B-2 is enacted to read:

B-2. "Commercial mining" means the commercial extraction or removal of metallic minerals or overburden or the preparation, washing, cleaning or other treatment of metallic minerals and includes the bulk sampling, advanced exploration, extraction or beneficiation of metallic minerals within a mining area.

"Commercial mining" does not include:

(1) Exploration;

(2) The physical extraction, crushing, grinding, storage or heating of calcium carbonate or limestone to produce cement;

(3) The exploration for or physical extraction, crushing, grinding, sorting or storage of borrow, topsoil, clay or silt; or

(4) The exploration for or physical extraction, crushing, grinding, sorting or storage of gemstones, aggregate, dimension stone or other construction materials from a quarry.

As used in this paragraph, "advanced exploration," "beneficiation," "cement," "exploration" and "metallic mineral" have the same meanings as in Title 38, section 490-MM.

Sec. 14. 36 MRSA §2013, sub-§1, ¶C, as amended by PL 2019, c. 7, §2, is further amended to read:

C. "Depreciable machinery and equipment" means, except as otherwise provided by this paragraph, that part of the following machinery and equipment for which depreciation is allowable under the Code and repair parts for that machinery and equipment:

- (1) New or used machinery and equipment for use directly and primarily in commercial agricultural production, including self-propelled vehicles; attachments and equipment for the production of field and orchard crops; new or used machinery and equipment for use directly and primarily in production of milk, maple syrup or honey, animal husbandry and production of livestock, including poultry; new or used machinery and equipment used in the removal and storage of manure; and new or used machinery and equipment not used directly and primarily in commercial agricultural production, but used to transport potatoes from a truck into a storage location;
- (2) New or used watercraft, nets, traps, cables, tackle and related equipment necessary to and used directly and primarily in commercial fishing;
- (3) New or used watercraft, machinery or equipment used directly and primarily for commercial aquacultural production, including, but not limited to: nets; ropes; cables; anchors and anchor weights; shackles and other hardware; buoys; fish tanks; fish totes; oxygen tanks; pumping systems; generators; water-heating systems; boilers and related pumping systems; diving equipment; feeders and related equipment; power-generating equipment; tank water-level sensors; aboveground piping; water-oxygenating systems; fish-grading equipment; safety equipment; and sea cage systems, including walkways and frames, lights, netting, buoys, shackles, ropes, cables, anchors and anchor weights; ~~and~~
- (4) New or used machinery and equipment for use directly and primarily in commercial wood harvesting, including, but not limited to, chain saws, skidders, delimiters, forwarders, slashers, feller bunchers and wood chippers; ~~and~~
- (5) New or used machinery and equipment for use directly and primarily in commercial mining.

"Depreciable machinery and equipment" does not include a motor vehicle as defined in section 1752, subsection 7 or a trailer as defined in section 1752, subsection 19-A.

Sec. 15. 36 MRSA §2013, sub-§2, as amended by PL 2015, c. 481, Pt. B, §1 and affected by §2, is further amended to read:

2. Refund authorized. Any person, association of persons, firm or corporation that purchases electricity or fuel, or that purchases or leases depreciable machinery or equipment, for use in commercial agricultural production, commercial fishing, commercial aquacultural production ~~or~~, commercial wood harvesting or commercial mining must be

refunded the amount of sales tax paid upon presenting to the ~~State Tax Assessor~~ assessor evidence that the purchase is eligible for refund under this section.

Evidence required by the assessor may include a copy or copies of that portion of the purchaser's or lessee's most recent filing under the ~~United States Internal Revenue~~ Code that indicates that the purchaser or lessee is engaged in commercial agricultural production, commercial fishing, commercial aquacultural production ~~or~~, commercial wood harvesting or commercial mining and that the purchased machinery or equipment is depreciable for those purposes or would be depreciable for those purposes if owned by the lessee.

In the event that any piece of machinery or equipment is only partially depreciable under the ~~United States Internal Revenue~~ Code, any reimbursement of the sales tax must be prorated accordingly. In the event that electricity or fuel is used in qualifying and nonqualifying activities, any reimbursement of the sales tax must be prorated accordingly.

Application for refunds must be filed with the assessor within 36 months of the date of purchase or execution of the lease.

Sec. 16. 36 MRSA §2013, sub-§3, as amended by PL 2015, c. 481, Pt. B, §1 and affected by §2, is further amended to read:

3. Purchases made free of tax with certificate. Sales tax need not be paid on the purchase of electricity, fuel or a single item of machinery or equipment if the purchaser has obtained a certificate from the assessor stating that the purchaser is engaged in commercial agricultural production, commercial fishing, commercial aquacultural production ~~or~~, commercial wood harvesting or commercial mining and authorizing the purchaser to purchase electricity, fuel or depreciable machinery and equipment without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the electricity, fuel or depreciable machinery or equipment must be used directly in commercial agricultural production, commercial fishing, commercial aquacultural production ~~or~~, commercial wood harvesting or commercial mining. In order to qualify for this exemption, the electricity or fuel must be used in qualifying activities, including support operations.

Sec. 17. 36 MRSA §2854, as enacted by PL 1981, c. 711, §10, is repealed and the following enacted in its place:

§2854. Excise tax

An annual excise tax is imposed on a mining company for the privilege of conducting mining in the State and is in addition to any other tax imposed by this Title.

Sec. 18. 36 MRSA §2855, sub-§2, as enacted by PL 1981, c. 711, §10, is repealed.

Sec. 19. 36 MRSA §2855, sub-§3, as enacted by PL 1981, c. 711, §10, is repealed.

Sec. 20. 36 MRSA §2855, sub-§4, as enacted by PL 1981, c. 711, §10, is repealed.

Sec. 21. 36 MRSA §2855, sub-§5, as enacted by PL 1981, c. 711, §10, is amended to read:

5. Gross proceeds. "Gross proceeds" means a mining company's federal gross income from mining ~~with respect to a mine site~~, as defined in Section 613 of the ~~code~~ Code, in the State.

Sec. 22. 36 MRSA §2855, sub-§6, as enacted by PL 1981, c. 711, §10, is repealed.

Sec. 23. 36 MRSA §2855, sub-§7, as enacted by PL 1981, c. 711, §10, is repealed.

Sec. 24. 36 MRSA §2855, sub-§8, as amended by PL 1983, c. 776, §4, is repealed.

Sec. 25. 36 MRSA §2855, sub-§9, as enacted by PL 1981, c. 711, §10, is amended to read:

9. Minerals. "Minerals" means all ~~naturally occurring~~ naturally occurring metallic minerals as defined in Title 38, section 490-MM, subsection 8.

Sec. 26. 36 MRSA §2855, sub-§10, as enacted by PL 1981, c. 711, §10, is repealed and the following enacted in its place:

10. Mining. "Mining" has the same meaning as in Title 38, section 490-MM, subsection 11, except that activity described in Title 38, section 490-MM, subsection 11, paragraph D is mining regardless of any exclusion by the Department of Environmental Protection pursuant to Title 38, section 490-NN, subsection 4.

Sec. 27. 36 MRSA §2855, sub-§12, as amended by PL 1983, c. 776, §5, is repealed.

Sec. 28. 36 MRSA §2855, sub-§13, as enacted by PL 1981, c. 711, §10, is repealed.

Sec. 29. 36 MRSA §2855, sub-§14, as amended by PL 1993, c. 395, §18, is repealed.

Sec. 30. 36 MRSA §2855, sub-§15, as enacted by PL 1981, c. 711, §10, is repealed and the following enacted in its place:

15. Tax year. "Tax year" means an accounting period that is the same as the taxpayer's taxable year for federal income tax purposes.

Sec. 31. 36 MRSA §2855, sub-§16, as enacted by PL 1981, c. 711, §10, is repealed.

Sec. 32. 36 MRSA §2855, sub-§17, as enacted by PL 1981, c. 711, §10, is repealed.

Sec. 33. 36 MRSA §2856, as corrected by RR 2013, c. 2, §45, is repealed and the following enacted in its place:

§2856. Amount of annual excise tax

The amount of the annual excise tax on a mining company is the mining company's gross proceeds multiplied by 0.05.

Sec. 34. 36 MRSA §2857, as enacted by PL 1981, c. 711, §10, is amended to read:

§2857. Returns

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

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

A. The tax due;

B. The estimated tax payments made; and

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

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

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

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

5. Computation. In computing a mining company's tax, gross proceeds ~~and net proceeds~~ shall must be computed as if each ~~mine-site~~ mining property were a separate taxpayer. To the extent the mining property is located both in this State and in one or more other states or Canadian provinces, the gross proceeds must be allocated or apportioned in a reasonable manner between the proceeds derived from minerals mined in this State and the proceeds derived from minerals mined in the other jurisdictions. The State Tax Assessor assessor may distribute, apportion or allocate on a reasonable basis gross proceeds, deductions, credits or allowances between or among mining companies or ~~mine sites~~ mining properties, if such distribution, apportionment or allocation is necessary to prevent evasion of taxes imposed by this chapter, or to reasonably reflect ~~clearly~~ the gross ~~or net~~ proceeds of any mining company ~~or mine-site~~ from mining activity in the State. For purposes of this subsection, "mining property" has the same meaning as "property" as defined in Section 614 of the Code.

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

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

B. The amended Maine return required pursuant to paragraph A must be filed within 180 days from the final determination date of the change or correction or the filing of the amended federal return. For purposes of this paragraph, "final determination date" means, when the taxpayer files an amended federal return affecting the taxpayer's

liability under this chapter, the date on which the earliest of the following events occurs with respect to a taxable year for federal income tax purposes:

- (1) The taxpayer has made payment of an additional income tax liability resulting from a federal audit, the taxpayer has not filed a petition for redetermination or claim for refund for the portions of the audit for which payment was made and the time for filing a petition for redetermination or refund claim has expired;
- (2) The taxpayer receives a refund from the United States Treasury that resulted from a federal audit;
- (3) The taxpayer signs federal Internal Revenue Service Form 870-AD or another Internal Revenue Service form consenting to a deficiency or accepting an overassessment;
- (4) The taxpayer's time for filing a petition for redetermination with the United States Tax Court expires;
- (5) The taxpayer and the Internal Revenue Service enter into a closing agreement;
- (6) A decision from the United States Tax Court, a United States District Court, a federal court of appeals, the United States Court of Federal Claims or the United States Supreme Court becomes final; and
- (7) The taxpayer files an amended return or similar report pursuant to the Code, Section 6225(c).

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

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

Sec. 35. 36 MRSA §2857-A is enacted to read:

§2857-A. Accounting periods and methods of accounting

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

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

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

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

A. For purposes of the tax imposed by this chapter, a taxpayer's method of accounting must be the same as the taxpayer's method of accounting for federal income tax purposes. If a method of accounting has not been regularly used by the taxpayer, gross

income from mining for purposes of this chapter must be computed under a method that in the opinion of the assessor fairly reflects gross proceeds.

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

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

Sec. 36. 36 MRSA §2858, as amended by PL 1987, c. 772, §26, is repealed.

Sec. 37. 36 MRSA §2859, as repealed and replaced by PL 1985, c. 691, §§27 and 48, is repealed and the following enacted in its place:

§2859. Estimated tax requirements

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

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

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

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

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

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

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

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

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

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

4. Amount of installment. The amount of estimated tax to be paid in a tax year by a taxpayer is to be paid in installments by the dates established in this section. The amount

of the estimated tax is to be paid in 4 equal installments unless the taxpayer establishes by adequate record the actual distribution of tax liability and allowable credits, or both, in which case the amount of the installment payments must be adjusted accordingly and be determined in accordance with the portion of the taxpayer's estimated tax liability applicable to that portion of the taxpayer's tax year, completed by the close of the month preceding the installment's due date, less estimated tax payments already made for the tax year.

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

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

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

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

Sec. 38. 36 MRSA §2861, as amended by PL 2011, c. 653, §4 and affected by §33 and amended by c. 682, §38, is repealed.

Sec. 39. 36 MRSA §2862, as amended by PL 2011, c. 653, §5 and affected by §33, is repealed.

Sec. 40. 36 MRSA §2862-A is enacted to read:

§2862-A. Distribution of revenues

Revenue from the excise tax imposed pursuant to this chapter must be distributed as follows:

1. Mining Excise Tax Trust Fund. Seventy-five percent of the revenue must be deposited in the Mining Excise Tax Trust Fund established in Title 5, section 452. The revenue deposited in the Mining Excise Tax Trust Fund is subject to the provisions of the Constitution of Maine, Article IX, Section 20; and

2. General Fund. Twenty-five percent of the revenue must be deposited in the General Fund.

Sec. 41. 36 MRSA §2863, as amended by PL 2017, c. 211, Pt. E, §7, is repealed.

Sec. 42. 36 MRSA §2865, as amended by PL 2007, c. 627, §76, is repealed.

Sec. 43. 36 MRSA §2866, as amended by PL 2011, c. 653, §6 and affected by §33 and amended by c. 682, §38, is repealed.

Sec. 44. Application. This Act applies to tax years beginning on or after January 1, 2026, except that those sections of this Act that enact the Maine Revised Statutes, Title 36,

section 2013, subsection 1, paragraph B-2 and amend Title 36, section 2013, subsection 1, paragraph C and subsections 2 and 3 apply to purchases made on or after January 1, 2026.