



# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1928

S.P. 786

In Senate, May 11, 2023

### **An Act to Protect Maine Taxpayers from Unconstitutional Federal Expenditures**

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BRAKEY of Androscoggin.  
Cosponsored by Representative WHITE of Guilford and  
Senators: HARRINGTON of York, KEIM of Oxford, Representatives: BOYER of Poland,  
FAULKINGHAM of Winter Harbor, HENDERSON of Rumford, HYMES of Waldo, LIBBY  
of Auburn, QUINT of Hodgdon.

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

2 **Sec. 1. 3 MRSA c. 39** is enacted to read:

3 **CHAPTER 39**

4 **REGULATION OF UNCONSTITUTIONAL FEDERAL EXPENDITURES**

5 **§1051. Process for determining unconstitutional federal expenditures**

6 **1. Request for opinion of justices.** Upon the belief that the Federal Government has  
7 made an expenditure of federal funds that is not authorized by the United States  
8 Constitution, either body of the Legislature may request the Supreme Judicial Court,  
9 pursuant to the Constitution of Maine, Article VI, Section 3, for a determination of whether  
10 the expenditure is an unconstitutional expenditure. For purposes of this section,  
11 "unconstitutional expenditure" means an expenditure of federal funds that is not authorized  
12 under the provisions of the United States Constitution.

13 **2. Action based on affirmative answer.** If, pursuant to subsection 1, the Supreme  
14 Judicial Court answers that an expenditure is an unconstitutional expenditure, the  
15 Legislature by resolve may:

16 A. Require for a limited duration, as specified in the resolve, employers to submit  
17 federal income taxes withheld from their employees to the Department of  
18 Administrative and Financial Services, Bureau of Revenue Services pursuant to Title  
19 36, section 5250, subsection 1-A; and

20 B. Require the Department of Administrative and Financial Services, Bureau of  
21 Revenue Services to:

22 (1) Determine the amount of the unconstitutional expenditure borne by residents  
23 of this State; and

24 (2) Withhold from federal income taxes payable to the United States Internal  
25 Revenue Service the amount determined pursuant to subparagraph (1).

26 **Sec. 2. 36 MRSA §185-B** is enacted to read:

27 **§185-B. Setoff of federal income taxes against unconstitutional federal expenditures**

28 Upon direction by the Legislature pursuant to Title 3, section 1051, subsection 2, the  
29 bureau shall set off an unconstitutional federal expenditure as provided in this section. For  
30 purposes of this section, "unconstitutional federal expenditure" means an expenditure of  
31 federal funds that is not authorized under the provisions of the United States Constitution  
32 and is found to be unconstitutional by the Supreme Judicial Court pursuant to Title 3,  
33 section 1051, subsection 1.

34 **1. Determination of set-off amount.** In order to determine the amount of the setoff,  
35 the bureau shall:

36 A. Determine the cost of the unconstitutional federal expenditure;

37 B. Determine the total federal appropriation for the federal fiscal year in which the  
38 unconstitutional federal expenditure is made;

1 C. Divide the amount determined under paragraph A by the amount determined under  
2 paragraph B; and

3 D. Multiply the result obtained in paragraph C by the total amount of federal income  
4 taxes paid by resident and nonresident individuals who filed Maine income tax returns  
5 for the tax year during which the unconstitutional federal expenditure was made.

6 The assessor shall inform the Governor, the President of the Senate and the Speaker of the  
7 House of the amounts determined pursuant to this subsection.

8 **2. Withhold federal income taxes.** The bureau shall establish within the Department  
9 of Administrative and Financial Services a segregated account, referred to in this section  
10 as "the segregated account." The bureau shall transfer into the segregated account the  
11 amount of federal income taxes collected pursuant to section 5250, subsection 1-A equal  
12 to the portion of the unconstitutional federal expenditure attributable to Maine taxpayer  
13 funds as determined pursuant to subsection 1, paragraph D.

14 **3. Disbursement of set-off amount.** Funds withheld and transferred to the segregated  
15 account pursuant to subsection 2 must be disbursed as provided in this subsection.

16 A. The Treasurer of State shall inform the State Controller and the assessor if the State  
17 receives an amount of federal funds less than the amount anticipated. Upon such  
18 notice, the State Controller shall transfer from the segregated account to the General  
19 Fund an amount equal to the deficit of federal funds determined by the Treasurer of  
20 State.

21 B. At the close of each state fiscal year, if funds remain in the segregated account, the  
22 assessor shall refund the funds to Maine taxpayers on a pro rata basis in direct  
23 proportion to the amount of federal taxes paid by the taxpayer for the prior tax year.

24 **Sec. 3. 36 MRSA §5250, sub-§1-A** is enacted to read:

25 **1-A. Federal tax withholding.** Notwithstanding any provision of law to the contrary,  
26 when directed by law pursuant to Title 3, section 1051, subsection 2, paragraph A, an  
27 employer maintaining an office or transacting business in this State that makes payment to  
28 a resident individual or a nonresident individual of wages subject to tax under this Part, if  
29 required to withhold federal income tax from those wages, shall transmit to the assessor  
30 any federal income taxes withheld by that employer at the same time and in the same  
31 manner as the taxes due under this Part are transmitted to the assessor. Except as provided  
32 in section 185-B, the bureau shall transmit the federal income taxes collected pursuant to  
33 this subsection to the United States Internal Revenue Service no later than 5 business days  
34 following transmission from an employer.

## 35 SUMMARY

36 This bill establishes a procedure for the State to avoid paying for federal expenditures  
37 that are determined by the Maine Supreme Judicial Court to be in violation of the United  
38 States Constitution.

39 Upon a determination by the Maine Supreme Judicial Court that a federal expenditure  
40 is unconstitutional, the Legislature may require an employer in this State that withholds  
41 federal income taxes from its employees to remit temporarily, for a time determined by the  
42 Legislature, those withheld federal income taxes to the Department of Administrative and

1 Financial Services, Bureau of Revenue Services instead of to the United States Internal  
2 Revenue Service. The Legislature may also direct the bureau to determine the portion of  
3 the unconstitutional federal expenditure paid for with income taxes from Maine taxpayers  
4 and transfer that amount to a segregated account. The funds in the segregated account are  
5 used to either make up a shortage in federal funding that the State is due, as determined by  
6 the Treasurer of State, or to provide a refund to Maine taxpayers on a pro rata basis in direct  
7 proportion to the amount of federal taxes paid by the taxpayer for the prior tax year.