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An Act To Provide for Tax Conformity and Funding Methods

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, state tax law needs to be updated to conform to federal law before the 90-day period expires to avoid delay in the processing of income tax returns for 2015; and

Whereas, legislative action is immediately necessary to ensure continued and efficient administration of the state income tax and certain other state taxes; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 36 MRSA §111, sub-§1-A, as amended by PL 2015, c. 1, §1 and affected by §15, is further amended to read:

1-A. Code. "Code" means the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, ~~2014~~2015.

Sec. A-2. 36 MRSA §5122, sub-§1, ¶II, as corrected by RR 2015, c. 1, §41, is amended to read:

II. For taxable years beginning in 2014:

(1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-MM for that taxable year; and

(2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-MM; ~~and~~

Sec. A-3. 36 MRSA §5122, sub-§1, ¶JJ, as enacted by PL 2015, c. 267, Pt. DD, §8, is amended to read:

JJ. For tax years beginning on or after January 1, 2016, an amount equal to the taxpayer base multiplied by the following fraction:

(1) For single individuals and married persons filing separate returns, the numerator is the taxpayer's Maine adjusted gross income less \$70,000, except that the numerator may not be less than zero, and the denominator is \$75,000. In no case may the fraction contained in this subparagraph produce a result that is more than one. The \$70,000 amount used to calculate the numerator in this subparagraph must be adjusted for inflation in accordance with section 5403, subsection 3;

(2) For individuals filing as heads of households, the numerator is the taxpayer's Maine adjusted gross income less \$105,000, except that the numerator may not be less than zero, and the denominator is \$112,500. In no case may the fraction contained in this subparagraph produce a result that is more than one. The \$105,000 amount used to calculate the numerator in this subparagraph must be adjusted for inflation in accordance with section 5403, subsection 3; or

(3) For individuals filing married joint returns or surviving spouses, the numerator is the taxpayer's Maine adjusted gross income less \$140,000, except that the numerator may not be less than zero, and the denominator is \$150,000. In no case may the fraction contained in this subparagraph produce a result that is more than one. The \$140,000 amount used to calculate the numerator in this subparagraph must be adjusted for inflation in accordance with section 5403, subsection 3.

For purposes of this paragraph, "taxpayer base" means either the taxpayer's applicable standard deduction amount for the taxable year determined under section 5124-B or, if itemized deductions are claimed, the taxpayer's itemized deductions claimed for the taxable year determined under section 5125-;

Sec. A-4. 36 MRSA §5122, sub-§1, ¶¶KK to MM are enacted to read:

KK. For taxable years beginning in 2015:

(1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-NN for that taxable year; and

(2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-NN;

LL. An amount equal to the sum of the following:

(1) For taxable years beginning on or after January 1, 2016 but before January 1, 2020, an amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer for the taxable year under the Code, Section 168(k); and

(2) For taxable years beginning on or after January 1, 2016, an amount equal to the net increase in aggregate cost under Section 179 of the Code arising from amendments to the Code enacted in the federal Consolidated Appropriations Act, 2016, Public Law 114-113 applicable to the taxable year; and

MM. For taxable years beginning on or after January 1, 2016, the amount of the deduction claimed pursuant to the Code, Section 62(a)(2)(D) for eligible educator expenses.

Sec. A-5. 36 MRSA §5122, sub-§2, ¶MM, as amended by PL 2015, c. 1, §6, is further amended to read:

MM. For taxable years beginning on or after January 1, 2014, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2013 for which an addition was required under subsection 1, paragraph HH, subparagraph (2) for the taxable year beginning in 2013.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal adjusted gross income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph HH, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph HH, subparagraph (2) for the same property; and

Sec. A-6. 36 MRSA §5122, sub-§2, ¶NN, as enacted by PL 2015, c. 1, §7, is amended to read:

NN. For taxable years beginning on or after January 1, 2015, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2014 for which an addition was required under subsection 1, paragraph II, subparagraph (2) for the taxable year beginning in 2014.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal adjusted gross income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph II, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph II, subparagraph (2) for the same property;

Sec. A-7. 36 MRSA §5122, sub-§2, ¶¶OO and PP are enacted to read:

OO. For taxable years beginning on or after January 1, 2016, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2015 for which an addition was required under subsection 1, paragraph KK, subparagraph (2) for the taxable year beginning in 2015.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal adjusted gross income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph KK, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph KK, subparagraph (2) for the same property; and

PP. For taxable years beginning on or after January 1, 2017, an amount equal to the net increase in:

(1) The depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the applicable taxable year for which an addition was required under subsection 1, paragraph LL, subparagraph (1) for the applicable taxable year; and

(2) The depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the increased cost under the Code, Section 179 not been claimed with respect to such property placed in service during the applicable taxable year for which an addition was required under subsection 1, paragraph LL, subparagraph (2) for the applicable taxable year.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal adjusted gross income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph LL and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph LL for the same property.

Sec. A-8. 36 MRSA §5125, sub-§3, ¶D, as amended by PL 2015, c. 267, Pt. DD, §16 and amended by c. 340, §1 and affected by §5, is repealed and the following enacted in its place:

D. Reduced by any amount attributable to interest or expenses incurred in the production of income exempt from tax under this Part;

Sec. A-9. 36 MRSA §5125, sub-§3, ¶E, as repealed by PL 2015, c. 267, Pt. DD, §17 and amended by c. 340, §2 and affected by §5, is repealed.

Sec. A-10. 36 MRSA §5125, sub-§3, ¶G, as enacted by PL 2015, c. 340, §3 and affected by §5, is amended to read:

G. Reduced by the amount of federal itemized deductions included in the base for calculating the credit under section 5218-A; and

Sec. A-11. 36 MRSA §5125, sub-§3, ¶H is enacted to read:

H. For tax years beginning on or after January 1, 2016, reduced by any amount attributable to mortgage insurance premiums treated as qualified residence interest under the Code, Section 163.

Sec. A-12. 36 MRSA §5200-A, sub-§1, ¶AA, as amended by PL 2015, c. 1, §9, is further amended to read:

AA. For taxable years beginning in 2013:

(1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-JJ for that taxable year; and

(2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-JJ; and

Sec. A-13. 36 MRSA §5200-A, sub-§1, ¶BB, as enacted by PL 2015, c. 1, §10, is amended to read:

BB. For taxable years beginning in 2014:

(1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-MM for that taxable year; and

(2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-MM;

Sec. A-14. 36 MRSA §5200-A, sub-§1, ¶¶CC and DD are enacted to read:

CC. For taxable years beginning in 2015:

(1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-NN for that taxable year; and

(2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-NN; and

DD. An amount equal to the sum of the following:

(1) For taxable years beginning on or after January 1, 2016 but before January 1, 2020, an amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer for the taxable year under the Code, Section 168(k); and

(2) For taxable years beginning on or after January 1, 2016, an amount equal to the net increase in aggregate cost under Section 179 of the Code arising from amendments to the Code enacted in the federal Consolidated Appropriations Act, 2016, Public Law 114-113 applicable to the taxable year.

Sec. A-15. 36 MRSA §5200-A, sub-§2, ¶Y, as amended by PL 2015, c. 1, §12, is further amended to read:

Y. For taxable years beginning on or after January 1, 2014, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been

claimed with respect to such property placed in service during the taxable year beginning in 2013 for which an addition was required under subsection 1, paragraph AA, subparagraph (2) for the taxable year beginning in 2013.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal taxable income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph AA, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph AA, subparagraph (2) for the same property; and

Sec. A-16. 36 MRSA §5200-A, sub-§2, ¶Z, as enacted by PL 2015, c. 1, §13, is amended to read:

Z. For taxable years beginning on or after January 1, 2015, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2014 for which an addition was required under subsection 1, paragraph BB, subparagraph (2) for the taxable year beginning in 2014.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal taxable income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph BB, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph BB, subparagraph (2) for the same property;:

Sec. A-17. 36 MRSA §5200-A, sub-§2, ¶¶AA and BB are enacted to read:

AA. For taxable years beginning on or after January 1, 2016, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2015 for which an addition was required under subsection 1, paragraph CC, subparagraph (2) for the taxable year beginning in 2015.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal taxable income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph CC, subparagraph (2) and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph CC, subparagraph (2) for the same property; and

BB. For taxable years beginning on or after January 1, 2017, an amount equal to the net increase in:

(1) The depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the applicable taxable year for which an addition was required under subsection 1, paragraph DD, subparagraph (1) for the applicable taxable year; and

(2) The depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the increased cost under the Code, Section 179 not been claimed with respect to such property placed in service during the applicable tax year for which an addition was required under subsection 1, paragraph DD, subparagraph (2) for the applicable tax year.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal taxable income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph DD and the subtraction modifications allowed pursuant to this paragraph.

The total amount of subtraction claimed under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph DD for the same property.

Sec. A-18. 36 MRSA §5219-S, sub-§5 is enacted to read:

5. Tax years after 2017. For purposes of calculating the credit under this section for tax years beginning on or after January 1, 2018, the federal earned income credit for individuals with 3 or more qualifying children must be determined using 40% as the credit percentage under the Code, Section 32(b)(1), the federal earned income credit phase-out amount for individuals filing joint returns must be determined in accordance with the Code, Section 32(b)(2)(A) and the Code, Section 32(b)(2)(B) must be disregarded.

Sec. A-19. 36 MRSA §5219-NN is enacted to read:

§ 5219-NN. Maine capital investment credit for 2015

1. Credit allowed. A taxpayer that claims a depreciation deduction under the Code, Section 168(k) for property placed in service in the State during a taxable year beginning in 2015 is allowed a credit as follows:

A. A taxable corporation is allowed a credit against the taxes imposed by this Part in an amount equal to 9% of the amount of the net increase in the depreciation deduction reported as an addition to income for the taxable year under section 5200-A, subsection 1, paragraph CC, subparagraph (1) with respect to that property, except for excluded property under subsection 2; or

B. An individual is allowed a credit against the taxes imposed by this Part in an amount equal to 8% of the amount of the net increase in the depreciation deduction reported as an addition to income for the taxable year under section 5122, subsection 1, paragraph KK, subparagraph (1) with respect to that property, except for excluded property under subsection 2.

2. Certain property excluded. The following property is not eligible for the credit under this section:

A. Property owned by a public utility as defined by Title 35-A, section 102, subsection 13;

B. Property owned by a person that provides radio paging services as defined by Title 35-A, section 102, subsection 15;

C. Property owned by a person that provides mobile telecommunications services as defined by Title 35-A, section 102, subsection 9-A;

D. Property owned by a cable television company as defined by Title 30-A, section 2001, subsection 2;

E. Property owned by a person that provides satellite-based direct television broadcast services;

F. Property owned by a person that provides multichannel, multipoint television distribution services; and

G. Property that is not in service in the State for the entire 12-month period following the date it is placed in service in the State.

3. Limitations; carry-forward. The credit allowed under subsection 1 may not reduce the tax otherwise due under this Part to less than zero. Any unused portion of the credit may be carried forward to the following year or years for a period not to exceed 20 years.

4. Recapture. The credit allowed under this section must be fully recaptured to the extent claimed by the taxpayer if the property forming the basis of the credit is not used in the State for the entire 12-month period following the date it is placed in service in the State. The credit must be recaptured by filing an amended return in accordance with section 5227-A for the tax year in which that property

was used to calculate the credit under this section. The amended return must reflect the credit disallowed and the income modifications required by section 5122, subsection 1, paragraph KK and section 5200-A, subsection 1, paragraph CC with respect to that property.

Sec. A-20. Application. That section of this Part that amends the Maine Revised Statutes, Title 36, section 111, subsection 1-A applies to tax years beginning on or after January 1, 2015 and to any prior tax years as specifically provided by the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2015.

PART B

Sec. B-1. Transfer from tax relief fund. The State Controller shall transfer \$9,535,933 from the Tax Relief Fund for Maine Residents established in the Maine Revised Statutes, Title 5, section 1518-A to the unappropriated surplus of the General Fund no later June 30, 2016.

PART C

Sec. C-1. Appropriations and allocations. The following appropriations and allocations are made.

TREASURER OF STATE, OFFICE OF

Debt Service - Treasury 0021

Initiative: Reduces funding for debt service costs.

GENERAL FUND	2015-16	2016-17
All Other	(\$6,113,120)	\$0
GENERAL FUND TOTAL	(\$6,113,120)	\$0

PART D

Sec. D-1. Personal Services savings; transfer to General Fund unappropriated surplus. Notwithstanding the Maine Revised Statutes, Title 5, section 1582, subsection 4 or any other provision of law, the State Controller shall transfer the first \$153,447 of unexpended Personal Services appropriations that would otherwise lapse to the General Fund Salary Plan program in the Department of Administrative and Financial Services to the unappropriated surplus of the General Fund at the close of fiscal year 2015-16.

Sec. D-2. General Fund Salary Plan; transfer to General Fund unappropriated surplus. Notwithstanding any other provision of law, the State Controller shall transfer up to \$153,447 from the General Fund Salary Plan program in the Department of Administrative and Financial Services to the unappropriated surplus of the General Fund at the close of fiscal year 2015-16 in the event that the total savings in section 1 of this Part are not achieved.

PART E

Sec. E-1. Personal Services savings; transfer to General Fund revenue. Notwithstanding the Maine Revised Statutes, Title 5, section 1582, subsection 4 or any other provision of law, the State Controller shall transfer the first \$1,034,880 of unexpended Personal Services appropriations that would otherwise lapse to the General Fund Salary Plan program in the Department of Administrative and Financial Services to the unappropriated surplus of the General Fund at the close of fiscal year 2016-17.

Sec. E-2. General Fund Salary Plan; transfer to General Fund revenue. Notwithstanding any other provision of law, the State Controller shall transfer up to \$1,034,880 from the General Fund Salary Plan program in the Department of Administrative and Financial Services to the unappropriated surplus of the General Fund at the close of fiscal year 2016-17 in the event that the total savings in section 1 of this Part are not achieved.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill is presented pursuant to Joint Order 2016, S.P. 630, which authorizes the Joint Standing Committee on Appropriations and Financial Affairs to report out a bill regarding tax conformity including funding. It provides conformity with the United States Internal Revenue Code of 1986 but only for tax years beginning in 2015.

Part A of this bill:

1. Decouples the Maine individual and corporate income taxes from the federal bonus depreciation deductions for taxable years beginning on or after January 1, 2015. In addition, it provides a Maine capital investment credit for taxable years beginning in 2015 with respect to depreciable property placed in service in Maine. The credit is equal to 9% of the amount of the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for taxable corporations; for individuals the credit is 8% of such amount for tax years beginning in 2015;

2. Decouples Maine's individual and corporate income tax from the Code, Section 179 expensing deductions for tax years beginning on or after January 1, 2016. It enacts addition and subtraction modifications to reverse any increase allowed at the federal level for the first year the property is placed in service, and then to allow depreciation deductions for the remainder of the asset's life;

3. Decouples Maine's individual income tax from the teacher expense deduction under the Code, Section 62(a)(2)(D) by requiring an addition modification in the amount of the federal deduction;

4. Disallows for Maine itemized deduction purposes the federal deduction for mortgage insurance premiums treated as qualified residence interest; and

5. For taxable years beginning after 2017, decouples the Maine earned income tax credit from the increased federal 45% earned income tax credit rate for taxpayers with 3 or more qualifying children and from the higher phase-out thresholds for married individuals filing joint returns.

Part B transfers \$9,535,933 from the Tax Relief Fund for Maine Residents to the unappropriated surplus of the General Fund by the end of fiscal year 2015-16.

Part C deappropriates funds no longer needed for debt service costs.

Part D requires the State Controller to transfer the first \$153,447 of unexpended Personal Services savings that would otherwise lapse to the General Fund Salary Plan program to the General Fund unappropriated surplus at the close of fiscal year 2015-16. This Part also requires the State Controller to transfer funding from the General Fund Salary Plan program to the General Fund unappropriated surplus in the event that the full \$153,447 of Personal Services savings in this Part is not achieved.

Part E requires the State Controller to transfer the first \$1,034,880 of unexpended Personal Services savings that would otherwise lapse to the General Fund Salary Plan program to the General Fund unappropriated surplus at the close of fiscal year 2016-17. This Part also requires the State Controller to transfer funding from the General Fund Salary Plan program to the General Fund unappropriated surplus in the event that the full \$1,034,880 of Personal Services savings in this Part is not achieved.

FISCAL NOTE REQUIRED
(See attached)