

126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 234

S.P. 70

In Senate, February 5, 2013

An Act To Provide Tax Treatment Consistency for Limited Liability Companies and S Corporations

Reference to the Committee on Taxation suggested and ordered printed.

DAREK M. GRANT Secretary of the Senate

Presented by Senator WOODBURY of Cumberland.
Cosponsored by Representative NELSON of Falmouth and
Senators: HASKELL of Cumberland, HILL of York, KATZ of Kennebec, Representatives:
BENNETT of Kennebunk, CHASE of Wells, HOBBINS of Saco, KNIGHT of Livermore
Falls, STANLEY of Medway.

4	FF. For taxable years beginning in 2011 and 2012:
5 6 7 8	(1) An amount equal 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-GG; and
9 10 11 12	(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-GG; and
13 14	Sec. 2. 36 MRSA §5122, sub-§1, ¶GG, as enacted by PL 2011, c. 644, §15 and affected by §33, is amended to read:
15 16 17	GG. The amount claimed as a deduction in determining federal adjusted gross income that is used to calculate the credit for Maine fishery infrastructure investment under section 5216-D-; and
18	Sec. 3. 36 MRSA §5122, sub-§1, ¶HH is enacted to read:
19 20 21 22 23	HH. For income tax years beginning on or after January 1, 2014, a resident individual's proportional share of the amount of any creditable income tax deducted pursuant to Section 703 of the Code by a pass-through entity of which the individual is a member when the individual claims the credit allowed by section 5217-A, subsection 2, paragraph B with respect to those taxes.
24 25	Sec. 4. 36 MRSA §5217-A, as amended by PL 2003, c. 673, Pt. JJ, §4 and affected by §6, is repealed and the following enacted in its place:
26	§5217-A. Income tax paid to other taxing jurisdiction
27 28	1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
29 30 31 32 33 34 35 36	A. "Creditable income tax" means a tax imposed by another state of the United States, a political subdivision of any such state, the District of Columbia or any political subdivision of a foreign country that is analogous to a state of the United States with respect to income subject to tax under this Part that is derived from sources in that taxing jurisdiction. In determining whether income is derived from sources in another jurisdiction, the assessor may not employ the law of the other jurisdiction but shall instead assume that a statute equivalent to section 5142 applies in that jurisdiction.
37	B. "Member" has the same meaning as in section 5250-B, subsection 1, paragraph A.

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

further amended to read:

Sec. 1. 36 MRSA §5122, sub-§1, ¶FF, as amended by PL 2011, c. 644, §14, is

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- 1 <u>C. "Pass-through entity" has the same meaning as in section 5250-B, subsection 1, paragraph C.</u>
 - 2. Credit. For tax years beginning on or after January 1, 2014, a resident individual is allowed a credit against the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, for the amount of creditable income tax for the taxable year imposed on:

A. That individual; or

- B. A pass-through entity of which the individual is a member to the extent the creditable income tax is imposed on that member's distributive share or pro rata share, as the case may be, of the pass-through entity's income.
- 3. Limitation. The credit allowed under this section for any of the specified taxing jurisdictions may not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in that taxing jurisdiction bears to the taxpayer's entire Maine adjusted gross income; except that, when a credit is claimed for taxes paid to both a state and a political subdivision of a state, the total credit allowable for those taxes does not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in the other state bears to the taxpayer's entire Maine adjusted gross income.
- **Sec. 5. Application.** This Act applies to tax years beginning on or after January 1, 2014.

23 SUMMARY

This bill allows a member of a pass-through entity, such as a limited liability company or S corporation, to receive an income tax credit against taxes imposed on that member's distributive share or pro rata share of the pass-through entity's income, and ensures that the amount used to calculate the income tax credit for certain members of pass-through entities cannot also be used as a deduction from income. This bill applies to tax years beginning on or after January 1, 2014.