



# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1707

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S.P. 673

In Senate, January 8, 2014

### An Act To Amend the State's Tax Laws

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Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

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 HASKELL of Cumberland.

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

2 **Sec. 1. 25 MRSA §2399, 2nd ¶**, as amended by PL 2013, c. 95, §1, is further  
3 amended to read:

4 Every fire insurance company or association that does business or collects premiums  
5 or assessments in the State shall pay to the State Tax Assessor, in addition to the taxes  
6 now imposed by law to be paid by those companies or associations, 1.4% of the gross  
7 direct premiums for fire risks written in the State, less the amount of all direct return  
8 premiums thereon and all dividends paid to policyholders on direct fire premiums. ~~The~~  
9 Beginning in 2013 and every 5 years thereafter, by October 1st the Department of  
10 Professional and Financial Regulation, Bureau of Insurance shall determine ~~every~~ for the  
11 subsequent 5 years the basis percentage of fire risk allocated to each line of insurance,  
12 and every fire insurance company or association shall pay the 1.4% tax based on that  
13 basis allocation. That tax must be paid as provided for insurance premium taxes as  
14 specified in Title 36, section 2521-A, except that the tax prescribed by this section must  
15 be paid on an estimated basis at the end of each month ~~starting July 31, 1998~~, with each  
16 installment equal to at least 1/12 of the estimated total tax to be paid for the current  
17 calendar year. The State Tax Assessor shall pay over all receipts from that tax to the  
18 Treasurer of State daily. Of these funds 75.7% must be used to defray the expenses  
19 incurred by the Commissioner of Public Safety in administering all fire preventive and  
20 investigative laws and rules and in educating the public in fire safety and is appropriated  
21 for those purposes and to carry out the administration and duties of the Office of the State  
22 Fire Marshal. Of these funds 24.3% must be used to defray the expenses of the fire  
23 training and education program as established in Title 20-A, chapter 319.

24 **Sec. 2. 36 MRSA §653, sub-§1, ¶G**, as amended by PL 2013, c. 222, §1, is  
25 further amended to read:

26 G. Any person who desires to secure exemption under this subsection shall make  
27 written application and file written proof of entitlement on or before the first day of  
28 April, in the year in which the exemption is first requested, with the assessors of the  
29 place in which the person resides. Notwithstanding Title 1, chapter 13, an application  
30 and proof of entitlement filed pursuant to this paragraph is confidential and may not  
31 be made available for public inspection. The application and proof of entitlement  
32 must be made available to the State Tax Assessor upon request. The assessors shall  
33 thereafter grant the exemption to any person who is so qualified and remains a  
34 resident of that place or until they are notified of reason or desire for discontinuance.

35 **Sec. 3. 36 MRSA §1752, sub-§17**, as amended by PL 1997, c. 557, Pt. B, §2 and  
36 affected by §14 and Pt. G, §1, is further amended to read:

37 **17. Tangible personal property.** "Tangible personal property" means personal  
38 property that may be seen, weighed, measured, felt, touched or in any other manner  
39 perceived by the senses, but does not include rights and credits, insurance policies, bills  
40 of exchange, stocks and bonds and similar evidences of indebtedness or ownership.  
41 "Tangible personal property" includes electricity. "Tangible personal property" includes

1 any computer software that is not a custom computer software program. "Tangible  
2 personal property" includes any product transferred electronically.

3 **Sec. 4. 36 MRSA §1754-B, sub-§1-A**, as enacted by PL 2013, c. 200, §4 and  
4 affected by §6, is amended to read:

5 **1-A. Persons presumptively required to register.** This subsection ~~creates a~~  
6 defines the basis for and obligations associated with the rebuttable presumption created  
7 by this subsection that a seller not ~~subject to~~ registered under subsection 1 is engaged in  
8 the business of selling tangible personal property or taxable services for use in this State  
9 and is required to register as a retailer with the assessor.

10 A. As used in this subsection, unless the context otherwise indicates, the following  
11 terms have the following meanings.

12 (1) "Affiliated person" means a person that is a member of the same controlled  
13 group of corporations as the seller or any other entity that, notwithstanding its  
14 form of organization, bears the same ownership relationship to the seller as a  
15 corporation that is a member of the same controlled group of corporations. For  
16 purposes of this subparagraph, "controlled group of corporations" has the same  
17 meaning as in the Code, Section 1563(a).

18 (2) "Person" means an individual or entity that qualifies as a person under the  
19 Code, Section 7701(a)(1).

20 (3) "Seller" means a person that sells, other than in a casual sale, tangible  
21 personal property or taxable services.

22 B. A seller is presumed to be engaged in the business of selling tangible personal  
23 property or taxable services for use in this State if an affiliated person has a  
24 substantial physical presence in this State or if any person, other than a person acting  
25 in its capacity as a common carrier, that has a substantial physical presence in this  
26 State:

27 (1) Sells a similar line of products as the seller and does so under a business  
28 name that is the same as or similar to that of the seller;

29 (2) Maintains an office, distribution facility, warehouse or storage place or  
30 similar place of business in the State to facilitate the delivery of property or  
31 services sold by the seller to the seller's customers;

32 (3) Uses trademarks, service marks or trade names in the State that are the same  
33 as or substantially similar to those used by the seller;

34 (4) Delivers, installs, assembles or performs maintenance services for the seller's  
35 customers within the State;

36 (5) Facilitates the seller's delivery of property to customers in the State by  
37 allowing the seller's customers to pick up property sold by the seller at an office,  
38 distribution facility, warehouse, storage place or similar place of business  
39 maintained by the person in the State; or

40 (6) Conducts any activities in the State that are significantly associated with the  
41 seller's ability to establish and maintain a market in the State for the seller's sales.

1 A seller who meets the requirements of this paragraph shall register with the assessor  
2 and collect and remit taxes in accordance with the provisions of this Part. A seller  
3 may rebut the presumption created in this paragraph by demonstrating that the  
4 person's activities in the State are not significantly associated with the seller's ability  
5 to establish or maintain a market in this State for the seller's sales.

6 C. A seller that does not otherwise meet the requirements of paragraph B is  
7 presumed to be engaged in the business of selling tangible personal property or  
8 taxable services for use in this State if the seller enters into an agreement with a  
9 person under which the person, for a commission or other consideration, while within  
10 this State:

11 (1) Directly or indirectly refers potential customers, whether by a link on an  
12 Internet website, by telemarketing, by an in-person presentation or otherwise, to  
13 the seller; and

14 (2) The cumulative gross receipts from retail sales by the seller to customers in  
15 the State who are referred to the seller by all persons with this type of an  
16 agreement with the seller are in excess of \$10,000 during the preceding 12  
17 months.

18 A seller who meets the requirements of this paragraph shall register with the assessor  
19 and collect and remit taxes in accordance with the provisions of this Part.

20 A seller may rebut the presumption created in this paragraph by submitting proof that  
21 the person with whom the seller has an agreement did not engage in any activity  
22 within the State that was significantly associated with the seller's ability to establish  
23 or maintain the seller's market in the State during the preceding 12 months. Such  
24 proof may consist of sworn, written statements from all of the persons within this  
25 State with whom the seller has an agreement stating that they did not engage in any  
26 solicitation in the State on behalf of the seller during the preceding 12 months; these  
27 statements must be provided and obtained in good faith.

28 A person who enters into an agreement with a seller under this paragraph to refer  
29 customers by a link on an Internet website is not required to register or collect taxes  
30 under this Part solely because of the existence of the agreement.

31 **Sec. 5. 36 MRSA §4102, sub-§6, ¶C**, as enacted by PL 2011, c. 380, Pt. M, §9,  
32 is amended to read:

33 C. With respect to which an election is made, on a return timely filed with the  
34 assessor, to treat the property as Maine qualified terminable interest property for  
35 purposes of the tax imposed by this chapter. The amount of property with respect to  
36 which the election is made may not be less than zero or greater than the amount by  
37 which the federal applicable exclusion amount under the Code, Section 2010 exceeds  
38 the Maine exclusion amount. For the purposes of this paragraph, "federal applicable  
39 exclusion amount" does not include any deceased spousal unused exclusion amount  
40 under the Code, Section ~~2810~~ 2010.

41 **Sec. 6. 36 MRSA §4109, sub-§1**, as enacted by PL 2011, c. 380, Pt. M, §9, is  
42 amended to read:

1           **1. Deferred payment arrangement.** If the United States Internal Revenue Service  
2 has approved a federal estate tax deferral and installment payment arrangement under the  
3 Code, Section 6166, the personal representative may elect a similar deferred payment  
4 arrangement under this section for payment of the tax imposed by this chapter, subject to  
5 acceptance by the assessor. The assessor may approve a deferral and installment  
6 arrangement under similar circumstances and on similar terms with respect to an estate of  
7 a decedent dying after December 31, ~~2011~~ 2012 that does not incur a federal estate tax.

8           **Sec. 7. 36 MRSA §5122, sub-§2, ¶M-1**, as enacted by PL 2011, c. 657, Pt. R, §2  
9 and affected by §3, is amended to read:

10           M-1. For tax years beginning on or after January 1, 2014, for each individual who is  
11 a primary recipient of retirement plan benefits under an employee retirement plan or  
12 an individual retirement account, an amount that is the lesser of the aggregate of  
13 retirement plan benefits under employee retirement plans or individual retirement  
14 accounts included in the individual's federal adjusted gross income and the pension  
15 deduction amount reduced by the total amount of the individual's social security  
16 benefits and railroad retirement benefits paid by the United States, but not less than  
17 \$0. The social security benefits and railroad retirement benefits reduction does not  
18 apply to benefits paid under a military retirement plan.

19           For purposes of this paragraph, the following terms have the following meanings.

20           (1) "Employee retirement plan" means a state, federal or military retirement plan  
21 or any other retirement benefit plan established and maintained by an employer  
22 for the benefit of its employees under the Code, Section 401(a), Section 403 or  
23 Section 457(b), except that distributions made pursuant to a Section 457(b) plan  
24 are not eligible for the deduction provided by this paragraph if they are made  
25 prior to age 55 and are not part of a series of substantially equal periodic  
26 payments made for the life of the primary recipient or the joint lives of the  
27 primary recipient and that recipient's designated beneficiary.

28           (2) "Individual retirement account" means an individual retirement account  
29 under Section 408 of the Code, a Roth IRA under Section 408A of the Code, a  
30 simplified employee pension under Section 408(k) of the Code or a simple  
31 retirement account for employees under Section 408(p) of the Code.

32           (3) "Military retirement plan" means retirement plan benefits received as a result  
33 of service in the active or reserve components of the Army, Navy, Air Force,  
34 Marines or Coast Guard.

35           (4) "Pension deduction amount" means \$10,000 for tax years beginning on or  
36 after January 1, 2014.

37           (5) "Primary recipient" means the individual upon whose earnings or  
38 contributions the retirement plan benefits are based or the surviving spouse of  
39 that individual.

40           (6) "Retirement plan benefits" means employee retirement plan benefits, except  
41 pick-up contributions for which a subtraction is allowed under paragraph E,  
42 reported as pension or annuity income for federal income tax purposes and  
43 individual retirement account benefits reported as individual retirement account

1 distributions for federal income tax purposes. "Retirement plan benefits" does  
2 not include distributions that are subject to the tax imposed by the Code, Section  
3 72(t);

4 **Sec. 8. 36 MRSA §5122, sub-§2, ¶X**, as amended by PL 2007, c. 466, Pt. A, §67  
5 and affected by §70, is further amended to read:

6 X. The taxpayer's pro rata share of an amount that was previously added back to  
7 federal taxable income pursuant to section 5200-A, subsection 1, paragraph N;  
8 section 5200-A, subsection 1, paragraph T; section 5200-A, subsection 1, paragraph  
9 Y, subparagraph (2); or section 5200-A, subsection 1, paragraph AA, subparagraph  
10 (2) by ~~an S~~ a corporation of which the taxpayer is a shareholder and by which, absent  
11 ~~the an S~~ corporation election, the corporation could have reduced its federal taxable  
12 income for the taxable year pursuant to section 5200-A, subsection 2, paragraph M,  
13 R, V or Y;

14 **Sec. 9. 36 MRSA §5251**, as amended by PL 2007, c. 437, §19 and affected by  
15 §22, is further amended to read:

16 **§5251. Information statement**

17 Every person who is required to deduct and withhold tax under this Part, or who  
18 would have been required to deduct and withhold tax if an employee had claimed no  
19 more than one withholding exemption, shall furnish a written statement as prescribed by  
20 the assessor to each person in respect to the items of income subject to withholding paid  
21 to that person during the calendar year on or before January 31st of the succeeding year,  
22 or, in the case of an employee who is terminated before the close of the calendar year,  
23 within 30 days from the date of receipt of a written request from the employee if that 30-  
24 day period ends before January 31st. The assessor may establish an alternative due date  
25 for providing a written statement under this section that is consistent with the due date for  
26 the related federal statement. The statement must show the amount of wages paid by the  
27 employer to the employee or, in the case of withholding pursuant to sections 5250-B and  
28 5255-B, the total items of income that were subject to withholding, the amount deducted  
29 and withheld as tax and such other information as the assessor requires.

30 **Sec. 10. 36 MRSA §6901, sub-§2**, as amended by PL 2011, c. 240, §45 and  
31 affected by §47, is further amended to read:

32 **2. Certified production wages.** "Certified production wages" means wages subject  
33 to withholding under section 5250, subsection 1 that are paid by a visual media  
34 production company for work on a certified visual media production.—"~~Certified~~  
35 ~~production wages~~" ~~includes~~, an amount paid to a temporary employee-leasing company  
36 for personal services rendered in this State by a leased employee in connection with a  
37 certified visual media production ~~and~~, an amount paid for the services of a performing  
38 artist working in the State in connection with a certified visual media production and  
39 other contractual payments for the services of individuals working in the State in  
40 connection with a certified visual media production. "Certified production wages"  
41 includes only the first \$50,000 paid to or with respect to a particular individual for

1 personal services rendered in connection with a particular certified visual media  
2 production.

3 **Sec. 11. Retroactive application.** That section of this Act that amends the  
4 Maine Revised Statutes, Title 25, section 2399, 2nd paragraph applies retroactively to the  
5 fire risk allocation determination required for tax periods beginning on or after January 1,  
6 2014.

## 7 SUMMARY

8 This bill makes the following changes to the tax laws.

9 It clarifies that the State Tax Assessor is allowed to review veterans' property tax  
10 exemption applications on file at the municipal assessor's office in order to determine that  
11 exemptions have been properly allowed and to be able to determine the amount of  
12 reimbursement a municipality is entitled to receive.

13 It clarifies that the term "tangible personal property" includes any product transferred  
14 electronically as that term is defined in Maine sales and use tax law.

15 It clarifies sales and use tax seller registration law as it relates to persons  
16 presumptively required to register.

17 It clarifies that the updated allocation rates for the fire investigation and prevention  
18 tax apply for 5 years following the year of determination. The Department of  
19 Professional and Financial Regulation, Bureau of Insurance is required to make the  
20 determination every 5 years. The first such determination occurred in 2013 and applies to  
21 the subsequent 5 years.

22 It corrects an erroneous reference to the United States Internal Revenue Code of  
23 1986, as amended, and an erroneous date reference.

24 It clarifies that benefits paid under a military retirement plan are retirement plan  
25 benefits for purposes of modifying federal adjusted gross income.

26 It corrects an oversight relating to the recapture of bonus depreciation add-back  
27 modifications. In 2006, the Second Regular Session of the 122nd Legislature enacted the  
28 Maine Revised Statutes, Title 36, section 5122, subsection 2, paragraph X to allow  
29 shareholders of an electing S corporation to recapture the bonus depreciation add-back  
30 claimed by the entity as a C corporation under Title 36, section 5200-A, subsection 1,  
31 paragraph N. The Federal Government extended the bonus depreciation deduction for tax  
32 years beginning in 2011, 2012 and 2013. Maine has not conformed to those provisions  
33 but allows the recapture of the add-back modifications in years subsequent to the year of  
34 the add-back. However, Title 36, section 5122, subsection 2, paragraph X has not been  
35 updated to allow shareholders of electing S corporations to recapture the add-back  
36 amounts required of C corporations in those years; this bill corrects the oversight. Maine  
37 law provides similar treatment for electing S corporation shareholders with respect to the  
38 recapture of disallowed net operating loss carry-back deductions.

1           It authorizes the State Tax Assessor to establish an alternative due date for an  
2 information statement with respect to tax withholding as long as the date established by  
3 the assessor is consistent with the due date of the related federal statement. This  
4 authorization is needed because some federal information statements affecting the Maine  
5 filing requirement have due dates occurring after January 31st. Current Maine law  
6 requires that all Maine information statements be provided no later than January 31st.

7           It clarifies that the payments other than wages that qualify for the visual media  
8 production reimbursement do not need to be subject to withholding in order to qualify for  
9 the reimbursement.