APPROVED
JUNE 11, 2021
BY GOVERNOR

CHAPTER
181
PUBLIC LAW

**STATE OF MAINE**

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**IN THE YEAR OF OUR LORD**

**TWO THOUSAND TWENTY-ONE**

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# H.P. 891 - L.D. 1216

## An Act To Amend the State Tax Laws

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

## PART A

**Sec. A-1. 20-A MRSA §12545,** as amended by PL 2015, c. 328, §1, is further amended to read:

**§12545. Report**

By February 1, ~~2021~~ 2022, each accredited Maine community college, college and university, as defined in section 12541, subsection 1, shall report to the department on efforts to promote the program and to train admissions and financial aid staff about the program. By ~~March~~ February 1, ~~2021~~ 2022, the department shall report findings and recommendations regarding the program to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and the joint standing committee of the Legislature having jurisdiction over taxation matters. By ~~March~~ February 1, ~~2021~~ 2022, the Department of Administrative and Financial Services, Bureau of Revenue Services, Office of Tax Policy shall report on implementation of the educational opportunity tax credit, including statistics on credits claimed, to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and the joint standing committee of the Legislature having jurisdiction over taxation matters. The Office of Tax Policy, in conjunction with the State Economist and the Department of Labor, shall include in its report an analysis of the costs of the credits claimed and the impact of the program on the State's labor force. After receipt and review of the information required under this section, the joint standing committee of the Legislature having jurisdiction over education and cultural affairs or the joint standing committee of the Legislature having jurisdiction over taxation matters may report out to the Legislature a bill regarding the program.

**Sec. A-2. 22 MRSA §2430, sub-§3,** as amended by PL 2017, c. 452, §21, is further amended to read:

**3. Uses of the fund.** The fund may be used for expenses of the department to administer this chapter or for research in accordance with subsection 5, as allocated by the Legislature. ~~To the extent that funds remain in the fund after the expenses of the~~

~~department to administer this chapter and for research in accordance with subsection 5, any remaining funds must be used to fund:~~

~~A. The cost of the tax deductions provided pursuant to Title 36, section 5122, subsection 2, paragraph PP and Title 36, section 5200-A, subsection 2, paragraph BB. By June 1st annually, the State Tax Assessor shall determine the cost of those deductions during the prior calendar year and report that amount to the State Controller, who shall transfer that amount from the remaining funds in the fund to the General Fund; and~~

~~B. The cost of the position in the Department of Administrative and Financial Services, Bureau of Revenue Services to administer the tax deductions provided pursuant to Title 36, section 5122, subsection 2, paragraph PP and Title 36, section 5200-A, subsection 2, paragraph BB. By June 1st annually, the Commissioner of Administrative and Financial Services shall determine the cost of the position in the bureau to administer those deductions during the prior calendar year and report that amount to the State Controller, who shall transfer that amount from the remaining funds in the fund to the General Fund.~~

**Sec. A-3. 36 MRSA §199-C, sub-§3,** as amended by PL 2015, c. 328, §2, is further amended to read:

**3. Specific tax expenditure review.** By June 1, ~~2021~~ 2022, the committee shall review the income tax credit under section 5217-D to determine whether the credit should be retained, repealed or modified. The committee shall consider information provided by the Office of Tax Policy within the bureau and the Department of Education pursuant to Title 20-A, section 12545.

**Sec. A-4. 36 MRSA §2519,** as amended by PL 2011, c. 548, §18, is further amended to read:

**§2519. Ratio of tax on foreign insurance companies**

An insurance company incorporated ~~by~~ in the District of Columbia, a state or possession of the United States or province of Canada whose laws impose upon insurance companies chartered by this State a greater tax than is provided in this chapter shall pay the same tax upon business done by it in this State, in place of the tax provided in any other section of this chapter. If the insurance company fails to pay the tax as provided in section 2521-A, the assessor shall certify that failure to the Superintendent of Insurance, who shall suspend the insurance company's right to do business in this State. For purposes of this section, an insurance company incorporated by another country is deemed to be incorporated by the state, district or possession of the United States where it has elected to make its deposit and establish its principal agency in the United States. For nonadmitted insurance premiums subject to section 2531, the rate applied pursuant to this section must be the highest rate that the state, district, possession or province applies to nonadmitted insurance premiums taxed in that state, district or possession or province.

**Sec. A-5. 36 MRSA §5122, sub-§2, ¶X,** as amended by PL 2017, c. 170, Pt. D, §3, is further amended to read:

X. The taxpayer's pro rata share of an amount that was previously added back to federal taxable income ~~pursuant to section 5200-A, subsection 1, paragraph N; section 5200-A, subsection 1, paragraph T; section 5200-A, subsection 1, paragraph Y, subparagraph~~

~~(2); section 5200-A, subsection 1, paragraph AA, subparagraph (2); section 5200-A, subsection 1, paragraph BB; or section 5200-A, subsection 1, paragraph CC, subparagraph (2)~~ by a corporation of which the taxpayer is a shareholder and by which, absent an S corporation election, the corporation could have reduced its federal taxable income for the taxable year pursuant to section 5200-A, subsection 2, paragraph M, R, V, Y, Z ~~or~~, AA or FF;

**Sec. A-6. 36 MRSA §5195, sub-§7,** as enacted by PL 2019, c. 380, §2, is amended to read:

**7. Federal adjustment.** "Federal adjustment" means an adjustment to an item or amount determined under the Code that affects the computation of a taxpayer's Maine tax liability resulting from a partnership-level audit or other action by the IRS or an amended federal return, refund claim or administrative adjustment request filed by a taxpayer. A federal adjustment is positive to the extent that it increases taxable income and is negative to the extent that it decreases taxable income, as determined under this Part.

**Sec. A-7. 36 MRSA §5196, sub-§1,** as enacted by PL 2019, c. 380, §2, is amended to read:

**1. General rule.** Except in the case of final federal adjustments required ~~to be reported for federal purposes under the Code, Section 6225(a)(2)~~ under federal law or regulations to be taken into account by the partnership in the partnership return for the adjustment year or other year, a partner shall, in accordance with section 5227-A, report and pay any amount due with respect to adjustments arising from a partnership-level audit or other action by the IRS that is reported by the taxpayer on a timely filed amended federal income tax return, including a return or other similar report filed pursuant to the Code, Section 6225(c)(2), or a federal claim for refund by filing a federal adjustments report with the assessor for the reviewed year and, if applicable, paying the additional tax, penalties and interest due no later than 180 days after the final determination date.

In the case of a partnership with partners required to file a federal adjustments report pursuant to this subsection and included in a composite return or subject to withholding under section 5250-B in the reviewed year, the partnership shall file an amended composite return and amended withholding return as required by the assessor and pay any additional tax, penalties and interest due no later than 180 days after the final determination date.

**Sec. A-8. 36 MRSA §5196, sub-§3,** as enacted by PL 2019, c. 380, §2, is amended to read:

**3. Partnership reporting and payment.** An audited partnership or a partnership that has filed an administrative adjustment request is subject to tax with respect to final federal adjustments without regard to the election under the Code, Section 6226(a). The amount of tax is determined as provided in this subsection.

A. An audited partnership or a partnership that has filed an administrative adjustment request shall file a completed federal adjustments report, including the distributive share of the adjustment paid by partners under subsection 1 and other information required by the assessor, and, if subject to tax under this subsection, pay the tax due no later than 180 days after the final determination date.

B. The tax due or a refund allowed pursuant to this subsection is determined as follows:

(1) Exclude from final federal adjustments the distributive share of adjustments properly allocable to partners pursuant to subsection 1 and adjustments required under federal law or regulations to be taken into account by the partnership in the partnership return for the adjustment year or other year;

(2) Exclude from final federal adjustments the distributive share of adjustments reported to direct exempt partners not subject to tax on unrelated business taxable income;

(3) For the total distributive shares of the remaining final federal adjustments, remove the portion of such adjustments this State is prohibited from taxing under the Constitution of Maine or the United States Constitution, net of any expenses incurred in production of that income, that are not otherwise excluded pursuant to this paragraph;

(4) For the total distributive shares of the remaining final federal adjustments reported to direct corporate partners subject to tax under chapter 817, and to direct exempt partners subject to tax on unrelated business taxable income, apportion and allocate such adjustments as provided under chapter 821 and multiply the resulting amount by the highest tax rate under section 5200;

(5) For the total distributive shares of the remaining final federal adjustments reported to direct partners that are nonresident partners subject to tax under section 5111 or 5160, determine the amount of such adjustments that is Maine-source income under sections 5142 and 5192 and multiply the resulting amount by the highest tax rate under section 5111 for the applicable tax year;

(6) For the total distributive shares of the remaining final federal adjustments reported to tiered partners:

(a) Determine the amount of such adjustments that is of a type that would be subject to sourcing under section 5142~~, excluding section 5142, subsection 3,~~ and calculate the portion of this amount sourced to this State;

(b) Determine the amount of such positive adjustments that is ~~income~~ of a type that would not be subject to sourcing by a nonresident partner under section 5142~~, subsection 3~~; ~~and~~

(c) Determine the portion of ~~the amount~~ positive adjustments determined in division (b) that can be established to the satisfaction of the assessor to be properly allocable to indirect partners that are nonresident partners or other partners not subject to tax on the adjustments;

(d) Determine the amount of such negative adjustments that is of a type that would not be subject to sourcing by a nonresident partner under section 5142; and

(e) Determine the portion of negative adjustments determined in division (d) that can be established to the satisfaction of the assessor to be properly allocable to indirect partners that are resident partners or other partners subject to tax on the adjustments;

(7) Multiply the total of the amounts determined in subparagraph (6), divisions (a) and (b), reduced by the amount determined in subparagraph (6), ~~division~~ divisions (c) and (e), by the highest tax rate under section 5111;

(8) For the total distributive shares of the remaining final federal adjustments reported to resident direct partners subject to tax under section 5111 or 5160, multiply that amount by the highest tax rate under section 5111 for the applicable tax year; ~~and~~

(9) Add the amounts determined in subparagraphs (4), (5), (7) and (8)~~, along with interest and penalties as provided in sections 186 and 187-B, respectively.~~;

(10) If the result in subparagraph (9) is a positive amount, compute interest and penalties pursuant to sections 186 and 187-B, respectively, and add these amounts to the amount computed in subparagraph (9); and

(11) A negative amount computed pursuant to subparagraph (9) must be treated as an overpayment of tax by the partnership for which a claim for refund may be made by the partnership.

C. Notwithstanding section 5219-H, a partnership may not claim any of the credits in chapter 822 against the tax imposed by this subsection. However, a partnership may claim a credit for income taxes imposed on and paid by the partnership to 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 the distributive shares of the final federal adjustments reported to resident direct partners included in the calculation pursuant to paragraph B, subparagraph (8) and paid by the partnership to this State. The credit under this paragraph is calculated in the same manner as the credit allowed by section 5217-A.

**Sec. A-9. 36 MRSA §5196, sub-§4,** as enacted by PL 2019, c. 380, §2, is amended to read:

**4. Tiered partners.** The direct partners and indirect partners of an audited partnership or of a partnership that has filed an administrative adjustment request that are tiered partners, and all the partners of those tiered partners that are subject to tax under section 5111, 5160 or 5200, are subject to the reporting and payment requirements of this section.

**Sec. A-10. 36 MRSA §5196, sub-§5,** as enacted by PL 2019, c. 380, §2, is amended to read:

**5. Effect of partnership reporting and payment of amounts due.** Except for adjustments required to be reported and the tax paid under subsection 1 and adjustments required under federal law or regulations to be taken into account by the partnership in the partnership return for the adjustment year or other year, the proper reporting of final federal adjustments and payment of amounts due by a partnership under subsections 3 and 4 relieves the partners of the partnership of any tax liability resulting from their distributive shares of the adjustments so reported. The direct partners or indirect partners may not take any deduction or credit for this amount or claim a refund of the amount in this State. The direct partners or indirect partners may not take a deduction, credit or refund with respect to any negative adjustment accounted for in subsection 3, paragraph B, subparagraphs (2) to (11).

**Sec. A-11. 36 MRSA §5196, sub-§6,** as enacted by PL 2019, c. 380, §2, is amended to read:

**6. Failure of audited partnership, partnership that has filed an administrative adjustment request or tiered partner to report or pay.** ~~Nothing in this~~ This section ~~prevents~~ does not prevent the assessor from assessing direct partners or indirect partners for taxes they owe, using the best information available, in the event that a partnership or tiered partner fails to timely make any report or payment required by this subchapter for any reason.

**Sec. A-12. 36 MRSA §5219-X, sub-§6** is enacted to read:

**6. Reporting.** A taxpayer allowed a credit under subsection 2 shall report to the Department of Economic and Community Development, for each tax credit awarded, the dollar amount of the tax credit, the number of direct manufacturing jobs created and the dollar amount of capital investment in manufacturing.

**Sec. A-13. 36 MRSA §5219-XX,** as enacted by PL 2019, c. 628, §3, is amended to read:

**§5219-XX. Renewable chemicals tax credit**

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

A. "Biobased content" means the total mass of organic carbon derived from renewable biomass, expressed as a percentage, determined by testing representative samples using the ASTM International D6866 standard test methods.

A-1. "Cellulose nanomaterial" means any cellulose-based material, extracted from trees, plants, aquaculture sources or by-products from their manufacturing using either a chemical, mechanical or enzymatic process or a combination of these processes, that has at least one external dimension in the range of one to 100 nanometers.

B. "Renewable biomass" has the same meaning as in 7 United States Code, Section 8101(13).

C. "Renewable chemical" means a ~~substance, compound or mixture~~ renewable chemical, as defined in 7 United States Code, Section 8101(14), that:

(1) Is the product of, or reliant upon, biological conversion, thermal conversion or a combination of biological and thermal conversion of renewable biomass or is a cellulose nanomaterial;

(2) Is sold or used by the taxpayer:

(a) For the production of ~~chemical products~~ chemicals, polymers, plastics or formulated products; or

(b) As a chemical, polymer, plastic or formulated product;

(3) Is not less than 95% biobased content, as determined by testing representative samples using the ASTM International D6866 standard test methods; and

(4) Is not sold or used for production of any, or sold as, food, feed or fuel, including any biofuel as defined under section 5219-X, subsection 1, except that "renewable chemical" may include:

(a) Cellulosic sugars used to produce aquaculture feed; and

(b) A food additive, supplement, vitamin, nutraceutical or pharmaceutical that does not provide caloric value and is not considered food or feed.

**2. Credit allowed.** A taxpayer engaged in the production of renewable chemicals in the State who has complied with subsection 5 and the rules adopted under that subsection is allowed a credit against the tax imposed by this Part on income derived during the taxable year from the production of renewable chemicals in the amount of 8¢ per pound of renewable chemical produced in the State as long as the taxpayer demonstrates to the Department of Economic and Community Development that at least 75% of the employees of the contractors hired or retained to harvest renewable biomass used in the production of the renewable chemicals meet the eligibility conditions specified in the Employment Security Law.

If the taxpayer does not contract directly with those hired or retained to harvest the renewable biomass, the taxpayer may obtain the necessary documentation under this subsection from the landowner or other entity that contracts directly.

**3. Reporting.** A taxpayer allowed a credit under subsection 2 shall report to the Department of Economic and Community Development, for each tax credit awarded, the dollar amount of the tax credit, the number of direct manufacturing jobs created~~, the number of related indirect jobs created~~ and the dollar amount of capital investment in manufacturing. ~~Indirect jobs include but are not limited to jobs in logging and support services.~~

**4. Limitation.** A person entitled to a tax credit under this section for any taxable year may carry over and apply the portion of any unused credits to the tax liability on income derived from the production of renewable chemicals for any one or more of the next succeeding 10 taxable years. The credit allowed, including carryovers, may not reduce the tax otherwise due under this Part to less than zero.

**5. Information reporting and 3rd-party testing; rules.** A taxpayer engaged in the production of renewable chemicals that is claiming a credit under subsection 2 shall provide information to the assessor regarding the renewable chemicals being produced, including the weight of renewable chemicals produced during the tax year, the type of renewable biomass used and any other information required by the assessor to determine compliance with this section. The assessor shall adopt rules requiring 3rd-party testing of the renewable chemicals to ensure the accuracy of the reported information. Rules adopted pursuant to this subsection are routine technical rules as provided in Title 5, chapter 375, subchapter 2-A.

This section applies to tax years beginning on or after January 1, 2021.

**Sec. A-14. 36 MRSA §5242,** as amended by PL 2017, c. 211, Pt. D, §12, is further amended by adding at the end a new paragraph to read:

A person who is required by the assessor to furnish a return of information in accordance with this section on or after January 31, 2022 and who fails to do so, or who willfully furnishes a false or fraudulent return of information, is subject to a penalty of $50 for each such failure.

**Sec. A-15. PL 2019, c. 628, §4** is amended to read:

**Sec. 4. Report.** By February 1, 2024, the Department of Economic and Community Development shall submit a report relating to the usage of the renewable chemicals tax credit under the Maine Revised Statutes, Title 36, section 5219-XX and the biofuel commercial production and commercial use tax credit under Title 36, section 5219-X to the joint standing committees of the Legislature having jurisdiction over taxation and innovation, development, economic advancement and business matters. Notwithstanding Title 36, section 191, the State Tax Assessor may disclose to an authorized representative of the Department of Economic and Community Development information required to prepare this report. The report must include:

1. For each tax credit awarded:

A. The dollar amount of the tax credit;

B. The number of direct manufacturing jobs created ~~and the number of related indirect jobs created~~; and

C. The dollar amount of capital investment in manufacturing; and

2. The amount in pounds of renewable chemical and gallons of biofuel produced for which ~~the~~ a credit was claimed.

## PART B

**Sec. B-1. 36 MRSA §1752, sub-§5** is amended to read:

**5. In this State or in the State.** "In this State" or "in the State" means within the exterior limits of the State of Maine and includes all territory within these limits owned by or ceded to the United States of America and includes sales of tangible personal property and taxable services sourced in this State pursuant to section 1819.

**Sec. B-2. 36 MRSA §1752, sub-§11, ¶B,** as amended by PL 2019, c. 607, Pt. B, §1, is further amended by amending subparagraph (3) to read:

(3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented for a period of less than one year~~. For the purposes of this subparagraph, "automobile" includes a pickup truck or van with a gross vehicle weight of less than 26,000 pounds~~;

**Sec. B-3. 36 MRSA §1752, sub-§11, ¶B,** as amended by PL 2019, c. 607, Pt. B, §1, is further amended by enacting a new subparagraph (3-A) to read:

(3-A) The sale, to a person primarily engaged in the business of renting automobiles, of pickup trucks or vans with a gross vehicle weight of less than 26,000 pounds, integral parts of such vehicles or accessories for such vehicles, for rental or for use in such a vehicle rented for a period of less than one year;

**Sec. B-4. 36 MRSA §1754-B, sub-§1-A,** as amended by PL 2019, c. 401, Pt. B, §10 and c. 441, §3, is repealed.

**Sec. B-5. 36 MRSA §1754-B, sub-§1-B,** as enacted by PL 2019, c. 401, Pt. B, §11 and by PL 2019, c. 441, §4, is repealed and the following enacted in its place:

**1-B. Persons required to register.** Except as otherwise provided in this section and section 1951-C, the following persons, other than casual sellers, shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part:

A. Every person that has a substantial physical presence in this State and that makes sales of tangible personal property or taxable services in this State, including, but not limited to:

(1) Every person that makes sales of tangible personal property or taxable services, whether or not at retail, that maintains in this State any office, manufacturing facility, distribution facility, warehouse or storage facility, sales or sample room or other place of business;

(2) Every person that makes sales of tangible personal property or taxable services that does not maintain a place of business in this State but makes retail sales in this State or solicits orders, by means of one or more salespeople within this State, for retail sales within this State; and

(3) Every lessor engaged in the leasing of tangible personal property located in this State that does not maintain a place of business in this State but makes retail sales to purchasers from this State;

B. Every person that makes sales of tangible personal property or taxable services in this State if the person's gross sales from delivery of tangible personal property or taxable services into this State in the previous calendar year or current calendar year exceeds $100,000;

C. Every person that has a substantial physical presence in this State and that makes retail sales in this State of tangible personal property or taxable services on behalf of a principal that is outside of this State if the principal is not the holder of a valid registration certificate;

D. Every agent, representative, salesperson, solicitor or distributor that has a substantial physical presence in this State and that receives compensation by reason of sales of tangible personal property or taxable services made outside this State by a principal for use or other consumption in this State;

E. Every person that manages or operates in the regular course of business or on a casual basis a hotel, rooming house or tourist or trailer camp in this State or that collects or receives rents on behalf of a hotel, rooming house or tourist or trailer camp in this State;

F. Every person that operates a transient rental platform and reserves, arranges for, offers, furnishes or collects or receives consideration for the rental of living quarters in this State;

G. Every room remarketer;

H. Every person that makes retail sales in this State of tangible personal property or taxable services on behalf of the owner of that property or the provider of those services;

I. Every person not otherwise required to be registered that sells tangible personal property to the State and is required to register as a condition of doing business with the State pursuant to Title 5, section 1825-B;

J. Every person that holds a wine direct shipper license under Title 28-A, section 1403-A; and

K. A marketplace facilitator if the marketplace facilitator's gross sales of tangible personal property or taxable services in this State in the previous calendar year or current calendar year exceeds $100,000.

For the purposes of this paragraph, the marketplace facilitator's gross sales include sales facilitated on behalf of marketplace sellers and any sales of tangible personal property or taxable services made directly by the marketplace facilitator.

**Sec. B-6. 36 MRSA §1819, sub-§2,** as enacted by PL 2019, c. 401, Pt. B, §18, is amended to read:

**2. Sourcing for sales of tangible personal property and taxable services.** The ~~retail~~ sale of tangible personal property or a taxable service is sourced in this State pursuant to this subsection.

A. When the tangible personal property or taxable service is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

B. When the tangible personal property or taxable service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee occurs, including the location indicated by instructions for delivery to the purchaser or donee known to the seller.

C. For a sale when paragraphs A and B do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

D. For a sale when paragraphs A to C do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

E. When paragraphs A to D do not apply, including the circumstance in which the seller is without sufficient information to apply paragraphs A to D, the location is determined by the address from which tangible personal property was shipped, from which the tangible personal property or taxable service transferred electronically was first available for transmission by the seller or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the tangible personal property or taxable service sold.

**Sec. B-7. Application.** This Part applies to sales occurring on or after January 1, 2022.

## PART C

**Sec. C-1. 36 MRSA §383, sub-§2,** as enacted by PL 1999, c. 487, §1, is amended to read:

**2. Assessment ratio.** The State Tax Assessor may establish procedures and adopt rules, in accordance with the Maine Administrative Procedure Act, designed to ensure that the ratio ~~certified~~ declared by the municipal assessors or the assessors of primary assessing

areas is accurate within ~~20%~~ 10% of the state valuation ratio last determined, unless adequate evidence is presented to the State Tax Assessor by the municipalities to justify a different assessment ratio.

**Sec. C-2. 36 MRSA §655, sub-§1, ¶U,** as enacted by PL 2019, c. 440, §3, is amended by repealing the 2nd blocked paragraph.

**Sec. C-3. 36 MRSA §656, sub-§1, ¶K,** as enacted by PL 2019, c. 440, §4, is amended by repealing the 2nd blocked paragraph.

**Sec. C-4. 36 MRSA §661, sub-§6** is enacted to read:

**6. Audits; determinations of bureau.** The bureau may audit the records of a municipality to ensure compliance with this subchapter. The bureau may independently review the records of a municipality to determine if exemptions subject to reimbursement under this section have been properly approved. If the bureau determines that an exemption was improperly approved, the bureau shall ensure, either by setoff against other payments due the municipality or otherwise, that the municipality is not reimbursed for the exemption. A municipality that is aggrieved by a determination of the bureau under this section may appeal pursuant to section 151.

**Sec. C-5. 36 MRSA §689,** as enacted by PL 1997, c. 643, Pt. HHH, §3 and affected by §10, is amended to read:

**§689. Audits; determinations of bureau**

The bureau ~~has the authority to~~ may audit the records of a municipality to ensure compliance with this subchapter. The bureau may independently review the records of a municipality to determine if homestead exemptions have been properly approved. If the bureau determines that a homestead exemption was improperly approved, the bureau shall ensure, either by setoff against other payments due the municipality or otherwise, that the municipality is not reimbursed for the exemption. A municipality that is aggrieved by a determination of the bureau under this ~~subchapter~~ section may appeal pursuant to section 151.

**Sec. C-6. 36 MRSA §697,** as amended by PL 2017, c. 211, Pt. A, §11, is further amended to read:

**§697. Audits; determination of bureau**

The bureau may audit the records of a municipality to ensure compliance with this subchapter. The bureau may independently review the records of a municipality to determine if exemptions have been properly approved. If the bureau determines that an exemption was improperly approved ~~for any of the 3 years immediately preceding the determination~~, the bureau shall ensure, by setoff against other payments due the municipality ~~under this subchapter or subchapter 4-B~~ or otherwise, that the municipality is not reimbursed for the exemption. A municipality that is aggrieved by a determination of the bureau under this ~~subchapter~~ section may appeal pursuant to section 151.

## PART D

**Sec. D-1. 36 MRSA §1760, sub-§45, ¶A-4,** as corrected by RR 2011, c. 2, §40, is amended to read:

A-4. If the property is brought into this State solely to conduct activities directly related to a declared state disaster or emergency, at the request of the State, a county, city, town or political subdivision of the State or a registered business, the property is owned by a person not otherwise required to register as a seller under section 1754-B and the property is present in this State only during a disaster period. As used in this paragraph, "declared state disaster or emergency" ~~has~~ and "disaster period" have the same meaning as in Title 10, section 9902, ~~subsection~~ subsections 1 and ~~"disaster period" means the period of 60 days that begins with the date of the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or major emergency, whichever occurs first~~ 2, respectively; or

**Sec. D-2. 36 MRSA §5102, sub-§6-C,** as enacted by PL 2011, c. 622, §4 and affected by §7, is amended to read:

**6-C. Disaster period.** "Disaster period" ~~means the period of 60 days that begins with the date of the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or major emergency, whichever occurs first~~ has the same meaning as in Title 10, section 9902, subsection 2.

**Sec. D-3. Machinery or equipment used in production.** The definition of "primarily" in the Maine Revised Statutes, Title 36, section 1752, subsection 9-A, is modified by replacing "time" with "days in use" if the 2-year period described in that definition includes any portion of the state of emergency declared by the Governor due to the pandemic related to coronavirus disease 2019, also known as COVID-19.

**Sec. D-4. Credit for income tax paid to other taxing jurisdictions.** For tax years beginning in 2021, when determining whether compensation for personal services performed as an employee working remotely from a location in this State is derived from sources in another jurisdiction for purposes of the credit for income tax paid to other taxing jurisdictions, allowed pursuant to the Maine Revised Statutes, Title 36, section 5217-A, notwithstanding section 5142, the compensation is sourced to that jurisdiction if:

1. The employee was engaged in performing services from a location outside of this State immediately prior to a state of emergency declared by the Governor due to the pandemic related to coronavirus disease 2019, referred to in this section as COVID-19, or declared by the jurisdiction where the employee was engaged in performing those services;

2. The employee commenced working remotely from this State, as to those services or proportion of services referred to in subsection 1, due to the COVID-19 pandemic and during either this State's or the other jurisdiction's state of emergency related to the COVID-19 pandemic;

3. The services were performed prior to January 1, 2022 and during either this State's or the other jurisdiction's state of emergency;

4. The compensation is sourced by that jurisdiction as derived from or connected with sources in that jurisdiction under the law of that jurisdiction; and

5. The employee does not qualify for an income tax credit in that jurisdiction for Maine income taxes paid as a result of the compensation.

The State Tax Assessor may adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement this section.

## PART E

**Sec. E-1. 36 MRSA §5102, sub-§10,** as amended by PL 2011, c. 655, Pt. QQ, §4 and affected by §8, is further amended to read:

**10. Taxable corporation.** "Taxable corporation" means, for any taxable year, a corporation that has nexus with this State pursuant to section 5200-B, including any corporation with income subject to federal tax under the Code, Section 1374 or 1375, and that has, at any time during that taxable year, realized Maine net income ~~and includes any S corporation with realized Maine net income that is subject to federal tax under the Code, Section 1374 and 1375~~.

**Sec. E-2. 36 MRSA §5200-B** is enacted to read:

**§5200-B. Corporate income tax nexus**

**1. Nexus established.** A corporation has nexus with this State, for the purposes of the tax imposed under section 5200, if that corporation:

A. Is organized or commercially domiciled in this State; or

B. Is organized or commercially domiciled outside this State, if the corporation's property, payroll or sales, as calculated pursuant to subsection 2, in this State exceed any of the following thresholds for the taxable year:

(1) For property, $250,000;

(2) For payroll, $250,000;

(3) For sales, $500,000; or

(4) Twenty-five percent of the corporation's property, payroll or sales.

**2. Property, payroll and sales defined; calculation.** For purposes of this section, property, payroll and sales are calculated as provided under chapter 821 and associated rules adopted by the assessor, except that the sales calculation does not exclude sales of tangible personal property under section 5211, subsection 14, paragraph B. For a taxpayer permitted or required to use a special apportionment method under section 5211, subsection 17, the property, payroll and sales used to determine nexus under this section must be consistent with the property, payroll and sales used for the special apportionment method.

**3. Corporate partners.** A corporation that holds an interest directly or indirectly in a partnership has nexus with this State if the partnership is organized or commercially domiciled in this State or if the partnership's property, payroll or sales, as calculated pursuant to subsection 2, in this State exceed any of the thresholds in subsection 1, paragraph B.

**4. Federal protection.** A state that is without jurisdiction to impose a tax on the net income of a taxpayer because that taxpayer comes under the protection of 15 United States Code, Sections 381 to 384, does not gain jurisdiction to impose such a tax because the taxpayer's property, payroll or sales in the State exceed a threshold established in subsection 1.

**Sec. E-3. 36 MRSA §5211, sub-§14,** as amended by PL 2009, c. 571, Pt. GG, §1 and affected by §2, is further amended to read:

**14. Sales factor formula.** The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. ~~For purposes of calculating the sales factor, "total sales of the taxpayer" includes sales of the taxpayer and of any member of an affiliated group with which the taxpayer conducts a unitary business. The formula must exclude from both the numerator and the denominator sales of tangible personal property delivered or shipped by the taxpayer, regardless of F.O.B. point or other conditions of the sale, to a purchaser within a state in which the taxpayer is not taxable within the meaning of subsection 2, unless any member of an affiliated group with which the taxpayer conducts a unitary business is taxable in that state in the same manner as a taxpayer is taxable under subsection 2.~~

A. For purposes of calculating the sales factor, "total sales of the taxpayer" includes sales of the taxpayer and of any member of an affiliated group with which the taxpayer conducts a unitary business.

B. The sales factor formula must exclude from both the numerator and the denominator sales of tangible personal property delivered or shipped by the taxpayer, regardless of F.O.B. point or other conditions of the sale, to a purchaser within a state in which the taxpayer is not taxable within the meaning of subsection 2, unless any member of an affiliated group with which the taxpayer conducts a unitary business is taxable in that state in the same manner as a taxpayer is taxable under subsection 2.

**Sec. E-4. Application.** This Part applies to tax years beginning on or after January 1, 2022.