

# **127th MAINE LEGISLATURE**

### **SECOND REGULAR SESSION-2016**

**Legislative Document** 

No. 1672

S.P. 684

In Senate, March 23, 2016

## An Act To Improve Priority of Tax Liens and the Collection of Sales Taxes

Reference to the Committee on Taxation suggested and ordered printed.

Heath & Print

HEATHER J.R. PRIEST Secretary of the Senate

Presented by Senator McCORMICK of Kennebec. (GOVERNOR'S BILL) Cosponsored by Representative: GOODE of Bangor. 1

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

### PART A

- 2
- 3 4

Sec. A-1. 36 MRSA §175-A, sub-§1, as amended by PL 1999, c. 699, Pt. D, §26 and affected by §30, is further amended to read:

5 1. Filing. If Before August 1, 2016, if any tax imposed by this Title or imposed by 6 any other provision of law and authorized to be collected by the bureau is not paid when due and no further administrative or judicial review of the assessment is available 7 8 pursuant to law, the assessor may file in the registry of deeds of any county, with respect 9 to real property, or in the office of the Secretary of State, with respect to property of a 10 type a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A, a notice of lien specifying the amount of the tax, interest, penalty and 11 costs due, the name and last known address of the person liable for the amount and, in the 12 case of a tax imposed by this Title, the fact that the assessor has complied with all the 13 provisions of this Title in the assessment of the tax. The lien arises at the time the 14 15 assessment becomes final and constitutes a lien upon all property, whether real or personal, then owned or thereafter acquired by that person in the period before the 16 17 expiration of the lien. The lien imposed by this section is not valid against any 18 mortgagee, pledgee, purchaser, judgment creditor or holder of a properly recorded 19 security interest until notice of the lien has been filed by the assessor, with respect to real 20 property, in the registry of deeds of the county where such property is located and, with respect to personal property, in the office in which a financing statement for such 21 personal property is normally filed. Notwithstanding this subsection, a tax lien upon 22 23 personal property does not extend to those types of personal property not subject to 24 perfection of a security interest by means of the filing in the office of the Secretary of 25 State. The lien is prior to any mortgage or security interest recorded, filed or otherwise perfected after the notice, other than a purchase money security interest perfected in 26 accordance with Title 11, Article 9-A. In the case of any mortgage or security interest 27 28 properly recorded or filed prior to the notice of lien that secures future advances by the 29 mortgagee or secured party, the lien is junior to all advances made within 45 days after 30 filing of the notice of lien, or made without knowledge of the lien or pursuant to a 31 commitment entered into without knowledge of the lien. Subject to the limitations in this 32 section, the lien provided in this section subsection has the same force, effect and priority 33 as a judgment lien and continues for 10 years from the date of recording unless sooner 34 released or otherwise discharged. The lien may, within the 10-year period, or within 10 35 years from the date of the last extension of the lien in the manner provided in this 36 subsection, be extended by filing for record in the appropriate office a copy of the notice and, from the time of filing, that lien must be extended for 10 years unless sooner 37 released or otherwise discharged. 38

- 39 This subsection applies to assessments made before August 1, 2016.
- 40 Sec. A-2. 36 MRSA §175-A, sub-§1-A is enacted to read:
- 41 <u>**1-A. Filing of tax lien.** Beginning August 1, 2016, if any tax imposed by this Title</u> 42 or any tax imposed by any other provision of law and authorized to be collected by the

1 bureau is not paid when due and no further administrative or judicial review of the 2 assessment is available pursuant to law, the amount of the assessment, including the tax, 3 interest, penalties and costs, is a lien in favor of the assessor. The lien arises at the time 4 the assessment is made and constitutes a lien upon all property, whether real or personal, 5 owned by the person liable for the assessment at the time the lien arises or acquired by 6 that person in the period after the lien arises until the expiration of the lien. The assessor 7 may file in the registry of deeds of any county, with respect to real property, or in the 8 office of the Secretary of State, with respect to property of a type for which a security 9 interest may be perfected by a filing in such office under Title 11, Article 9-A, a notice of 10 lien specifying the amount of the tax, interest, penalties and costs due, the name and last 11 known address of the person liable for the amount and, in the case of a tax imposed by 12 this Title, the fact that the assessor has complied with all the provisions of this Title in the 13 assessment of the tax. Filing of the lien by the assessor constitutes notice of lien for, and 14 secures payment of, both the original assessment and all subsequent assessments of tax 15 against the same person, until such time as the lien is released or otherwise discharged as 16 provided for in this section. The lien imposed by this section is not valid against any 17 mortgagee, pledgee, purchaser, judgment creditor or holder of a properly recorded 18 security interest until notice of the lien has been filed by the assessor, with respect to real 19 property, in the registry of deeds of the county where such property is located and, with 20 respect to personal property, in the office in which a financing statement for such 21 personal property is normally filed. Notwithstanding this subsection, a tax lien upon 22 personal property does not extend to those types of personal property not subject to 23 perfection of a security interest by means of the filing in the office of the Secretary of 24 State. The lien is prior to any mortgage or security interest recorded, filed or otherwise 25 perfected after the notice, other than a purchase-money security interest perfected in 26 accordance with Title 11, Article 9-A. In the case of any mortgage or security interest 27 properly recorded or filed prior to the notice of lien that secures future advances by the 28 mortgagee or secured party, the lien is junior to all advances made within 45 days after 29 filing of the notice of lien, or made without knowledge of the lien or pursuant to a 30 commitment entered into without knowledge of the lien. Subject to the limitations in this 31 section, the lien provided in this subsection has the same force, effect and priority as a 32 judgment lien and continues for 10 years from the date of recording unless sooner 33 released or otherwise discharged. The lien may, within the 10-year period, or within 10 34 years from the date of the last extension of the lien in the manner provided in this 35 subsection, be extended by filing for record in the appropriate office a copy of the notice 36 and, from the time of filing, that lien must be extended for 10 years unless sooner 37 released or otherwise discharged. If the lien is extended within the 10-year period, or 38 within 10 years from the date of the last extension of the lien as provided for in this 39 subsection, the extended lien relates back to the date the lien was first filed. 40 This subsection applies to assessments made on or after August 1, 2016.

- 41 Sec. A-3. 36 MRSA §175-A, sub-§3, as amended by PL 1997, c. 526, §10, is 42 further amended to read:
- 43 3. Enforcement. The lien provided for by subsection 1 or subsection 1-A may be
  44 enforced at any time after the tax liability with respect to which the lien arose becomes
  45 collectible under section 173, subsection 1 by a civil action brought by the Attorney

1 General in the name of the State in the Superior Court of the county in which the property 2 is located to subject any property, of whatever nature, in which the taxpayer has any right, 3 title or interest, to the payment of such tax or liability. The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved in the 4 5 action and finally determine the merits of all claims to and liens upon the property and, in 6 all cases where a claim or interest of the State therein is established, may decree a sale of 7 the property by the proper officer of the court and a distribution of the proceeds of such 8 sale according to the findings of the court. If the property is sold to satisfy a lien held by 9 the State, the State may bid at the sale such sum, not exceeding the amount of that lien 10 plus expenses of sale, as the assessor directs.

11 Sec. A-4. 36 MRSA §175-A, sub-§4, as corrected by RR 1997, c. 1, §28, is 12 amended to read:

**4. Recording fees part of tax liability.** Fees paid by the assessor to registrars of deeds for recording notices of lien pursuant to subsection 1 <u>or subsection 1-A</u> and notices of release of a lien pursuant to subsection 2 may be added to the tax liability that gave rise to the lien and, in the case of a tax imposed by this Title, may be collected by all the methods provided for in chapter 7. In the case of other obligations owed to the State and authorized to be collected by the bureau, the fees may be collected by any collection method authorized by this section or section 176-A.

Sec. A-5. 36 MRSA §177, sub-§1, as amended by PL 1999, c. 708, §9, is further
 amended to read:

22 1. Generally. All sales and use taxes collected by a person pursuant to Part 3, all taxes collected by a person under color of Part 3 that have not been properly returned or 23 24 credited to the persons from whom they were collected, all taxes collected by or imposed 25 on a person pursuant to chapter 451 or 459, all fees collected pursuant to chapter 719 and all taxes collected by a person pursuant to chapter 827 constitute a special fund in trust 26 27 for the State Tax Assessor. The liability for the taxes or fees and the interest or penalty 28 on taxes or fees is enforceable by assessment and collection, in the manner prescribed in 29 this Part, against the person and against any officer, director, member, agent or employee 30 of that person who, in that capacity, is responsible for the control or management of the 31 funds or finances of that person or is responsible for the payment of that person's taxes. 32 An assessment against a responsible individual pursuant to this section must be made 33 within 6 years from the date on which the return on which the taxes were required to be reported was filed. An assessment pursuant to this section may be made at any time with 34 35 respect to a time period for which a return has become due but has not been filed.

- 36 Sec. A-6. 36 MRSA §177, sub-§1-A is enacted to read:
- **1-A. Responsible individual liability for uncollected tax.** The liability for all sales
  and use taxes required to be collected pursuant to Part 3 but not collected or paid and all
  taxes imposed pursuant to chapter 451 or 459 but not collected or paid, along with the
  interest or penalty on the taxes, is enforceable by assessment and collection against a
  responsible individual in accordance with subsection 1.

1 2	<b>Sec. A-7. 36 MRSA §191, sub-§2, ¶Y,</b> as amended by PL 2003, c. 390, §2, is further amended to read:
3 4 5	Y. The disclosure by the State Tax Assessor, upon request in writing of any individual against whom an assessment has been made pursuant to section 177, subsection 1 or subsection 1-A, of the following information:
6 7	(1) Information regarding the underlying tax liability to the extent necessary to apprise the individual of the basis of the assessment;
8 9	(2) The name of any other individual against whom an assessment has been made for the same underlying tax debt; and
10 11	(3) The general nature of any steps taken by the assessor to collect the underlying tax debt from any other individuals and the amount collected;
12	PART B
13 14	Sec. B-1. 36 MRSA §5122, sub-§1, ¶JJ, as amended by PL 2015, c. 388, Pt. A, §4, is repealed.
15 16	<b>Sec. B-2. 36 MRSA §5124-B, first </b> ¶, as enacted by PL 2015, c. 267, Pt. DD, §14, is amended to read:
17 18 19	For tax years beginning on or after January 1, 2016, the standard deduction of a resident individual is equal to the sum of the basic standard deduction and any additional standard deduction, subject to the phase-out under subsection 3.
20	Sec. B-3. 36 MRSA §5124-B, sub-§3 is enacted to read:
21 22 23	<b>3. Phase-out.</b> The total standard deduction of the taxpayer determined in accordance with subsections 1 and 2 must be reduced by an amount equal to the total standard deduction multiplied by the following fraction:
24 25 26 27 28 29	A. 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 paragraph produce a result that is more than one. The \$70,000 amount used to calculate the numerator in this paragraph must be adjusted for inflation in accordance with section 5403, subsection 4;
30 31 32 33 34 35	B. 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 paragraph produce a result that is more than one. The \$105,000 amount used to calculate the numerator in this paragraph must be adjusted for inflation in accordance with section 5403, subsection 4; or
36 37 38 39	C. 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 paragraph produce a result that is more than one. The

1 2	\$140,000 amount used to calculate the numerator in this paragraph must be adjusted for inflation in accordance with section 5403, subsection 4.
3	Sec. B-4. 36 MRSA §5125, sub-§6 is enacted to read:
4 5 6 7	<b>6. Phase-out.</b> For tax years beginning on or after January 1, 2016, the total itemized deductions of the taxpayer determined in accordance with subsections 1 to 4 must be reduced by an amount equal to the total itemized deductions multiplied by the following fraction:
8 9 10 11 12 13	A. 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 paragraph produce a result that is more than one. The \$70,000 amount used to calculate the numerator in this paragraph must be adjusted for inflation in accordance with section 5403, subsection 4;
14 15 16 17 18 19	B. 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 paragraph produce a result that is more than one. The \$105,000 amount used to calculate the numerator in this paragraph must be adjusted for inflation in accordance with section 5403, subsection 4; or
20 21 22 23 24 25	C. 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 paragraph produce a result that is more than one. The \$140,000 amount used to calculate the numerator in this paragraph must be adjusted for inflation in accordance with section 5403, subsection 4.
26 27	Sec. B-5. 36 MRSA §5242, as amended by PL 1995, c. 639, §23, is further amended to read:

### 28 §5242. Information returns

29 The State Tax Assessor may require returns of information to be made and filed on or 30 before February 28th January 31st of each year by a person making payment or crediting in a calendar year the amounts of \$600 or more (\$10 or more in the case of interest or 31 32 dividends) to a person who may be subject to the tax imposed under this Part. The returns may be required of a person, including lessees or mortgagors of real or personal 33 property, fiduciaries, employers and all officers and employees of this State, or of a 34 35 municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums, 36 annuities, compensations, remunerations, emoluments or other fixed or determinable 37 38 gains, profits or income, except interest coupons payable to bearer. A duplicate of the 39 statement as to tax withheld on wages, required to be furnished by an employer to an 40 employee, constitutes the return of information required to be made under this section with respect to those wages. 41

Sec. B-6. 36 MRSA §5403, sub-§4, as enacted by PL 2015, c. 267, Pt. DD, §33,
 is amended to read:

3 4. Individual income tax standard deduction and itemized deduction phase-out. 4 Beginning in 2017 and each year thereafter, by the dollar amount contained in the numerator of the fraction specified in section 5122, subsection 1, paragraph JJ, 5 6 subparagraphs (1), (2) and (3) 5124-B, subsection 3, paragraphs A, B and C and section 5125, subsection 6, paragraphs A, B and C, except that for the purposes of this 7 8 subsection, notwithstanding section 5402, subsection 1-B, the "cost-of-living adjustment" 9 is the Chained Consumer Price Index for the 12-month period ending June 30th of the preceding calendar year divided by the Chained Consumer Price Index for the 12-month 10 11 period ending June 30, 2016;

Sec. B-7. Application. That section of this Part that amends the Maine Revised
 Statutes, Title 36, section 5242 applies to returns of information made for calendar years
 beginning on or after January 1, 2016. That section of this Part that repeals Title 36,
 section 5122, subsection 1, paragraph JJ applies to tax years beginning on or after January
 1, 2016.

SUMMARY

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- 18 The intent of Part A of this bill is to improve the State's ability to collect sales and 19 use taxes owed to the State by, beginning August 1, 2016:
- Strengthening the existing tax lien provisions to increase the State's ability to be
  first in line in priority ahead of other creditors for payment on a tax debt;
- 22 2. Broadening the existing responsible individual liability provision for sales and use
  23 taxes to include sales and use taxes required to be collected by a business, whether or not
  24 actually collected; and
- Including within the new responsible individual provision the existing responsible
  person liability for uncollected fuel taxes.
- 27 Part B of this bill makes technical changes to the income tax laws, including:

Changing the date an information return, such as a Form W-2, must be filed with
 Maine Revenue Services from February 28th to January 31st following the calendar year
 to which the information return relates. The change in the due date applies to information
 returns made for calendar years beginning on or after January 1, 2016. The change is
 consistent with recently enacted federal law; and

Replacing the current individual income tax addition modification equal to the
 phase-out amount of a taxpayer's Maine standard deduction or itemized deductions with a
 phase-out amount used to calculate the taxpayer's allowable Maine standard deduction or
 itemized deductions. The calculation of the phase-out amount is unchanged and, as under
 current law, applies to tax years beginning on or after January 1, 2016.