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Testimony of Rep. Tavis Hasenfus introducing
**LD 191, An Act to Support Maine Businesses by Establishing a Pass-through
Entity Tax and Tax Credit**
Before the Taxation Committee

Good morning, Senator Grohoski, Representative Cloutier and esteemed members of the Taxation Committee. My name is Tavis Hasenfus, and I represent the communities of Readfield and Winthrop. I am here today to present **LD 191**, a bill that is truly a win-win for Maine businesses and the state economy.

With this legislation, we have the opportunity to cut taxes for small businesses while simultaneously generating revenue for the state of Maine. If this sounds too good to be true, I understand your skepticism – I was skeptical at first, too. Until I dug deep into the inner workings of this bill. Let me explain how this works:

The tax savings this bill provides are realized on the taxpayers' federal tax returns. For this to happen, Maine must authorize a specific type of tax election that allows pass-through entities – such as LLCs and partnerships – to elect to be taxed as businesses rather than individuals. Typically, pass-through entities "pass through" their income to the individual owner or owners of the company, who then report it on their personal tax returns. Under the current Federal Tax Code, an individual is limited to a \$10,000 deduction for state and local taxes, whereas a business is not subject to this same limit. This means that all pass-through income from Maine business is subject to the \$10,000 cap on state and local tax (SALT) deductions.

LD 191 would allow business owners to elect to have their businesses taxed separately. This removes the SALT deduction cap, allowing businesses to deduct state and local taxes without limitation. For many Maine businesses, which often pay more than \$10,000 in state and local taxes, this change could result in substantial federal tax savings. It is estimated that the overall tax savings for Maine businesses could be in excess of \$300 million.

Let me illustrate with an example. A business paying \$110,000 in state and local taxes currently is allowed to only reduce their income, for tax purposes, by \$10,000 leaving \$100,000 of those

expenses to be considered income. As a result, that business must pay federal taxes on an additional \$100,000 at their effective tax rate. For a business in the highest tax bracket, this could mean paying 37% – or an additional \$37,000 – to the federal government not for actually income the business gets to keep or invest but for having a large state and local tax bill. Under LD 191, the business could deduct the full \$110,000, reducing its federal tax liability. This represents a significant tax savings of up to \$37,000 on the federal return.

However, this tax savings is contingent on State action and offering to change the way it taxes businesses and providing a credit for SALT. Because the choice to be taxed at the business level requires state authorization, Maine can, as other states have, retain a percentage of the tax savings as revenue. For example, at the proposed rate of 10%, the state would receive a portion of the overall tax savings, while businesses still enjoy substantial financial relief. This innovative approach allows Maine to generate revenue without increasing taxes on businesses or individuals.

It's important to note that the effectiveness of this bill beyond 2026 depends on the renewal of the Tax Cuts and Jobs Act (TCJA). While renewal seems likely, changes to the SALT cap could impact the benefits of this legislation. However, given the current availability of tax savings and the likelihood of TCJA renewal, it is prudent to pass this bill now. I also recommend allowing for retroactive filings to maximize tax savings and state revenue in the current year. By ignoring retroactivity, we ignore the potential tax savings and revenue available for this year and last.

Additionally, predicting the fiscal note on revenue generated by this bill may be inexact, which is why I propose directing the revenue into a specially designed Other Special Revenue (OSR) fund. This fund could be used to implement future services, such as full-day universal pre-K programming. With an estimated \$30 million or more per year, the OSR fund could provide grants for capital improvements, transportation needs and temporary staffing to support pre-K programs and childcare agencies across the state. By investing in Maine's youngest residents, we can ensure long-term benefits for our communities and economy.

LD 191 is a forward-thinking proposal that balances tax relief for businesses with revenue generation for the state. It provides immediate financial benefits to Maine businesses, supports small business competitiveness and creates a sustainable revenue stream for critical investments in education and other services. In passing this bill, we can make a meaningful difference for Maine's businesses, families and future.

Thank you for your time and consideration. I urge you to support LD 191 and help Maine take this important step forward.

Amendment to LD 191
An Act to Support Maine Businesses Through a Pass-Through Entity Tax and Tax Credit

Sec. 1. Amend Sec. 1 of the Bill to read as follows:

Sec. 1. 36 MRSA c. 814-A is enacted to read:

CHAPTER 814-A

PASS-THROUGH ENTITY TAX

§5186. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affected business entity. "Affected business entity" means a partnership or an S corporation, but does not include a publicly traded partnership, as defined in the Code, Section 7704(b), that has agreed to file an annual return pursuant to section 5187 reporting the name, address, social security number or federal employer identification number and such other information required by the assessor of each member whose distributive share of partnership income derived from or connected with sources within this State is more than \$500.

2. Electing pass-through entity. "Electing pass-through entity" means a pass-through entity or partnership that elects to pay taxes pursuant to section 5187.

3. Member. "Member" means:

A. A shareholder of an S corporation;

B. A partner in:

(1) A general partnership;

(2) A limited partnership; or

(3) A limited liability partnership; or

C. A member of a limited liability company that is treated as a partnership or an S corporation for federal income tax purposes.

4. Partnership. "Partnership" has the same meaning as in the Code, Section 7701(a)(2) and regulations adopted thereunder. "Partnership" includes a limited liability company that is treated as a partnership for federal income tax purposes.

5. Pass-through entity. "Pass-through entity" has the same meaning as in section 5195, subsection 18.

6. S corporation. "S corporation" means a corporation or a limited liability company that is treated as an S corporation for federal income tax purposes.

7. Tax year. "Tax year" means the tax year of an affected business entity for federal income tax purposes.

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§5187. Pass-through entity taxation election

1. Election. A partnership or S corporation may elect to become an electing pass-through entity in a tax year. A separate election must be made for each tax year.

2. Imposition and calculation of tax. Notwithstanding any provision of law to the contrary, a tax is imposed on an electing pass-through entity. The tax is the sum of each member's distributive share of Maine taxable income as calculated under this Part (not including the distributive share of Maine taxable income attributable to an employee stock ownership plan as defined in Section 4975(e)(7) of the Internal Revenue Code), multiplied by the highest rate of tax applicable to the individual under section 5111.

3. Carry-forward. If the tax calculated pursuant to subsection 2 results in a net loss for the electing pass-through entity, the net loss may not be carried forward to subsequent tax years.

4. Filing of return. A nonresident individual who is a member of an electing pass-through entity must file an income tax return to claim the credit provided by this chapter. ~~may not be required to file an income tax return pursuant to this chapter for a tax year if the member's only source of Maine income for that tax year is from an electing pass-through entity and the electing pass-through entity files and pays the tax due under this chapter.~~

5. Report of pro rata share. Each electing pass-through entity shall report to each of its members, for each tax year, the member's pro rata share of the tax imposed pursuant to this chapter.

6. Report of credit. A subsidiary pass-through entity or partnership shall report to a parent electing pass-through entity the amount of the credit the subsidiary allocates to the parent electing pass-through entity.

7. Treatment of indirect credit. A parent electing pass-through entity cannot claim the credit against the pass-through entity tax reported on its own return but shall flow through the indirect credit to its members.

8. Amount of credit. Each member of an electing pass-through entity is entitled to a credit equal to 90% of the member's share of the tax paid pursuant to this chapter. If the amount of the credit authorized by this subsection exceeds the member's tax liability imposed pursuant to this chapter, the excess amount is refundable to the member. A member claiming a credit pursuant to this subsection is not entitled to deduct from that member's Maine taxable income those amounts of Maine income taxes paid by the member on that member's distributive share of income from the electing pass-through entity.

9. Effect of taxes paid in and credit from other jurisdictions. Each resident individual who is a member of a pass-through entity or partnership that is subject to a tax imposed by another state or by the District of Columbia that is substantially similar to the tax imposed by this chapter ~~the tax imposed by this chapter as a resident or part-year resident of the State is entitled to a credit for the direct member's or indirect member's pro rata share of taxes paid to another that other state or to the District of Columbia.~~ The State Tax Assessor shall determine on an annual basis which states or District of Columbia's taxes are substantially similar to the taxes imposed by this chapter, except that the New Hampshire Business Profits Tax shall be deemed substantially similar to the taxes imposed by this

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~~chapter. on income of any partnership or S corporation of which the person is a member if the taxes paid to another state or to the District of Columbia result from a tax that the director of taxation for that state or the District of Columbia determines is substantially similar to the tax imposed pursuant to this chapter. A credit must be calculated in a form and manner prescribed by that director of taxation consistent with the provisions of this section. If the amount of the credit authorized by this subsection exceeds the member's tax liability for the tax imposed pursuant to this chapter, the excess amount is not refundable and may not carry forward.~~

10. Timing. Each affected business entity that is required to file a return under this chapter shall pay, on or before the 15th day of the 3rd month following the close of each tax year, to the assessor the tax as determined under this chapter.

§5188. Rules

The bureau may adopt rules to implement this chapter. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

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