



130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 1216

H.P. 891

House of Representatives, March 24, 2021

An Act To Amend the State Tax Laws

(EMERGENCY)

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

Received by the Clerk of the House on March 22, 2021. Referred to the Committee on Taxation pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TERRY of Gorham.

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

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

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

14 ~~B. The cost of the position in the Department of Administrative and Financial Services,~~
15 ~~Bureau of Revenue Services to administer the tax deductions provided pursuant to Title~~
16 ~~36, section 5122, subsection 2, paragraph PP and Title 36, section 5200-A, subsection~~
17 ~~2, paragraph BB. By June 1st annually, the Commissioner of Administrative and~~
18 ~~Financial Services shall determine the cost of the position in the bureau to administer~~
19 ~~those deductions during the prior calendar year and report that amount to the State~~
20 ~~Controller, who shall transfer that amount from the remaining funds in the fund to the~~
21 ~~General Fund.~~

22 **Sec. A-3. 36 MRSA §2519**, as amended by PL 2011, c. 548, §18, is further amended
23 to read:

24 **§2519. Ratio of tax on foreign insurance companies**

25 An insurance company incorporated ~~by~~ in the District of Columbia, a state or
26 possession of the United States or province of Canada whose laws impose upon insurance
27 companies chartered by this State a greater tax than is provided in this chapter shall pay the
28 same tax upon business done by it in this State, in place of the tax provided in any other
29 section of this chapter. If the insurance company fails to pay the tax as provided in section
30 2521-A, the assessor shall certify that failure to the Superintendent of Insurance, who shall
31 suspend the insurance company's right to do business in this State. For purposes of this
32 section, an insurance company incorporated by another country is deemed to be
33 incorporated by the state, district or possession of the United States where it has elected to
34 make its deposit and establish its principal agency in the United States. For nonadmitted
35 insurance premiums subject to section 2531, the rate applied pursuant to this section must
36 be the highest rate that the state, district, possession or province applies to nonadmitted
37 insurance premiums taxed in that state, district or possession or province.

38 **Sec. A-4. 36 MRSA §5195, sub-§7**, as enacted by PL 2019, c. 380, §2, is amended
39 to read:

40 **7. Federal adjustment.** "Federal adjustment" means an adjustment to an item or
41 amount determined under the Code that affects the computation of a taxpayer's Maine tax
42 liability resulting from a partnership-level audit or other action by the IRS or an amended
43 federal return, refund claim or administrative adjustment request filed by a taxpayer. A

1 federal adjustment is positive to the extent that it increases taxable income and is negative
2 to the extent that it decreases taxable income, as determined under this Part.

3 **Sec. A-5. 36 MRSA §5196, sub-§1**, as enacted by PL 2019, c. 380, §2, is amended
4 to read:

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

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

20 **Sec. A-6. 36 MRSA §5196, sub-§3**, as enacted by PL 2019, c. 380, §2, is amended
21 to read:

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

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

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

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

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

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

- 1 (4) For the total distributive shares of the remaining final federal adjustments
2 reported to direct corporate partners subject to tax under chapter 817, and to direct
3 exempt partners subject to tax on unrelated business taxable income, apportion and
4 allocate such adjustments as provided under chapter 821 and multiply the resulting
5 amount by the highest tax rate under section 5200;
- 6 (5) For the total distributive shares of the remaining final federal adjustments
7 reported to direct partners that are nonresident partners subject to tax under section
8 5111 or 5160, determine the amount of such adjustments that is Maine-source
9 income under sections 5142 and 5192 and multiply the resulting amount by the
10 highest tax rate under section 5111 for the applicable tax year;
- 11 (6) For the total distributive shares of the remaining final federal adjustments
12 reported to tiered partners:
- 13 (a) Determine the amount of such adjustments that is of a type that would be
14 subject to sourcing under section 5142, ~~excluding section 5142, subsection 3,~~
15 and calculate the portion of this amount sourced to this State;
- 16 (b) Determine the amount of such positive adjustments that is income of a type
17 that would not be subject to sourcing by a nonresident partner under section
18 5142, subsection 3; and
- 19 (c) Determine the portion of ~~the amount~~ positive adjustments determined in
20 division (b) that can be established to the satisfaction of the assessor to be
21 properly allocable to indirect partners that are nonresident partners or other
22 partners not subject to tax on the adjustments;
- 23 (d) Determine the amount of such negative adjustments that is of a type that
24 would not be subject to sourcing by a nonresident partner under section 5142;
25 and
- 26 (e) Determine the portion of negative adjustments determined in division (d)
27 that can be established to the satisfaction of the assessor to be properly
28 allocable to indirect partners that are resident partners or other partners subject
29 to tax on the adjustments;
- 30 (7) Multiply the total of the amounts determined in subparagraph (6), divisions (a)
31 and (b), reduced by the amount determined in subparagraph (6), ~~division~~ divisions
32 (c) and (e), by the highest tax rate under section 5111;
- 33 (8) For the total distributive shares of the remaining final federal adjustments
34 reported to resident direct partners subject to tax under section 5111 or 5160,
35 multiply that amount by the highest tax rate under section 5111 for the applicable
36 tax year; ~~and~~
- 37 (9) Add the amounts determined in subparagraphs (4), (5), (7) and (8), ~~along with~~
38 ~~interest and penalties as provided in sections 186 and 187-B, respectively;~~
- 39 (10) If the result in subparagraph (9) is a positive amount, compute interest and
40 penalties pursuant to sections 186 and 187-B, respectively, and add these amounts
41 to the amount computed in subparagraph (9); and

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

4 C. Notwithstanding section 5219-H, a partnership may not claim any of the credits in
5 chapter 822 against the tax imposed by this subsection. However, a partnership may
6 claim a credit for income taxes imposed on and paid by the partnership to another state
7 of the United States, a political subdivision of any such state, the District of Columbia
8 or any political subdivision of a foreign country that is analogous to a state of the
9 United States with respect to the distributive shares of the final federal adjustments
10 reported to resident direct partners included in the calculation pursuant to paragraph B,
11 subparagraph (8) and paid by the partnership to this State. The credit under this
12 paragraph is calculated in the same manner as the credit allowed by section 5217-A.

13 **Sec. A-7. 36 MRSA §5196, sub-§4**, as enacted by PL 2019, c. 380, §2, is amended
14 to read:

15 **4. Tiered partners.** The direct partners and indirect partners of an audited partnership
16 or of a partnership that has filed an administrative adjustment request that are tiered
17 partners, and all the partners of those tiered partners that are subject to tax under section
18 5111, 5160 or 5200, are subject to the reporting and payment requirements of this section.

19 **Sec. A-8. 36 MRSA §5196, sub-§5**, as enacted by PL 2019, c. 380, §2, is amended
20 to read:

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

32 **Sec. A-9. 36 MRSA §5196, sub-§6**, as enacted by PL 2019, c. 380, §2, is amended
33 to read:

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

40 **Sec. A-10. 36 MRSA §5219-X, sub-§6** is enacted to read:

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

1 **Sec. A-11. 36 MRSA §5219-XX**, as enacted by PL 2019, c. 628, §3, is amended to
2 read:

3 **§5219-XX. Renewable chemicals tax credit**

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

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

9 B. "Renewable biomass" has the same meaning as in 7 United States Code, Section
10 8101(13).

11 C. "Renewable chemical" means a substance, compound or mixture that:

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

14 (2) Is sold or used:

15 (a) For the production of chemical products, polymers, plastics or formulated
16 products; or

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

18 (3) Is not less than 95% biobased content; and

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

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

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

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

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

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

1 manufacturing. ~~Indirect jobs include but are not limited to jobs in logging and support~~
2 ~~services.~~

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

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

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

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

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

24 **Sec. A-13. PL 2019, c. 628, §4** is amended to read:

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

34 1. For each tax credit awarded:

35 A. The dollar amount of the tax credit;

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

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

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

41 **Sec. A-14. Effective date.** This Part takes effect 90 days following adjournment of
42 the First Regular Session of the 130th Legislature.

1 **PART B**

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

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

7 **Sec. B-2. 36 MRSA §1754-B, sub-§1-A,** as amended by PL 2019, c. 401, Pt. B,
8 §10 and c. 441, §3, is repealed.

9 **Sec. B-3. 36 MRSA §1754-B, sub-§1-B,** as enacted by PL 2019, c. 401, Pt. B, §11
10 and by PL 2019, c. 441, §4, is repealed and the following enacted in its place:

11 **1-B. Persons required to register.** Except as otherwise provided in this section and
12 section 1951-C, the following persons, other than casual sellers, shall register with the
13 assessor and collect and remit taxes in accordance with the provisions of this Part:

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

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

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

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

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

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

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

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

1 or receives rents on behalf of a hotel, rooming house or tourist or trailer camp in this
2 State;

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

6 G. Every room remarketer;

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

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

13 J. Every person that holds a wine direct shipper license under Title 28-A, section
14 1403-A; and

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

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

21 **Sec. B-4. 36 MRSA §1819, sub-§2**, as enacted by PL 2019, c. 401, Pt. B, §18, is
22 amended to read:

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

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

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

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

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

40 E. When paragraphs A to D do not apply, including the circumstance in which the
41 seller is without sufficient information to apply paragraphs A to D, the location is
42 determined by the address from which tangible personal property was shipped, from

1 which the tangible personal property or taxable service transferred electronically was
2 first available for transmission by the seller or from which the service was provided,
3 disregarding for these purposes any location that merely provided the digital transfer
4 of the tangible personal property or taxable service sold.

5 **Sec. B-5. Application.** This Part applies to sales occurring on or after January 1,
6 2022.

7 **Sec. B-6. Effective date.** This Part takes effect 90 days following adjournment of
8 the First Regular Session of the 130th Legislature.

9 PART C

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

12 **2. Assessment ratio.** The State Tax Assessor may establish procedures and adopt
13 rules, in accordance with the Maine Administrative Procedure Act, designed to ensure that
14 the ratio ~~certified~~ declared by the municipal assessors or the assessors of primary assessing
15 areas is accurate within ~~20%~~ 10% of the state valuation ratio last determined, unless
16 adequate evidence is presented to the State Tax Assessor by the municipalities to justify a
17 different assessment ratio.

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

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

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

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

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

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

34 The bureau ~~has the authority to~~ may audit the records of a municipality to ensure
35 compliance with this subchapter. The bureau may independently review the records of a
36 municipality to determine if homestead exemptions have been properly approved. If the
37 bureau determines that a homestead exemption was improperly approved, the bureau shall
38 ensure, either by setoff against other payments due the municipality or otherwise, that the
39 municipality is not reimbursed for the exemption. A municipality that is aggrieved by a
40 determination of the bureau under this ~~subchapter~~ section may appeal pursuant to section
41 151.

1 **Sec. D-5. Credit for income tax paid to other taxing jurisdictions.** For tax
2 years beginning in 2020, when determining whether compensation for personal services
3 performed as an employee teleworking from a location in this State is derived from sources
4 in another jurisdiction for purposes of the credit for income tax paid to other taxing
5 jurisdictions, allowed pursuant to the Maine Revised Statutes, Title 36, section 5217-A,
6 notwithstanding section 5142, the compensation is sourced to that jurisdiction if:

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

11 2. The employee commenced working remotely from this State due to the COVID-19
12 pandemic and during either this State's or the other jurisdiction's state of emergency related
13 to the COVID-19 pandemic;

14 3. The services were performed prior to January 1, 2021 and during either this State's
15 or the other jurisdiction's state of emergency;

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

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

20 The State Tax Assessor may adopt routine technical rules as defined in Title 5, chapter
21 375, subchapter 2-A as necessary to implement this section.

22 **PART E**

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

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

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

32 **§5200-B. Corporate income tax nexus**

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

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

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

39 (1) For property, \$250,000;

40 (2) For payroll, \$250,000;

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

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

3 **2. Property, payroll and sales defined; calculation.** For purposes of this section,
4 property, payroll and sales are calculated as provided under chapter 821 and associated
5 rules adopted by the assessor, except that the sales calculation does not exclude sales of
6 tangible personal property under section 5211, subsection 14, paragraph B. For a taxpayer
7 permitted or required to use a special apportionment method under section 5211, subsection
8 17, the property, payroll and sales used to determine nexus under this section must be
9 consistent with the property, payroll and sales used for the special apportionment method.

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

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

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

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

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

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

42 **Sec. E-4. Application.** This Part applies to tax years beginning on or after January
43 1, 2022.

1 **Sec. F-3. 36 MRSA §2551, sub-§2-C** is enacted to read:

2 **2-C. Digital audiovisual works.** "Digital audiovisual works" means a series of related
3 digital images that, when shown in succession, impart an impression of motion, together
4 with accompanying sounds, if any.

5 **Sec. F-4. 36 MRSA §2551, sub-§2-D** is enacted to read:

6 **2-D. Digital audio works.** "Digital audio works" means works that result from the
7 fixation of a series of digital musical, spoken or other sounds, including ringtones. For
8 purposes of this subsection, "ringtones" means digitized sound files that are downloaded
9 onto a device and that may be used to alert the purchaser with respect to a communication.

10 **Sec. F-5. 36 MRSA §2552, sub-§1, ¶L**, as amended by PL 2013, c. 368, Pt.
11 OOOO, §3, is further amended to read:

12 L. Ancillary services; and

13 **Sec. F-6. 36 MRSA §2552, sub-§1, ¶M**, as enacted by PL 2013, c. 368, Pt. OOOO,
14 §4, is amended to read:

15 M. Group residential services for persons with brain injuries; and

16 **Sec. F-7. 36 MRSA §2552, sub-§1, ¶N** is enacted to read:

17 N. Digital audiovisual and digital audio services.

18 **Sec. F-8. 36 MRSA §2556-A** is enacted to read:

19 **§2556-A. Sourcing for sales of digital audiovisual and digital audio services**

20 The sale of digital audiovisual and digital audio services is sourced in this State
21 pursuant to this section.

22 **1. Sourced to address of purchaser in seller's business records.** The sale of digital
23 audiovisual and digital audio services is sourced to the location indicated by an address for
24 the purchaser that is available from the business records of the seller that are maintained in
25 the ordinary course of the seller's business when use of this address does not constitute bad
26 faith.

27 **2. Sourced to address of purchaser not in seller's business records.** For a sale
28 when subsection 1 does not apply, the sale of digital audiovisual and digital audio services
29 is sourced to the location indicated by an address for the purchaser obtained during the
30 consummation of the sale, including the address of a purchaser's payment instrument, if no
31 other address is available, when use of this address does not constitute bad faith.

32 **3. Sourced to address from which service provided.** For a sale when subsections 1
33 and 2 do not apply, including the circumstance in which the seller is without sufficient
34 information to apply subsection 1 or 2, the sale of digital audiovisual and digital audio
35 services is sourced to the address from which the services were provided, disregarding for
36 these purposes any location that was merely the site from which the digital transfer of the
37 product sold was provided.

38 **4. Mobile telecommunications service providers.** Notwithstanding subsections 1 to
39 3, the sale of digital audiovisual and digital audio services by a provider of mobile
40 telecommunications service is sourced in the same manner as mobile telecommunications
41 services pursuant to section 2556.

1 requirements to allow a refund directly to the partnership in lieu of a refund to the affected
2 partners to the extent that negative adjustments exceed positive adjustments;

3 5. Clarifies that the Maine reporting and tax payment requirements related to federal
4 partnership adjustments under the new federal partnership audit rules also apply to a
5 partnership that has filed an administrative adjustment request with the federal Internal
6 Revenue Service;

7 6. Establishes a penalty for persons who fail to provide returns of information to the
8 State Tax Assessor or who willfully furnish to the assessor a false or fraudulent return of
9 information. Generally, returns of information consist of Forms W-2, Forms 1099 and
10 other similar forms containing tax information necessary for filing Maine tax returns.
11 Similar to the penalty imposed for failure to provide information statements, or for willfully
12 providing a false or fraudulent statement to payees, the penalty is \$50 for each failure to
13 provide a return of information to the State Tax Assessor. The penalty applies to returns
14 of information required to be filed on or after January 31, 2022;

15 7. Makes the following changes to the renewable chemicals tax credits:

16 A. Adds taxpayer information reporting and 3rd-party testing and verification credit
17 requirements, to be specified by rules of the State Tax Assessor;

18 B. Clarifies that the renewable chemicals may not be sold as food, feed or fuel and that
19 they must be produced in Maine; and

20 C. Modifies the February 1, 2024 report on the renewable chemicals tax credit issued
21 by the Department of Economic and Community Development to remove required
22 reporting on the number of indirect jobs created and to include reporting on the newly
23 reinstated credit for biofuel commercial production and commercial use under Title 36,
24 section 5219-X.

25 Part B makes changes to the sales tax law, applicable to sales occurring on or after
26 January 1, 2022. Part B:

27 1. Clarifies that the Title 36, Part 3 definition of "in this State" includes sales of
28 tangible personal property and taxable services sourced in this State pursuant to Title 36,
29 section 1819;

30 2. Repeals the presumptive sales and use tax registrations requirements for affiliate-
31 based and certain agent-based connections with the State;

32 3. Corrects a conflict created when 2 different public laws enacted the same section of
33 law and:

34 A. Clarifies that the remote seller and marketplace registration requirements apply
35 based on sales in this State and not the location from which they are delivered;

36 B. Repeals the remote seller and marketplace facilitator sales and use tax registration
37 requirement for persons or marketplace facilitators, respectively, with at least 200
38 separate sales transactions in the State; and

39 C. Clarifies the agent, representative, salesperson, solicitor or distributor registration
40 requirements by removing the redundant term "storage"; and

41 4. Expands the sales and use tax sourcing provision to apply to all sales and not just
42 retail sales.

1 Part C makes changes to the property tax law. Part C:

2 1. Lowers the declared ratio accuracy threshold from within 20% to within 10% of the
3 state valuation ratio last determined to align with the accuracy requirement provided for
4 state reimbursement for the homestead exemption; and

5 2. Updates and aligns the audit authority for exemptions that are reimbursed by the
6 State to municipalities, allowing for the audit of all reimbursable exemptions.

7 Part D makes the following updates to respond to certain COVID-19 impacts and is
8 effective when approved. Part D:

9 1. Aligns the Title 36 definitions of "disaster period" with the Title 10, section 9902
10 definition;

11 2. Relaxes the "work in Maine" requirement of the educational opportunity tax credit
12 by deeming a qualified individual who worked in this State immediately prior to, or at any
13 point during, the state of emergency declared by the Governor due to the COVID-19
14 pandemic to have worked in this State for the entire state of emergency;

15 3. Relaxes the primary use requirement of the sales tax exemption for machinery and
16 equipment by determining the equipment's primary use based only on the days in use; and

17 4. Allows taxpayers to use the sourcing law of another jurisdiction when calculating
18 the credit for income tax paid to other jurisdictions in certain COVID-19 pandemic-related
19 teleworking circumstances.

20 Part E clarifies and simplifies the corporate income tax law by establishing clearly
21 defined, objective nexus thresholds as a practical structure for the current general
22 "economic nexus" standard. These so-called factor presence thresholds clarify the
23 minimum thresholds that, when exceeded by a corporation, subject that corporation to the
24 Maine corporate income tax. In addition, the new thresholds create a safe harbor for
25 corporations with little activity within the State that nonetheless have nexus under current
26 law due to a small, but greater than de minimis, physical presence in the State. The new
27 thresholds are \$250,000 of property, \$250,000 in payroll or \$500,000 in sales in Maine, or
28 25% of total property, payroll or sales in Maine, as determined under Title 36, chapter 821.
29 The thresholds apply to tax years beginning on or after January 1, 2022.

30 Part F updates, clarifies and simplifies the service provider tax law regarding consumer
31 purchases of digital media by equalizing the tax treatment between the various modes of
32 purchase for sales occurring on or after October 1, 2021.