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House of Representatives, March 21, 2013

An Act Regarding Corporate Income Tax Disclosure

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative STUCKEY of Portland.
Cosponsored by Representatives: BROOKS of Winterport, GOODE of Bangor.

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

2 **Sec. 1. 13-C MRSA §1624** is enacted to read:

3 **§1624. Annual tax disclosure statement**

4 **1. Required filing of annual tax disclosure statement.** No later than 30 days
5 following the filing of a tax return under Title 36, Part 8, a corporation authorized to do
6 business in this State shall file with the Secretary of State, in an electronic format
7 specified by the Secretary of State, a tax disclosure statement as described in subsection 2
8 unless excused as provided in section 1621, subsection 4 or 6. In the case of a corporation
9 not required to file a tax return under Title 36, Part 8, the tax disclosure statement must be
10 filed within 90 days of filing a federal tax return or a federal consolidated return. For
11 purposes of this section, "corporation" includes a domestic corporation and a foreign
12 corporation and a financial institution as defined in Title 36, section 5206-D, subsection
13 8, but does not include a qualified personal service corporation, as defined in Section 448
14 of the Code.

15 **2. Content of tax disclosure statement.** The Secretary of State shall adopt rules
16 that specify the information that must be in the tax disclosure statement under subsection
17 1, including the following as applicable:

18 A. The information required under section 1621, subsection 1;

19 B. The name and the street address of a corporation that owns, directly or indirectly,
20 50% or more of the voting stock of the corporation;

21 C. The corporation's North American Industry Classification System code number;

22 D. The unique code number assigned by the Secretary of State to identify the
23 corporation, which remains constant from year to year;

24 E. Information reported on or used in preparing a combined report required by Title
25 36, sections 5206-G and 5244 or, in the case of a corporation not required to file a
26 report under Title 36, section 5206-G or 5244, the information that would be required
27 to be reported on or used in preparing the report if the corporation were required to
28 file such a report, including as applicable:

29 (1) Total receipts of the affiliated group of which the corporation is a member;

30 (2) Total cost of goods sold claimed as a deduction from gross income by the
31 affiliated group of which the corporation is a member;

32 (3) Taxable income of the corporation and the affiliated group of which the
33 corporation is a member prior to net operating loss deductions or apportionment;

34 (4) Property, payroll and sales apportionment factors of the corporation and the
35 overall apportionment factor as calculated on the combined report;

36 (5) Total business income and nonbusiness income of the corporation
37 apportioned to the State;

38 (6) Net operating loss deduction, if any, of the corporation apportioned to the
39 State;

- 1 (7) Total tax before credits;
- 2 (8) Each tax credit claimed and accumulated tax credit carry-overs, enumerated
3 by credit;
- 4 (9) Alternative minimum tax due; and
- 5 (10) Tax due and tax paid including tax paid under protest;
- 6 F. Total deductions for management services fees, for rent and for royalty, interest,
7 license fee and similar payments for the use of intangible property paid to any
8 affiliated entity that is not included in the affiliated group that includes the
9 corporation and the names and principal office addresses of the entities to which the
10 payments were made;
- 11 G. A description of the source of any nonbusiness income reported on the report and
12 the identification of the state to which such income was reported;
- 13 H. A list of all corporations included in the affiliated group that includes the
14 corporation, their state identification numbers and a listing of all variations in the
15 affiliated group that includes the corporation used in filing corporate income or
16 franchise tax returns;
- 17 I. Full-time-equivalent employment of the corporation in the State on the last day of
18 the tax year for which the return is being filed and for the 3 previous tax years;
- 19 J. In the case of a publicly traded corporation incorporated in the United States or the
20 affiliate of such a publicly traded corporation, profits before tax reported on the
21 United States Securities and Exchange Commission Form 10-K for the corporation,
22 or the affiliated group of which the corporation is a member, for the corporate fiscal
23 year that contains the last day of the tax year for which the return is filed; and
- 24 K. Property and payroll factors for the corporation for this State calculated on the
25 basis of combined reporting.
- 26 **3. Alternative tax disclosure statement.** The Secretary of State shall adopt rules
27 that specify the information that, instead of the statement required in subsection 2, a
28 corporation doing business in this State but not required to file a tax return under Title 36,
29 Part 8 may file with the Secretary of State including, but not limited to:
- 30 A. The information specified in subsection 2, paragraphs A to D;
- 31 B. An explanation of why the corporation is not required to file a corporate income
32 tax return in this State; and
- 33 C. A range for the corporation's total gross receipts from sales to purchasers in the
34 tax year for which the tax disclosure statement otherwise would be due.
- 35 **4. Supplemental information.** A corporation submitting a tax disclosure statement
36 required by this section may submit supplemental information that, in its sole judgment,
37 could facilitate proper interpretation of the information included in the statement.
- 38 **5. Amended tax disclosure statement.** If a corporation files an amended tax return,
39 the corporation shall file a revised statement under this section within 60 calendar days
40 after the amended return is filed. If a corporation's tax liability for a tax year is changed as

1 the result of an uncontested audit adjustment or final determination by the Department of
2 Administrative and Financial Services, Bureau of Revenue Services, the Maine Board of
3 Tax Appeals or Superior Court as provided for in Title 36, sections 151 and 151-D, the
4 corporation shall file a revised statement under this section within 60 calendar days of the
5 final determination.

6 **6. Public access.** A statement required under this section is a public record. The
7 Secretary of State shall, no sooner than the first day of the 3rd calendar year that follows
8 the tax year applicable to the tax disclosure statement required under subsection 1, make
9 all information contained in the statement available to the public on an ongoing basis in
10 the form of a searchable database accessible through the Internet. The Secretary of State
11 shall adopt rules needed to implement this subsection.

12 **7. Compliance.** The chief operating officer of a corporation shall attest in writing to
13 the accuracy of the statements required under this section. The Department of
14 Administrative and Financial Services, Bureau of Revenue Services shall act as the agent
15 of the Secretary of State to audit a corporation's tax disclosure statement under the normal
16 procedures applicable to corporate income tax return audits. The Secretary of State shall
17 adopt rules for oversight and penalties for violations of this section. The Secretary of
18 State shall publish on the Secretary of State's publicly accessible website the name and
19 penalty imposed upon a corporation subject to a penalty for failing to file the required
20 statement or filing an inaccurate statement.

21 **8. Rules.** Rules adopted pursuant to this section are major substantive rules as
22 defined in Title 5, chapter 375, subchapter 2-A.

23 **Sec. 2. 36 MRSA §191, sub-§2, ¶U-1** is enacted to read:

24 U-1. The disclosure by employees of the bureau to designated representatives of the
25 Secretary of State of information required by the Secretary of State for the
26 administration of the tax disclosure statement under Title 13-C, section 1624;

27 **Sec. 3. Application.** This Act applies to tax years beginning on or after January 1,
28 2014.

29 SUMMARY

30 This bill requires a corporation that files a tax return with the State to file a tax
31 disclosure statement with the Secretary of State. It requires the Secretary of State to adopt
32 major substantive rules for the content of the tax disclosure statement, an alternative tax
33 disclosure statement, procedures and fees to provide public access to the tax disclosure
34 statements, oversight and penalties for failing to file or filing an inaccurate tax disclosure
35 statement. It permits a corporation that files a tax disclosure statement to submit
36 supplemental information that could facilitate proper interpretation of the information
37 included in the tax disclosure statement. It requires a corporation that files an amended
38 tax return or with a tax liability that is changed as the result of an uncontested audit
39 adjustment or final determination by the Department of Administrative and Financial
40 Services, Bureau of Revenue Services, the Maine Board of Tax Appeals or Superior
41 Court to file a revised tax disclosure statement within 60 calendar days of filing the

1 amended return or the final determination. It requires the Secretary of State to make the
2 tax disclosure statement available to the public on an ongoing basis in the form of a
3 searchable database accessible through the Internet. It requires the chief operating officer
4 of a corporation to attest in writing to the accuracy of the tax disclosure statement. It
5 requires the Bureau of Revenue Services to act as the agent of the Secretary of State to
6 audit a corporation's tax disclosure. It requires the Secretary of State to publish the name
7 of and penalty imposed upon a corporation subject to a penalty for failing to file or filing
8 an inaccurate tax disclosure statement. It permits the disclosure by employees of the
9 Bureau of Revenue Services to designated representatives of the Secretary of State of
10 information required by the Secretary of State for the administration of the tax disclosure
11 statement.