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TAXATION

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STATE OF MAINE
SENATE
127TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 616, L.D. 1564, Bill, "An Act To Update References to the United States Internal Revenue Code of 1986 Contained in the Maine Revised Statutes"

Amend the bill by striking out all of section 2 and inserting the following:

Sec. 2. 36 MRSA §5122, sub-§1, ¶II, as corrected by RR 2015, c. 1, §41, is amended to read:

II. For taxable years beginning in 2014:

(1) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property placed in service in the State during the taxable year for which a credit is claimed under section 5219-MM for that taxable year; and

(2) An amount equal to the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under the Code, Section 168(k) with respect to property for which a credit is not claimed under section 5219-MM; and

Sec. 3. 36 MRSA §5122, sub-§1, ¶JJ, as enacted by PL 2015, c. 267, Pt. DD, §8, is amended to read:

JJ. For tax years beginning on or after January 1, 2016, an amount equal to the taxpayer base multiplied by the following fraction:

(1) 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 subparagraph produce a result that is more than one. The \$70,000 amount used to calculate the numerator in this subparagraph must be adjusted for inflation in accordance with section 5403, subsection 3;

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1 (2) For individuals filing as heads of households, the numerator is the taxpayer's  
2 Maine adjusted gross income less \$105,000, except that the numerator may not  
3 be less than zero, and the denominator is \$112,500. In no case may the fraction  
4 contained in this subparagraph produce a result that is more than one. The  
5 \$105,000 amount used to calculate the numerator in this subparagraph must be  
6 adjusted for inflation in accordance with section 5403, subsection 3; or

7 (3) For individuals filing married joint returns or surviving spouses, the  
8 numerator is the taxpayer's Maine adjusted gross income less \$140,000, except  
9 that the numerator may not be less than zero, and the denominator is \$150,000.  
10 In no case may the fraction contained in this subparagraph produce a result that is  
11 more than one. The \$140,000 amount used to calculate the numerator in this  
12 subparagraph must be adjusted for inflation in accordance with section 5403,  
13 subsection 3.

14 For purposes of this paragraph, "taxpayer base" means either the taxpayer's  
15 applicable standard deduction amount for the taxable year determined under section  
16 5124-B or, if itemized deductions are claimed, the taxpayer's itemized deductions  
17 claimed for the taxable year determined under section 5125-;

18 **Sec. 4. 36 MRSA §5122, sub-§1, ¶¶KK to MM** are enacted to read:

19 KK. For taxable years beginning in 2015:

20 (1) An amount equal to the net increase in depreciation attributable to the  
21 depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
22 with respect to property placed in service in the State during the taxable year for  
23 which a credit is claimed under section 5219-NN for that taxable year; and

24 (2) An amount equal to the net increase in depreciation attributable to the  
25 depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
26 with respect to property for which a credit is not claimed under section 5219-NN;

27 LL. An amount equal to the sum of the following:

28 (1) For taxable years beginning on or after January 1, 2016 but before January 1,  
29 2020, an amount equal to the net increase in depreciation attributable to the  
30 depreciation deduction claimed by the taxpayer for the taxable year under the  
31 Code, Section 168(k); and

32 (2) For taxable years beginning on or after January 1, 2016, an amount equal to  
33 the net increase in aggregate cost under Section 179 of the Code arising from  
34 amendments to the Code enacted in the federal Consolidated Appropriations Act,  
35 2016, Public Law 114-113 applicable to the taxable year; and

36 MM. For taxable years beginning on or after January 1, 2016, the amount of the  
37 deduction claimed pursuant to the Code, Section 62(a)(2)(D) for eligible educator  
38 expenses.

39 **Sec. 5. 36 MRSA §5122, sub-§2, ¶MM**, as amended by PL 2015, c. 1, §6, is  
40 further amended to read:

1 MM. For taxable years beginning on or after January 1, 2014, an amount equal to the  
2 net increase in the depreciation deduction allowable under the Code, Sections 167  
3 and 168 that would have been applicable to that property had the depreciation  
4 deduction under the Code, Section 168(k) not been claimed with respect to such  
5 property placed in service during the taxable year beginning in 2013 for which an  
6 addition was required under subsection 1, paragraph HH, subparagraph (2) for the  
7 taxable year beginning in 2013.

8 Upon the taxable disposition of property to which this paragraph applies, the amount  
9 of any gain or loss includable in federal adjusted gross income must be adjusted for  
10 Maine income tax purposes by an amount equal to the difference between the  
11 addition modification for such property under subsection 1, paragraph HH,  
12 subparagraph (2) and the subtraction modifications allowed pursuant to this  
13 paragraph.

14 The total amount of subtraction claimed under this paragraph for all tax years may  
15 not exceed the addition modification under subsection 1, paragraph HH,  
16 subparagraph (2) for the same property; ~~and~~

17 **Sec. 6. 36 MRSA §5122, sub-§2, ¶NN**, as enacted by PL 2015, c. 1, §7, is  
18 amended to read:

19 NN. For taxable years beginning on or after January 1, 2015, an amount equal to the  
20 net increase in the depreciation deduction allowable under the Code, Sections 167  
21 and 168 that would have been applicable to that property had the depreciation  
22 deduction under the Code, Section 168(k) not been claimed with respect to such  
23 property placed in service during the taxable year beginning in 2014 for which an  
24 addition was required under subsection 1, paragraph II, subparagraph (2) for the  
25 taxable year beginning in 2014.

26 Upon the taxable disposition of property to which this paragraph applies, the amount  
27 of any gain or loss includable in federal adjusted gross income must be adjusted for  
28 Maine income tax purposes by an amount equal to the difference between the  
29 addition modification for such property under subsection 1, paragraph II,  
30 subparagraph (2) and the subtraction modifications allowed pursuant to this  
31 paragraph.

32 The total amount of subtraction claimed under this paragraph for all tax years may  
33 not exceed the addition modification under subsection 1, paragraph II, subparagraph  
34 (2) for the same property;

35 **Sec. 7. 36 MRSA §5122, sub-§2, ¶¶OO and PP** are enacted to read:

36 OO. For taxable years beginning on or after January 1, 2016, an amount equal to the  
37 net increase in the depreciation deduction allowable under the Code, Sections 167  
38 and 168 that would have been applicable to that property had the depreciation  
39 deduction under the Code, Section 168(k) not been claimed with respect to such  
40 property placed in service during the taxable year beginning in 2015 for which an  
41 addition was required under subsection 1, paragraph KK, subparagraph (2) for the  
42 taxable year beginning in 2015.

1 Upon the taxable disposition of property to which this paragraph applies, the amount  
2 of any gain or loss includable in federal adjusted gross income must be adjusted for  
3 Maine income tax purposes by an amount equal to the difference between the  
4 addition modification for such property under subsection 1, paragraph KK,  
5 subparagraph (2) and the subtraction modifications allowed pursuant to this  
6 paragraph.

7 The total amount of subtraction claimed under this paragraph for all tax years may  
8 not exceed the addition modification under subsection 1, paragraph KK,  
9 subparagraph (2) for the same property; and

10 PP. For taxable years beginning on or after January 1, 2017, an amount equal to the  
11 net increase in:

12 (1) The depreciation deduction allowable under the Code, Sections 167 and 168  
13 that would have been applicable to that property had the depreciation deduction  
14 under the Code, Section 168(k) not been claimed with respect to such property  
15 placed in service during the applicable taxable year for which an addition was  
16 required under subsection 1, paragraph LL, subparagraph (1) for the applicable  
17 taxable year; and

18 (2) The depreciation deduction allowable under the Code, Sections 167 and 168  
19 that would have been applicable to that property had the increased cost under the  
20 Code, Section 179 not been claimed with respect to such property placed in  
21 service during the applicable taxable year for which an addition was required  
22 under subsection 1, paragraph LL, subparagraph (2) for the applicable taxable  
23 year.

24 Upon the taxable disposition of property to which this paragraph applies, the amount  
25 of any gain or loss includable in federal adjusted gross income must be adjusted for  
26 Maine income tax purposes by an amount equal to the difference between the  
27 addition modification for such property under subsection 1, paragraph LL and the  
28 subtraction modifications allowed pursuant to this paragraph.

29 The total amount of subtraction claimed under this paragraph for all tax years may  
30 not exceed the addition modification under subsection 1, paragraph LL for the same  
31 property.

32 **Sec. 8. 36 MRSA §5125, sub-§3, ¶D**, as amended by PL 2015, c. 267, Pt. DD,  
33 §16 and amended by c. 340, §1 and affected by §5, is repealed and the following enacted  
34 in its place:

35 D. Reduced by any amount attributable to interest or expenses incurred in the  
36 production of income exempt from tax under this Part;

37 **Sec. 9. 36 MRSA §5125, sub-§3, ¶E**, as repealed by PL 2015, c. 267, Pt. DD,  
38 §17 and amended by c. 340, §2 and affected by §5, is repealed.

39 **Sec. 10. 36 MRSA §5125, sub-§3, ¶G**, as enacted by PL 2015, c. 340, §3 and  
40 affected by §5, is amended to read:

41 G. Reduced by the amount of federal itemized deductions included in the base for  
42 calculating the credit under section 5218-A; and

1           **Sec. 11. 36 MRSA §5125, sub-§3, ¶H** is enacted to read:

2           H. For tax years beginning on or after January 1, 2016, reduced by any amount  
3           attributable to mortgage insurance premiums treated as qualified residence interest  
4           under the Code, Section 163.

5           **Sec. 12. 36 MRSA §5200-A, sub-§1, ¶AA**, as amended by PL 2015, c. 1, §9, is  
6 further amended to read:

7           AA. For taxable years beginning in 2013:

8                   (1) An amount equal to the net increase in depreciation attributable to the  
9                   depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
10                   with respect to property placed in service in the State during the taxable year for  
11                   which a credit is claimed under section 5219-JJ for that taxable year; and

12                   (2) An amount equal to the net increase in depreciation attributable to the  
13                   depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
14                   with respect to property for which a credit is not claimed under section 5219-JJ;  
15                   and

16           **Sec. 13. 36 MRSA §5200-A, sub-§1, ¶BB**, as enacted by PL 2015, c. 1, §10, is  
17 amended to read:

18           BB. For taxable years beginning in 2014:

19                   (1) An amount equal to the net increase in depreciation attributable to the  
20                   depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
21                   with respect to property placed in service in the State during the taxable year for  
22                   which a credit is claimed under section 5219-MM for that taxable year; and

23                   (2) An amount equal to the net increase in depreciation attributable to the  
24                   depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
25                   with respect to property for which a credit is not claimed under section  
26                   5219-MM;

27           **Sec. 14. 36 MRSA §5200-A, sub-§1, ¶¶CC and DD** are enacted to read:

28           CC. For taxable years beginning in 2015:

29                   (1) An amount equal to the net increase in depreciation attributable to the  
30                   depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
31                   with respect to property placed in service in the State during the taxable year for  
32                   which a credit is claimed under section 5219-NN for that taxable year; and

33                   (2) An amount equal to the net increase in depreciation attributable to the  
34                   depreciation deduction claimed by the taxpayer under the Code, Section 168(k)  
35                   with respect to property for which a credit is not claimed under section 5219-NN;  
36                   and

37           DD. An amount equal to the sum of the following:

38                   (1) For taxable years beginning on or after January 1, 2016 but before January 1,  
39                   2020, an amount equal to the net increase in depreciation attributable to the

1 depreciation deduction claimed by the taxpayer for the taxable year under the  
2 Code, Section 168(k); and

3 (2) For taxable years beginning on or after January 1, 2016, an amount equal to  
4 the net increase in aggregate cost under Section 179 of the Code arising from  
5 amendments to the Code enacted in the federal Consolidated Appropriations Act,  
6 2016, Public Law 114-113 applicable to the taxable year.

7 **Sec. 15. 36 MRSA §5200-A, sub-§2, ¶Y**, as amended by PL 2015, c. 1, §12, is  
8 further amended to read:

9 Y. For taxable years beginning on or after January 1, 2014, an amount equal to the  
10 net increase in the depreciation deduction allowable under the Code, Sections 167  
11 and 168 that would have been applicable to that property had the depreciation  
12 deduction under the Code, Section 168(k) not been claimed with respect to such  
13 property placed in service during the taxable year beginning in 2013 for which an  
14 addition was required under subsection 1, paragraph AA, subparagraph (2) for the  
15 taxable year beginning in 2013.

16 Upon the taxable disposition of property to which this paragraph applies, the amount  
17 of any gain or loss includable in federal taxable income must be adjusted for Maine  
18 income tax purposes by an amount equal to the difference between the addition  
19 modification for such property under subsection 1, paragraph AA, subparagraph (2)  
20 and the subtraction modifications allowed pursuant to this paragraph.

21 The total amount of subtraction claimed under this paragraph for all tax years may  
22 not exceed the addition modification under subsection 1, paragraph AA,  
23 subparagraph (2) for the same property; ~~and~~

24 **Sec. 16. 36 MRSA §5200-A, sub-§2, ¶Z**, as enacted by PL 2015, c. 1, §13, is  
25 amended to read:

26 Z. For taxable years beginning on or after January 1, 2015, an amount equal to the  
27 net increase in the depreciation deduction allowable under the Code, Sections 167  
28 and 168 that would have been applicable to that property had the depreciation  
29 deduction under the Code, Section 168(k) not been claimed with respect to such  
30 property placed in service during the taxable year beginning in 2014 for which an  
31 addition was required under subsection 1, paragraph BB, subparagraph (2) for the  
32 taxable year beginning in 2014.

33 Upon the taxable disposition of property to which this paragraph applies, the amount  
34 of any gain or loss includable in federal taxable income must be adjusted for Maine  
35 income tax purposes by an amount equal to the difference between the addition  
36 modification for such property under subsection 1, paragraph BB, subparagraph (2)  
37 and the subtraction modifications allowed pursuant to this paragraph.

38 The total amount of subtraction claimed under this paragraph for all tax years may  
39 not exceed the addition modification under subsection 1, paragraph BB, subparagraph  
40 (2) for the same property; ~~;~~

41 **Sec. 17. 36 MRSA §5200-A, sub-§2, ¶¶AA and BB** are enacted to read:

1 AA. For taxable years beginning on or after January 1, 2016, an amount equal to the  
2 net increase in the depreciation deduction allowable under the Code, Sections 167  
3 and 168 that would have been applicable to that property had the depreciation  
4 deduction under the Code, Section 168(k) not been claimed with respect to such  
5 property placed in service during the taxable year beginning in 2015 for which an  
6 addition was required under subsection 1, paragraph CC, subparagraph (2) for the  
7 taxable year beginning in 2015.

8 Upon the taxable disposition of property to which this paragraph applies, the amount  
9 of any gain or loss includable in federal taxable income must be adjusted for Maine  
10 income tax purposes by an amount equal to the difference between the addition  
11 modification for such property under subsection 1, paragraph CC, subparagraph (2)  
12 and the subtraction modifications allowed pursuant to this paragraph.

13 The total amount of subtraction claimed under this paragraph for all tax years may  
14 not exceed the addition modification under subsection 1, paragraph CC, subparagraph  
15 (2) for the same property; and

16 BB. For taxable years beginning on or after January 1, 2017, an amount equal to the  
17 net increase in:

18 (1) The depreciation deduction allowable under the Code, Sections 167 and 168  
19 that would have been applicable to that property had the depreciation deduction  
20 under the Code, Section 168(k) not been claimed with respect to such property  
21 placed in service during the applicable taxable year for which an addition was  
22 required under subsection 1, paragraph DD, subparagraph (1) for the applicable  
23 taxable year; and

24 (2) The depreciation deduction allowable under the Code, Sections 167 and 168  
25 that would have been applicable to that property had the increased cost under the  
26 Code, Section 179 not been claimed with respect to such property placed in  
27 service during the applicable tax year for which an addition was required under  
28 subsection 1, paragraph DD, subparagraph (2) for the applicable tax year.

29 Upon the taxable disposition of property to which this paragraph applies, the amount  
30 of any gain or loss includable in federal taxable income must be adjusted for Maine  
31 income tax purposes by an amount equal to the difference between the addition  
32 modification for such property under subsection 1, paragraph DD and the subtraction  
33 modifications allowed pursuant to this paragraph.

34 The total amount of subtraction claimed under this paragraph for all tax years may  
35 not exceed the addition modification under subsection 1, paragraph DD for the same  
36 property.

37 **Sec. 18. 36 MRSA §5219-S, sub-§5** is enacted to read:

38 **5. Tax years after 2017.** For purposes of calculating the credit under this section for  
39 tax years beginning on or after January 1, 2018, the federal earned income credit for  
40 individuals with 3 or more qualifying children must be determined using 40% as the  
41 credit percentage under the Code, Section 32(b)(1), the federal earned income credit  
42 phase-out amount for individuals filing joint returns must be determined in accordance

1 with the Code, Section 32(b)(2)(A) and the Code, Section 32(b)(2)(B) must be  
2 disregarded.

3 **Sec. 19. 36 MRSA §5219-NN** is enacted to read:

4 **§5219-NN. Maine capital investment credit for 2015**

5 **1. Credit allowed.** A taxpayer that claims a depreciation deduction under the Code,  
6 Section 168(k) for property placed in service in the State during a taxable year beginning  
7 in 2015 is allowed a credit as follows:

8 A. A taxable corporation is allowed a credit against the taxes imposed by this Part in  
9 an amount equal to 9% of the amount of the net increase in the depreciation  
10 deduction reported as an addition to income for the taxable year under section  
11 5200-A, subsection 1, paragraph CC, subparagraph (1) with respect to that property,  
12 except for excluded property under subsection 2; or

13 B. An individual is allowed a credit against the taxes imposed by this Part in an  
14 amount equal to 8% of the amount of the net increase in the depreciation deduction  
15 reported as an addition to income for the taxable year under section 5122, subsection  
16 1, paragraph KK, subparagraph (1) with respect to that property, except for excluded  
17 property under subsection 2.

18 **2. Certain property excluded.** The following property is not eligible for the credit  
19 under this section:

20 A. Property owned by a public utility as defined by Title 35-A, section 102,  
21 subsection 13;

22 B. Property owned by a person that provides radio paging services as defined by  
23 Title 35-A, section 102, subsection 15;

24 C. Property owned by a person that provides mobile telecommunications services as  
25 defined by Title 35-A, section 102, subsection 9-A;

26 D. Property owned by a cable television company as defined by Title 30-A, section  
27 2001, subsection 2;

28 E. Property owned by a person that provides satellite-based direct television  
29 broadcast services;

30 F. Property owned by a person that provides multichannel, multipoint television  
31 distribution services; and

32 G. Property that is not in service in the State for the entire 12-month period  
33 following the date it is placed in service in the State.

34 **3. Limitations; carry-forward.** The credit allowed under subsection 1 may not  
35 reduce the tax otherwise due under this Part to less than zero. Any unused portion of the  
36 credit may be carried forward to the following year or years for a period not to exceed 20  
37 years.

38 **4. Recapture.** The credit allowed under this section must be fully recaptured to the  
39 extent claimed by the taxpayer if the property forming the basis of the credit is not used  
40 in the State for the entire 12-month period following the date it is placed in service in the

1 State. The credit must be recaptured by filing an amended return in accordance with  
2 section 5227-A for the tax year in which that property was used to calculate the credit  
3 under this section. The amended return must reflect the credit disallowed and the income  
4 modifications required by section 5122, subsection 1, paragraph KK and section 5200-A,  
5 subsection 1, paragraph CC with respect to that property.

6 **Sec. 20. Application.** That section of this Act that amends the Maine Revised  
7 Statutes, Title 36, section 111, subsection 1-A applies to tax years beginning on or after  
8 January 1, 2015 and to any prior tax years as specifically provided by the United States  
9 Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2015.'

## 10 SUMMARY

11 This amendment is the minority report the committee. It provides conformity with  
12 the Internal Revenue Code of 1986 in the same manner as the majority report but only for  
13 tax years beginning in 2015.

14 This amendment decouples the Maine individual and corporate income taxes from the  
15 federal bonus depreciation deductions for taxable years beginning on or after January 1,  
16 2015. In addition, it provides a Maine capital investment credit for taxable years  
17 beginning in 2015 with respect to depreciable property placed in service in Maine. The  
18 credit is equal to 9% of the amount of the net increase in depreciation attributable to the  
19 depreciation deduction claimed by the taxpayer under the United States Internal Revenue  
20 Code of 1986, Section 168(k) with respect to property placed in service in the State  
21 during the taxable year for taxable corporations; for individuals the credit is 8% of such  
22 amount for tax years beginning in 2015.

23 The amendment also decouples Maine's individual and corporate income tax from  
24 the Code, Section 179 expensing deductions for tax years beginning on or after January 1,  
25 2016. It enacts addition and subtraction modifications to reverse any increase allowed at  
26 the federal level for the first year the property is placed in service, and then to allow  
27 depreciation deductions for the remainder of the asset's life.

28 The amendment decouples Maine's individual income tax from the teacher expense  
29 deduction under the Code, Section 62(a)(2)(D) by requiring an addition modification in  
30 the amount of the federal deduction.

31 The amendment disallows for Maine itemized deduction purposes the federal  
32 deduction for mortgage insurance premiums treated as qualified residence interest.

33 For taxable years beginning after 2017, the amendment decouples the Maine earned  
34 income tax credit from the increased federal 45% earned income tax credit rate for  
35 taxpayers with 3 or more qualifying children and from the higher phase-out thresholds for  
36 married individuals filing joint returns.

## 37 FISCAL NOTE REQUIRED

38 (See attached)