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Legislative Document

No. 1752

H.P. 1293

House of Representatives, January 9, 2012

An Act Concerning Technical Changes to the Tax Laws

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

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative KNIGHT of Livermore Falls.

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

2 **Sec. 1. 10 MRSA §1100-Z, sub-§2**, as enacted by PL 2011, c. 380, Pt. Q, §1 and
3 affected by §7, is amended to read:

4 **2. Program.** The Maine New Markets Capital Investment Program, referred to in
5 this section as "the program," is established to encourage new investment in economically
6 distressed areas of the State. For the purposes of this section, unless otherwise defined in
7 this section, all terms have the same meaning as under Title 36, section ~~5219-GG~~
8 5219-HH and Section 45D of the United States Internal Revenue Code of 1986, as
9 amended.

10 **Sec. 2. 10 MRSA §1100-Z, sub-§3, ¶G**, as enacted by PL 2011, c. 380, Pt. Q, §1
11 and affected by §7, is amended to read:

12 G. Upon receipt of notice that a qualified community development entity has issued
13 its qualified equity investments or long-term debt securities, the authority shall certify
14 the entity's qualified equity investments or long-term debt securities as qualified
15 equity investments and eligible for tax credits under Title 36, section ~~5219-GG~~
16 5219-HH. The authority shall provide written notice, sent by certified mail or any
17 other means considered feasible by the authority, of the certification to the qualified
18 community development entity, ~~Maine~~ the Department of Administrative and
19 Financial Services, Bureau of Revenue Services and the Commissioner of
20 Administrative and Financial Services. The notice must include the names of persons
21 eligible to claim the tax credits and their respective tax credit amounts. If the names
22 of the persons that are eligible to claim the tax credits change due to a transfer of a
23 qualified equity investment or a change in an allocation pursuant to this subchapter,
24 the qualified community development entity shall notify the authority of ~~such~~ that
25 transfer or change.

26 **Sec. 3. 10 MRSA §1100-Z, sub-§4**, as enacted by PL 2011, c. 380, Pt. Q, §1 and
27 affected by §7, is amended to read:

28 **4. Limit on amount of tax credits authorized.** The maximum aggregate amount of
29 qualified equity investments for which the authority may issue tax credit authority under
30 this section is \$250,000,000; a tax credit claim may not exceed \$20,000,000 in any one
31 state fiscal year over the 7 years of the tax credit allowance dates as described in Title 36,
32 section ~~5219-GG~~ 5219-HH, subsection 1, paragraph A.

33 **Sec. 4. 10 MRSA §1100-Z, sub-§5**, as enacted by PL 2011, c. 380, Pt. Q, §1 and
34 affected by §7, is amended to read:

35 **5. Reporting and disclosure of information.** The authority shall require annual
36 reports of a qualified community development entity granted tax credit allocation
37 authority pursuant to subsection 3. Reports may be shared with ~~Maine~~ the Department of
38 Administrative and Financial Services, Bureau of Revenue Services and the
39 Commissioner of Administrative and Financial Services. Notwithstanding section 975-A,
40 the authority may disclose any information to ~~Maine~~ the Department of Administrative
41 and Financial Services, Bureau of Revenue Services and the Commissioner of

1 Administrative and Financial Services that it considers necessary for the administration of
2 the program pursuant to this section, Title 36, section ~~2531~~ 2533 or Title 36, section
3 ~~5219-GG~~ 5219-HH.

4 **Sec. 5. 20-A MRSA §12542, sub-§2-A, ¶D**, as enacted by PL 2009, c. 553, Pt.
5 A, §9, is amended to read:

6 D. ~~For an individual whose student loans exceed the principal cap, a~~ A benchmark
7 loan payment must be calculated as described in this paragraph. The State Tax
8 Assessor shall annually by November 1st calculate what the monthly payment would
9 be on a loan for the amount of the principal cap, to be paid over 10 years, at the
10 interest rate offered for federally subsidized Stafford loans under 20 United States
11 Code, Section 1077a, during the individual's last year of enrollment at an accredited
12 Maine community college, college or university.

13 **Sec. 6. 22 MRSA §1714-C**, as enacted by PL 2009, c. 213, Pt. CC, §2, is
14 amended to read:

15 **§1714-C. Critical access hospital staff enhancement reimbursement**

16 Beginning April 1, 2011, the department shall reimburse critical access hospitals
17 from the total allocated from hospital tax revenues under Title 36, chapter ~~375~~ 377 at
18 least \$1,000,000 in state and federal funds to be distributed annually among critical
19 access hospitals for staff enhancement payments.

20 **Sec. 7. 32 MRSA §14706, sub-§6**, as enacted by PL 2001, c. 324, §12, is
21 amended to read:

22 **6. Seller's certificate.** The number of a valid ~~transient seller of consumer~~
23 ~~merchandise's~~ registration certificate issued to the applicant by the State Tax Assessor
24 pursuant to Title 36, chapter 211 or satisfactory evidence that the applicant is not required
25 to be registered under that ~~Title~~ chapter.

26 **Sec. 8. 36 MRSA §112, sub-§8**, as amended by PL 2011, c. 211, §17, is further
27 amended to read:

28 **8. Additional duties.** In addition to the duties specified in this Title, the assessor ~~is~~
29 ~~responsible for~~ has the following duties:

30 A. Collection of the tax ~~levied~~ on fire insurance companies imposed by Title 25,
31 section 2399;

32 C. Administration of the spruce budworm excise tax in accordance with Title 12,
33 section 8427; ~~and~~

34 D. Administration of the premium imposed on motor vehicle oil under Title 10,
35 section 1020-; and

36 E. Administration of reports and payments required under Title 32, section 1866-E.

37 **Sec. 9. 36 MRSA §191, sub-§2, ¶SS**, as enacted by PL 2011, c. 380, Pt. Q, §4
38 and affected by §7, is amended to read:

1 SS. The disclosure of information to the Finance Authority of Maine necessary for
2 the administration of the new markets capital investment credit in sections ~~2531~~ 2533
3 and ~~5219-GG~~ 5219-HH and to the Commissioner of Administrative and Financial
4 Services as necessary for the execution of the memorandum of agreement pursuant to
5 section ~~5219-GG~~ 5219-HH, subsection 3-;

6 **Sec. 10. 36 MRSA §191, sub-§2, ¶TT**, as reallocated by RR 2011, c. 1, §50, is
7 amended to read:

8 TT. The disclosure to tax officials of other states, and to clearinghouses and other
9 administrative entities acting on behalf of participating states, of information
10 necessary for the administration of a multistate agreement entered into pursuant to
11 section 2532-;

12 **Sec. 11. 36 MRSA §844, sub-§2**, as amended by PL 1995, c. 262, §7, is further
13 amended to read:

14 **2. Nonresidential property of \$1,000,000 or greater.** Notwithstanding subsection
15 1, ~~with regard to nonresidential property or properties with an equalized municipal~~
16 ~~valuation of \$1,000,000 or greater either separately or in the aggregate, either party~~ the
17 applicant may ~~choose to~~ appeal the decision of the assessors or the municipal officers
18 ~~with regard to~~ on a request for abatement with respect to nonresidential property or
19 properties having an equalized municipal valuation of \$1,000,000 or greater, either
20 separately or in the aggregate, to the State Board of Property Tax Review within 60 days
21 after notice of the decision from which the appeal is taken or after the application is
22 deemed to be denied. If the ~~state board thinks~~ State Board of Property Tax Review
23 determines that the applicant is over-assessed, it shall grant such reasonable abatement as
24 ~~the board thinks it determines~~ proper. For the purposes of this subsection, "nonresidential
25 property" means property that is used primarily for commercial, industrial or business
26 purposes, excluding unimproved land that is not associated with a commercial, industrial
27 or business use.

28 **Sec. 12. 36 MRSA §1752, sub-§1-H**, as enacted by PL 2007, c. 240, Pt.
29 WWW, §1, is repealed.

30 **Sec. 13. 36 MRSA §1760, sub-§5**, as amended by PL 2009, c. 625, §6, is further
31 amended to read:

32 **5. Medicines.** Sales of medicines for human beings sold on a doctor's prescription.
33 This subsection does not apply to the sale of marijuana pursuant to Title 22, chapter
34 558-C.

35 **Sec. 14. 36 MRSA §1760, sub-§8**, as amended by PL 2009, c. 434, §25, is
36 further amended to read:

37 **8. Certain motor fuels.** Sales of:

38 A. Motor fuels upon which a tax at the maximum rate for highway use ~~has been paid~~
39 pursuant to Part 5 or a comparable tax of ~~any other~~ another state or a province of
40 Canada has been paid; or

1 B. Internal combustion engine fuel, as defined in section 2902, bought and used for
2 the purpose of propelling jet engine aircraft; and.

3 ~~D. Diesel internal combustion engine fuel bought and used from July 1, 2007 to June~~
4 ~~30, 2008 for the purpose of operating or propelling a commercial groundfishing boat.~~

5 **Sec. 15. 36 MRSA §1764**, as amended by PL 2007, c. 375, §2, is further amended
6 to read:

7 **§1764. Tax against certain casual sales**

8 The tax imposed by ~~chapters 211 to 225~~ this Part must be levied upon all casual
9 rentals of living quarters in a hotel, rooming house ~~or~~, tourist camp or trailer camp and
10 upon all casual sales involving the sale of trailers, truck campers, motor vehicles, special
11 mobile equipment ~~except farm tractors and lumber harvesting vehicles or loaders,~~
12 watercraft or aircraft except those unless the property is sold for resale at retail sale or to
13 a corporation, partnership, limited liability company or limited liability partnership when
14 the seller is the owner of a majority of the common stock of the corporation or of the
15 ownership interests in the partnership, limited liability company or limited liability
16 partnership. This section does not apply to the rental of living quarters rented for a total
17 of fewer than 15 days in the calendar year, except that a person who owns and offers for
18 rental more than one property in the State during the calendar year is liable for collecting
19 sales tax with respect to the rental of each unit regardless of the number of days for which
20 it is rented. For purposes of this section, "special mobile equipment" does not include
21 farm tractors and lumber harvesting vehicles or loaders.

22 **Sec. 16. 36 MRSA §2519**, as amended by PL 2011, c. 331, §13 and affected by
23 §§16 and 17, is further amended to read:

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

25 ~~Any~~ An insurance company incorporated by a state of the United States or province
26 of Canada whose laws impose upon insurance companies chartered by this State ~~any a~~
27 greater tax than is herein provided in this chapter shall pay the same tax upon business
28 done by it in this State, in place of the tax provided in any other section of this ~~Title~~
29 chapter. If it is not paid 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
31 shall suspend the insurance company's right of said company to do business in this State.
32 ~~Any~~ For purposes of this section, an insurance company incorporated by another country
33 is regarded for the purpose of this section as though deemed to be incorporated by the
34 state where it has elected to make its deposit and establish its principal agency in the
35 United States. For nonadmitted insurance premiums subject to section 2531, the rate
36 applied pursuant to this section must be the highest rate that the state or province applies
37 to nonadmitted insurance premiums taxed in that state or province.

38 **Sec. 17. 36 MRSA §2531**, as enacted by PL 2011, c. 331, §14 and affected by
39 §§16 and 17; enacted by c. 380, Pt. Q, §5 and affected by §7; and enacted by c. 453, §4,
40 is repealed and the following enacted in its place:

1 **§2531. Taxation of nonadmitted insurance coverage**

2 **1. Generally.** All gross direct insurance premiums and annuity considerations paid
3 to insurers that do not have certificates of authority to do business in this State issued by
4 the Superintendent of Insurance pursuant to Title 24-A are subject to taxation in
5 accordance with this section if this State is the insured's home state, as defined in the
6 federal Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203, Section
7 527. This section does not apply to reinsurance premiums paid by an authorized
8 domestic insurer.

9 **2. Rate and incidence of tax.** Except as otherwise provided in section 2519 or
10 2532, the rate of taxation is 3% of the premiums subject to tax under this section. For all
11 coverage placed in accordance with Title 24-A, chapter 19, the tax must be paid by the
12 surplus lines producer. For all other nonadmitted insurance, the tax must be paid by the
13 insured.

14 **3. Returns.** Except as otherwise provided in accordance with a multistate agreement
15 entered into pursuant to section 2532, every producer holding surplus lines authority in
16 this State shall file a return and pay the tax due in accordance with section 2521-A and
17 every insured subject to tax in accordance with this section shall file a return and pay the
18 tax due subject to the same requirements as provided in section 2521-A. An insurance
19 agency may elect to collect and pay the tax on surplus lines premiums on behalf of all of
20 its employees who are surplus lines producers and file a single return.

21 **Sec. 18. 36 MRSA §2533** is enacted to read:

22 **§2533. New markets capital investment credit**

23 A person that is subject to tax under this chapter, or would be subject to tax under this
24 chapter if it did business or collected premiums or assessments in this State, that holds a
25 qualified equity investment certified by the Finance Authority of Maine pursuant to Title
26 10, section 1100-Z, subsection 3, paragraph G is allowed a credit equal to the amount
27 determined in accordance with section 5219-HH against the tax otherwise due under this
28 chapter. Section 5219-HH governs the allowance of the credit and limitations on the
29 amount, refundability, carry-over and recapture of the credit.

30 **Sec. 19. 36 MRSA §2534** is enacted to read:

31 **§2534. Credit for rehabilitation of historic properties**

32 A taxpayer is allowed a credit against the tax otherwise due under this chapter as
33 determined under section 5219-BB.

34 **Sec. 20. 36 MRSA §4603, sub-§1**, as amended by PL 1995, c. 502, Pt. C, §14, is
35 further amended to read:

36 **1. Establishment.** The Maine Potato Board is a body corporate and politic and an
37 incorporated public instrumentality of the State and the exercise of powers conferred by
38 this Part is determined to be the performance of essential government functions. For the
39 purposes of the budget, accounts and control, purchasing or other provisions of Title 5,

1 Part 4, the board may not be construed to be a state agency. The board consists of 11
2 members who, ~~following the transition period provided for in subsection 11,~~ must be
3 elected in accordance with the procedures set forth in this chapter and such additional
4 procedures as the board may prescribe by rulemaking. Subject to such staggered terms as
5 the board may provide by rule, board members shall serve 2-year terms, ~~provided except~~
6 that a board member may continue to serve until a successor is duly elected and qualified
7 and that board members may not serve more than 3 consecutive terms.

8 **Sec. 21. 36 MRSA §4603, sub-§11**, as enacted by PL 1985, c. 753, §§14 and 15,
9 is repealed.

10 **Sec. 22. 36 MRSA §5122, sub-§2, ¶II**, as corrected by RR 2011, c. 1, §56, is
11 amended to read:

12 II. For taxable years beginning on or after January 1, 2012, an amount equal to the
13 net increase in the depreciation deduction allowable under the Code, Sections 167
14 and 168 that would have been applicable to that property had the depreciation
15 deduction under the Code, Section 168(k) not been claimed with respect to such
16 property placed in service during the taxable year beginning in 2011 or 2012 for
17 which an addition was required under subsection 1, paragraph FF, subparagraph (2)
18 for the taxable year beginning in 2011 or 2012.

19 Upon the taxable disposition of property to which this paragraph applies, the amount
20 of any gain or loss includable in federal adjusted gross income must be adjusted for
21 Maine income tax purposes by an amount equal to the difference between the
22 addition modification for such property under subsection 1, paragraph FF,
23 subparagraph (2) related to property placed in service outside the State and the
24 subtraction modifications allowed pursuant to this paragraph.

25 The total amount of the subtraction modification claimed ~~for property placed in~~
26 ~~service outside the State~~ under this paragraph for all tax years may not exceed the
27 addition modification under subsection 1, paragraph FF, subparagraph (2) for the
28 same property; and

29 **Sec. 23. 36 MRSA §5142, sub-§8-B, ¶C**, as enacted by PL 2011, c. 380, Pt.
30 CCCC, §2 and affected by §4, is amended to read:

31 C. Performance of the following personal services for 24 days during a ~~calendar~~
32 taxable year may not be counted toward the 12-day threshold under paragraph A:

33 (1) Personal services performed in connection with presenting or receiving
34 employment-related training or education;

35 (2) Personal services performed in connection with a site inspection, review,
36 analysis of management or any other supervision of a facility, affiliate or
37 subsidiary based in the State by a representative from a company, not
38 headquartered in the State, that owns that facility or is the parent company of the
39 affiliate or subsidiary;

1 (3) Personal services performed in connection with research and development at
2 a facility based in the State or in connection with the installation of new or
3 upgraded equipment or systems at that facility; or

4 (4) Personal services performed as part of a project team working on the
5 attraction or implementation of new investment in a facility based in the State.

6 **Sec. 24. 36 MRSA §5164, sub-§1**, as amended by PL 2007, c. 539, Pt. CCC, §12,
7 is further amended to read:

8 **1. Fiduciary adjustment defined.** The fiduciary adjustment is the net amount of the
9 modifications described in section 5122, including subsection 3 if the estate or trust is a
10 beneficiary of another estate or trust, ~~which that~~ that relates to items of income or deduction
11 of an estate or trust. Income taxes imposed by this State or any other taxing jurisdiction;
12 ~~mortgage insurance premiums paid or accrued on or after January 1, 2008 and claimed as~~
13 ~~a deduction pursuant to the Code, Section 163(h)(3)(E)~~ and interest or expenses incurred
14 in the production of income exempt from tax under this Part that were deducted in
15 arriving at federal taxable income must be added back to the fiduciary adjustment.
16 Interest or expenses incurred in the production of income taxable under this Part but
17 exempt from federal income tax must be subtracted from the fiduciary adjustment.

18 **Sec. 25. 36 MRSA §5191, sub-§3**, as amended by PL 1979, c. 541, Pt. A, §233,
19 is further amended to read:

20 **3. Tax avoidance or evasion.** ~~Where~~ If a partner's distributive share of an item of
21 partnership income, gain, loss or deduction is determined for federal income tax purposes
22 by a special provision in the partnership agreement ~~with respect to such item, and~~
23 ~~the principal purpose of such provision~~ which is the avoidance or evasion of tax under this
24 Part, the partner's distributive share of ~~such~~ that item and any modification required with
25 respect ~~thereto shall~~ to that item must be determined in accordance with ~~his~~ the partner's
26 distributive share of the taxable income or loss of the partnership generally ~~(that is,~~
27 ~~exclusive of those items requiring separate computation~~ that must be separately computed
28 ~~under the Internal Revenue Code, Section 702, or its equivalent.)~~.

29 **Sec. 26. 36 MRSA §5200-A, sub-§2, ¶V**, as corrected by RR 2011, c. 1, §57, is
30 amended to read:

31 V. For taxable years beginning on or after January 1, 2012, an amount equal to the
32 net increase in the depreciation deduction allowable under the Code, Sections 167
33 and 168 that would have been applicable to that property had the depreciation
34 deduction under the Code, Section 168(k) not been claimed with respect to such
35 property placed in service during the taxable year beginning in 2011 or 2012 for
36 which an addition was required under subsection 1, paragraph Y, subparagraph (2)
37 for the taxable year beginning in 2011 or 2012.

38 Upon the taxable disposition of property to which this paragraph applies, the amount
39 of any gain or loss includable in federal ~~adjusted gross taxable~~ taxable income must be
40 adjusted for Maine income tax purposes by an amount equal to the difference
41 between the addition modification for such property under subsection 1, paragraph Y,

1 subparagraph (2) related to property placed in service outside the State and the
2 subtraction modifications allowed pursuant to this paragraph.

3 The total amount of the subtraction modification claimed for ~~property placed in~~
4 ~~service outside the State~~ under this paragraph for all tax years may not exceed the
5 addition modification under subsection 1, paragraph Y, subparagraph (2) for the same
6 property; and

7 **Sec. 27. 36 MRSA §5204**, as amended by PL 2011, c. 380, Pt. N, §15 and affected
8 by §19, is further amended to read:

9 **§5204. Lump-sum retirement plan distributions**

10 In addition to any other tax imposed by this Part, a tax is hereby imposed for each
11 taxable year on every taxpayer who, ~~in accordance with the Code, Section 402(e)(1),~~
12 elects to compute a separate federal tax on a lump-sum distribution from a retirement plan
13 at the rate of 15% of the separate federal tax imposed on the distribution, except that, for
14 tax years beginning in 2012, the rate is 7.5%. The tax under this section does not apply to
15 tax years beginning on or after January 1, 2013.

16 **Sec. 28. 36 MRSA §5216-D, sub-§§3 and 4**, as enacted by PL 2011, c. 380, Pt.
17 HHHH, §3, are amended to read:

18 **3. Limitation.** The amount of the credit allowed under this section for any one
19 taxable year may not exceed 50% of the tax imposed by this Part on the investor for the
20 taxable year before application of the credit. The credit allowed under this section may
21 not reduce the tax otherwise due under this Part to less than zero.

22 **4. Carry-forward.** A credit under this section not taken because of the ~~limitation~~
23 limitations in subsection 3 must be taken in the next taxable year in which the credit may
24 be taken, and the ~~limitation~~ limitations of subsection 3 also ~~applies~~ apply to the carry-
25 forward years. In no case may this carry-forward period exceed 15 years.

26 **Sec. 29. 36 MRSA §5219-BB, sub-§4**, as amended by PL 2011, c. 453, §9, is
27 further amended to read:

28 **4. Maximum credit.** The credit allowed pursuant to this section and section ~~2531~~
29 ~~2534~~ may not exceed \$5,000,000 for each certified rehabilitation project under ~~Section 47~~
30 ~~of the Code, Section 47~~, placed into service in the State during the taxable year for which
31 a credit is claimed under this section.

32 **Sec. 30. 36 MRSA §5219-GG**, as enacted by PL 2011, c. 380, Pt. O, §17 and
33 affected by §18 and enacted by Pt. Q, §6 and affected by §7, is repealed and the following
34 enacted in its place:

35 **§5219-GG. Maine capital investment credit**

36 **1. Credit allowed.** A taxpayer that claims a depreciation deduction under the Code,
37 Section 168(k) for property placed in service in the State during the taxable year
38 beginning in 2011 or 2012 is allowed a credit against the taxes imposed by this Part in an

1 amount equal to 10% of the amount claimed for the taxable year under the Code, Section
2 168(k) with respect to that property, except for excluded property under subsection 2.

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

5 A. Property owned by a public utility as defined by Title 35-A, section 102;

6 B. Property owned by a person that provides radio paging services as defined by
7 Title 35-A, section 102;

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

10 D. Property owned by a cable television company as defined by Title 30-A, section
11 2001;

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

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

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

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

22 **4. Recapture.** The credit allowed under this section must be fully recaptured to the
23 extent claimed by the taxpayer if the property forming the basis of the credit is not used
24 in the State for the entire 12-month period following the date it is placed in service in the
25 State. The credit must be recaptured by filing an amended return in accordance with
26 section 5227-A for the tax year in which that property was used to calculate the credit
27 under this section. The amended return must reflect the credit disallowed and the income
28 modifications required by section 5122, subsection 1, paragraph FF and section 5200-A,
29 subsection 1, paragraph Y with respect to that property.

30 **Sec. 31. 36 MRS §5219-HH** is enacted to read:

31 **§5219-HH. New markets capital investment credit**

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

34 A. "Applicable percentage" means 0% for each of the first 2 credit allowance dates,
35 7% for the 3rd credit allowance date and 8% for the next 4 credit allowance dates.

36 B. "Authority" means the Finance Authority of Maine.

37 C. "Commissioner" means the Commissioner of Administrative and Financial
38 Services.

1 D. "Credit allowance date" means, with respect to any qualified equity investment,
2 the date on which the investment is initially made and each of the 6 anniversary dates
3 of the date thereafter.

4 E. "Long-term debt security" means any debt instrument issued by a qualified
5 community development entity, at par value or a premium, with an original maturity
6 date of at least 7 years from the date of its issuance, with no acceleration of
7 repayment, amortization or prepayment features prior to its original maturity date.
8 The qualified community development entity that issues the debt instrument may not
9 make cash interest payments on the debt instrument during the period commencing
10 with its issuance and ending on its final credit allowance date in excess of the
11 cumulative operating income, as defined in the regulations adopted pursuant to the
12 Code, Section 45D, of the qualified community development entity for the same
13 period prior to giving effect to interest expense on such debt instrument. This
14 paragraph does not limit the holder's ability to accelerate payments on the debt
15 instrument in situations when the qualified community development entity has
16 defaulted on covenants designed to ensure compliance with this section; section 191,
17 subsection 2, paragraph SS; section 2533; and Title 10, section 1100-Z or the Code,
18 Section 45D.

19 F. "Purchase price" means the amount of the investment in the qualified community
20 development entity for the qualified equity investment.

21 G. "Qualified active low-income community business" has the same meaning as in
22 the Code, Section 45D.

23 H. "Qualified community development entity" has the same meaning as in the Code,
24 Section 45D, except that the entity must have entered into or be controlled by or
25 under common control of an entity that has entered into an allocation agreement with
26 the Community Development Financial Institutions Fund of the United States
27 Department of the Treasury with respect to credits authorized by the Code, Section
28 45D.

29 I. "Qualified equity investment" means any equity investment in, or long-term debt
30 security issued by, a qualified community development entity that:

31 (1) Has at least 85% of its cash purchase price used by the issuer to make
32 qualified low-income community investments in qualified active low-income
33 community businesses located in the State by the 2nd anniversary of the initial
34 credit allowance date;

35 (2) Is acquired after December 31, 2011 at its original issuance solely in
36 exchange for cash; and

37 (3) Is designated by the issuer as a qualified equity investment and is certified by
38 the authority pursuant to Title 10, section 1100-Z, subsection 3, paragraph G.
39 "Qualified equity investment" includes any qualified equity investment that does
40 not meet the provisions of Title 10, section 1100-Z, subsection 3, paragraph G if
41 the investment was a qualified equity investment in the hands of a prior holder.
42 The qualified community development entity shall keep sufficiently detailed
43 books and records with respect to the investments made with the proceeds of the
44 qualified equity investments to allow the direct tracing of the proceeds into

1 qualified low-income community investments in qualified active low-income
2 community businesses in the State.

3 J. "Qualified low-income community investment" means any capital or equity
4 investment in, or loan to, any qualified active low-income community business made
5 after September 28, 2011. With respect to any one qualified active low-income
6 community business, the maximum amount of qualified low-income community
7 investments that may be made in the business, on a collective basis with all of its
8 affiliates, with the proceeds of qualified equity investments that have been certified
9 under Title 10, section 1100-Z, subsection 3, paragraph G is \$10,000,000 whether
10 made by one or several qualified community development entities.

11 **2. Credit allowed.** A person that holds a qualified equity investment certified by the
12 authority pursuant to Title 10, section 1100-Z, subsection 3, paragraph G on a credit
13 allowance date that falls within the taxable year is allowed a credit equal to the applicable
14 percentage that applies to the credit allowance date multiplied by the purchase price paid
15 for the qualified equity investment. Notwithstanding any other provision of law, other
16 than the recapture provisions of subsection 7, the person, and any subsequent person, that
17 is the holder of the credit certificate issued by the authority for a qualified equity
18 investment is entitled, in the aggregate, to the entire 39% credit amount computed with
19 respect to the 7 credit allowance dates. In no event may the credit amount in the
20 aggregate exceed 39% for any single qualified equity investment certified by the
21 authority.

22 **3. Memorandum of agreement.** Upon receipt of the authority's written notice of
23 the certification of a qualified equity investment's tax credit eligibility, the commissioner
24 shall enter into an agreement on behalf of the State with the person eligible to claim the
25 credit pursuant to Title 10, section 1100-Z, subsection 3, paragraph G. That agreement
26 must provide that the State shall, with the exception of recapture pursuant to subsection 7,
27 allow the tax credit as provided for in subsection 2 and recognize that the person named
28 as eligible for tax credit pursuant to Title 10, section 1100-Z, subsection 3, paragraph G is
29 entitled to claim the tax credits and the respective tax credit amounts in the aggregate, to
30 the entire 39% credit amount computed with respect to the 7 credit allowance dates.

31 **4. Carry-over to succeeding year.** Any unused portion of the credit may be carried
32 over to the following taxable year or years, except that the carry-over period for unused
33 credit amounts may not exceed 20 years.

34 **5. Pass-through entity; allocation of the credit.** Credits allowed pursuant to this
35 section to a partnership, limited liability company, S corporation or other similar pass-
36 through entity must be allocated to the partners, members, shareholders or other owners
37 in accordance with section 5219-G or pursuant to an executed agreement among the
38 partners, members or shareholders or other owners documenting an alternate allocation
39 method.

40 **6. Credit refundable.** The credit allowed under this section is fully refundable.

41 **7. Recapture of credits.** The State Tax Assessor may recapture all of the credit
42 allowed under this section if:

1 A. Any amount of federal tax credits available with respect to a qualified equity
2 investment that is eligible for a tax credit under this section is recaptured under the
3 Code, Section 45D. In such a case, the recapture must be proportionate to the federal
4 recapture with respect to the qualified equity investment;

5 B. The qualified community development entity redeems or makes a principal
6 repayment with respect to the qualified equity investment that generated the tax credit
7 prior to the final credit allowance date of the qualified equity investment. In such a
8 case, the recapture must be proportionate to the amount of the redemption or
9 repayment with respect to the qualified equity investment; or

10 C. The qualified community development entity fails to invest at least 85% of the
11 purchase price of the qualified equity investment in qualified low-income community
12 investments in qualified active low-income community businesses located in the
13 State within 24 months of the issuance of the qualified equity investment and
14 maintain this level of investment in qualified low-income community investments in
15 qualified active low-income community businesses located in the State until the last
16 credit allowance date for the qualified equity investment. For purposes of calculating
17 the amount of qualified low-income community investments held by a qualified
18 community development entity, an investment is considered held by the qualified
19 community development entity even if the investment has been sold or repaid as long
20 as the qualified community development entity reinvests an amount equal to the
21 capital returned to or recovered from the original investment, exclusive of any profits
22 realized, in another qualified active low-income community business in this State
23 within 12 months of the receipt of the capital. A qualified community development
24 entity may not be required to reinvest capital returned from qualified low-income
25 community investments after the 6th anniversary of the issuance of the qualified
26 equity investment, the proceeds of which were used to make the qualified low-
27 income community investment, and the qualified low-income community investment
28 is considered to be held by the issuer through the qualified equity investment's final
29 credit allowance date.

30 The qualified community development entity must be provided 90 days to cure any
31 deficiency indicated in the authority's original recapture notice and avoid such recapture.
32 If the entity fails or is unable to cure the deficiency within the 90-day period, the assessor
33 shall provide the qualified community development entity and the person from whom the
34 credit is to be recaptured with a final order of recapture. Any amount of tax credits for
35 which a final recapture order has been issued must be recaptured from the person that
36 actually claimed the tax credit.

37 **Sec. 32. 38 MRSA §2138, sub-§3**, as enacted by PL 1989, c. 585, Pt. A, §7, is
38 repealed.

39 **Sec. 33. Application.** Those sections of this Act that enact the Maine Revised
40 Statutes, Title 36, section 2533 and section 5219-HH apply to tax years beginning on or
41 after January 1, 2012. That section of this Act that amends the Title 36, section 5164,
42 subsection 1 applies to tax years beginning on or after January 1, 2012.

43 **Sec. 34. Retroactivity.** That section of this Act that repeals and replaces the
44 Maine Revised Statutes, Title 36, section 2531 applies retroactively to taxes on all

1 premiums received on or after July 1, 2011. That section of this Act that enacts Title 36,
2 section 2534 applies retroactively to September 28, 2011. That section of this Act that
3 amends Title 36, section 5216-D, subsections 3 and 4 applies retroactively to June 20,
4 2011. Those sections of this Act that amend Title 36, section 5122, subsection 2,
5 paragraph II; section 5142, subsection 8-B, paragraph C; and section 5200-A, subsection
6 2, paragraph V apply retroactively to tax years beginning on or after January 1, 2011.
7 That section of this Act that repeals and replaces Title 36, section 5219-GG applies
8 retroactively to tax years beginning on or after January 1, 2011.

9 **SUMMARY**

10 This bill makes the following changes to the laws governing taxation.

11 It makes technical changes to correct cross-references, correct clerical errors, resolve
12 statutory numbering conflicts, improve syntax and repeal unnecessary language.

13 It corrects references to the Department of Administrative and Financial Services,
14 Bureau of Revenue Services.

15 It clarifies the computation of a benchmark loan payment for purposes of the
16 educational opportunity tax credit, consistent with the way the credit is currently
17 administered.

18 It clarifies that an insurance company that does not do business in Maine and is not
19 subject to the Maine insurance premiums tax is eligible for the new markets capital
20 investment credit.

21 It clarifies the computation of the Maine fishery infrastructure investment tax credit.

22 It adds administration of reports and payments by initiators of deposit under the
23 beverage container laws to the list of duties assigned to the State Tax Assessor.

24 It clarifies that only the applicant may appeal to the State Board of Property Tax
25 Review the decision of the assessors or municipal officers with respect to a request for
26 abatement of property taxes on nonresidential property with a valuation of \$1,000,000 or
27 greater.

28 It corrects the computation of the subtraction modification relating to bonus
29 depreciation for property not used as the basis for the Maine capital investment credit.

30 It clarifies that the minimum taxability thresholds for nonresidents apply to the
31 taxable year of the taxpayer rather than the calendar year.

32 It amends the definition of "fiduciary adjustment" to reflect the repeal of the
33 requirement to reduce itemized deductions by the amount of any federal deduction for
34 mortgage insurance premiums.

35 It clarifies the recapture provisions of the Maine capital investment credit.