#### OFFICE OF FISCAL AND PROGRAM REVIEW

Date: May 28, 2013

To: Members, Joint Standing Committee on Taxation

From: Elizabeth Cooper, Legislative Analyst Re: Final Amendment Review – LD 988

An amendment and fiscal note for LD 988 are attached for your review.

#### LD 988 "An Act To Amend the Tax Laws"

• The Committee voted OTPA on May 7, 2013 and reconsidered with a voted of OPTA on May 17, 2013.

- This amendment makes the following changes to the bill.
  - It provides greater flexibility in the renewal of resale certificates.
  - It provides for changes to reflect the estate tax law applicable to estates on or after January 1, 2013 and includes provisions for the automatic release of the estate tax lien.
  - It provides a mechanism for taxpayers to request an appeal conference after the filing a statement of appeal and clarifies confidentiality provisions regarding the disclosure of taxpayer information to the Maine Board of Appeals by Maine Revenue Services.
  - It adds to the bill clarification that the term "personal home care' has the same meaning as "private nonmedical institution" in the application of the service provided tax in order to align the language with that used in the Department of Health and Human Services rule.
  - It makes changes to the wild blueberry tax provisions to clarify which party is responsible for paying the tax and that the tax is levied on the unprocessed weight of the blueberries received by a processor.
- The fiscal note indicates that the bill makes multiple technical changes to the tax laws that collectively have no fiscal impact.

Please let me know if you have any questions or concerns.



# 126th MAINE LEGISLATURE

LD 988

LR 379(02)

An Act To Amend the Tax Laws

Fiscal Note for Bill as Amended by Committee Amendment " "
Committee: Taxation
Fiscal Note Required: Yes

# **Fiscal Note**

No net fiscal impact

# Fiscal Detail and Notes

This bill makes multiple technical changes to the tax laws that collectively have no fiscal impact.

1	L.D. 988
2	Date: (Filing No. S-)
3	TAXATION
4	Reproduced and distributed under the direction of the Secretary of the Senate.
5	STATE OF MAINE
6	SENATE
7	126TH LEGISLATURE
8	FIRST REGULAR SESSION
9.0	COMMITTEE AMENDMENT " to S.P. 333, L.D. 988, Bill, "An Act To Amend the Tax Laws"
1	Amend the bill by striking out all of section 1 and inserting the following:
12	'PART A
13 14	<b>Sec. A-1. 36 MRSA §1754-B, sub-§2-C,</b> as amended by PL 2005, c. 519, Pt. OOO, §1, is further amended to read:
15 16 17 18 19 20 21 22 23 24 25 26 27 28	2-C. Issuance and renewal of resale certificates; contents; presentation to vendor. The On November 1st of each year, the assessor shall periodically review the status of returns filed by each registered retailer registered under this section unless the retailer has a resale certificate expiring after December 31st of that year. On or before the date of expiration of a resale certificate, the assessor shall issue to each registered retailer with gross sales of \$3,000 or more during the 12 months preceding the assessor's review a resale certificate effective for the next 3 calendar years. Any subsequent annual resale certificate issued is effective for the next 5 calendar years. If the retailer reports \$3,000 or more in gross sales during the 12 months preceding the assessor's review, the assessor shall issue to the registered retailer a resale certificate effective for 5 calender years. Each certificate must contain the name and address of the retailer, the expiration date of the certificate and the certificate number. If a vendor has a true copy of a retailer's resale certificate on file, that retailer need not present the certificate for each subsequent transaction with that vendor during the period for which it is valid.
29 30 31 32 33 34 35	A registered retailer that fails to meet the \$3,000 threshold upon the annual review of the assessor is not entitled to renewal of its resale certificate except as provided in this subsection. When any such retailer shows that its gross sales for a more current 12-month period total \$3,000 or more or explains to the satisfaction of the assessor why temporary extraordinary circumstances caused its gross sales for the period used for the assessor's annual review to be less than \$3,000, the assessor shall, upon the written request of the retailer, issue to the retailer a resale certificate effective for the next 5 calendar years.

Sec. A-2. 36 MRSA §4072, as amended by PL 1999, c. 38, §1, is further amended to read:

### §4072. Lien for taxes

All property subject to taxes under this chapter, in whatever form of investment it may happen to be, is charged with a lien for all taxes, interest and penalties that are or may become due on that property. The lien does not attach to any property passing by right of survivorship to a surviving joint tenant who was the decedent's spouse on the decedent's date of death. The lien does not attach to any real or personal property after the property has been sold or disposed of for value by the personal representative, trustee or surviving joint tenant. Upon payment of those taxes, interest and penalties due under this chapter, or upon determination that no tax is due, the State Tax Assessor shall upon request execute a discharge of the tax lien for recording in the appropriate registry or registries of deeds.

Any lien that attached to real property prior to September 30, 1989 and after the property was sold or disposed of for value by the personal representative, trustee or surviving joint tenant is released by operation of this section. A lien that attaches under this section is released 10 years after the decedent's date of death.

**Sec. A-3. 36 MRSA §4112,** as enacted by PL 2011, c. 380, Pt. M, §9, is amended to read:

# §4112. Lien for taxes

All property subject to taxes under this chapter, in whatever form of investment it may happen to be, is charged with a lien for all taxes, interest and penalties that are or may become due on that property. The lien does not attach to any property passing by right of survivorship to a surviving joint tenant who was the decedent's spouse on the decedent's date of death. The lien does not attach to any real or personal property after the property has been sold or disposed of for value by the personal representative, trustee or surviving joint tenant. Upon payment of those taxes, interest and penalties due under this chapter or upon determination that no tax is due, the assessor shall upon request execute a discharge of the tax lien for recording in the appropriate registry or registries of deeds.

A lien that attaches under this section is released 10 years after the decedent's date of death.

- **Sec. A-4. 36 MRSA §5122, sub-§1, ¶Y,** as amended by PL 2007, c. 539, Pt. CCC, §3, is further amended to read:
  - Y. Any amount of allowable deduction claimed for federal purposes in accordance with the election under Section 642(g) of the Code that is also used to determine the taxable estate for purposes of calculating the Maine estate tax under chapter 575 or 577;
- **Sec. A-5. Application.** That section of this Part that amends the Maine Revised Statutes, Title 36, section 5122, subsection 1, paragraph Y applies to tax years beginning on or after January 1, 2013.

2 3 4 5	Sec. A-6. Retroactivity. That section of this Part that amends the Maine Revised Statutes, Title 36, section 4072 applies retroactively to estates of decedents with dates of death on or before December 31, 2012. That section of this Part that amends Title 36, section 4112 applies retroactively to estates of decedents with dates of death on or after January 1, 2013.
6	PART B
7 8	<b>Sec. B-1. 36 MRSA §151-D, sub-§10, ¶A,</b> as enacted by PL 2011, c. 694, §6, is amended to read:
9 10 11 12 13 14 15	A. If requested by a petitioner in within 20 days of filing a statement of appeal, the appeals office shall hold an appeals conference to receive additional information and to hear arguments regarding the protested assessment or determination. The board shall set a rate of no more than \$150 as a processing fee for each petition that proceeds to an appeals conference. These fees must be credited to a special revenue account to be used to defray expenses in carrying out this section. Any balance of these fees in the special revenue account does not lapse but is carried forward as a continuing account to be expended for the same purposes in the following years.
17 18	<b>Sec. B-2. 36 MRSA §151-D, sub-§10, ¶D,</b> as enacted by PL 2011, c. 694, §6, is amended to read:
19 20 21 22	D. If a petitioner does not include a timely request for an appeals conference in the statement of appeal, the appeals officer shall determine the matter based on written submissions by the petitioner and the division within the bureau making the original determination.
23 24	<b>Sec. B-3. 36 MRSA §191, sub-§2, ¶VV,</b> as amended by PL 2011, c. 644, §6 and repealed by c. 694, §9, is further amended to read:
25 26 27 28 29	VV. The disclosure by the assessor to the taxpayer advocate under section 151-C of information related to a petition for reconsideration filed by a taxpayer pursuant to section 151. The taxpayer advocate is prohibited from disclosing information obtained pursuant to this paragraph other than to the particular taxpayer to whom the information pertains; and
30 31	<b>Sec. B-4.</b> 36 MRSA §191, sub-§2, ¶WW, as enacted by PL 2011, c. 644, §7 and c. 694, §10, is repealed and the following enacted in its place:
32 33 34	WW. The disclosure of information to the Department of Inland Fisheries and Wildlife necessary for the administration of the credit for Maine fishery infrastructure investment under section 5216-D;
35	Sec. B-5. 36 MRSA §191, sub-§2, ¶¶XX and YY are enacted to read:
36 37 38	XX. The disclosure of information by the assessor to the board, except that such disclosure is limited to information that is pertinent to an appeal or other action or proceeding before the board; and
39 40	YY. The inspection and disclosure of information by the board to the extent necessary to conduct appeals procedures pursuant to this Title and issue a decision on

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1	an appeal to the parties. The board may make available to the public redacted
	decisions that do not disclose the identity of a taxpayer or any information made
3	confidential by state or federal statute.
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4 PART C

- **Sec. C-1. 36 MRSA §111, sub-§1-C,** as enacted by PL 2011, c. 694, §2, is amended to read:
- **1-C. Board.** "Board" For purposes of sections 151 and 151-D and section 191, subsection 2, paragraphs C, XX and YY, "board" means the Maine Board of Tax Appeals as established in Title 5, section 12004-B, subsection 10.'

Amend the bill by striking out all of section 4 and inserting the following:

- 'Sec. 4. 36 MRSA §151-A, sub-§2, as amended by PL 2013, c. 45, §5, is further amended to read:
- 2. Representative of taxpayer. The taxpayer may bring to any interview or informal conference with the State Tax Assessor or to any proceeding pursuant to section 151-D any attorney, certified public accountant, enrolled agent, enrolled actuary or any other person permitted to represent the taxpayer. If the taxpayer does not bring anyone to the interview, conference or proceeding but clearly states at any time during the interview, conference or proceeding that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary or any other person permitted to represent the taxpayer, the State Tax Assessor shall suspend the interview or conference or the board shall suspend the proceeding. The suspension must occur even if the taxpayer has answered one or more questions before that point in the interview, conference or proceeding. The conference interview must be rescheduled to be held within 10 working days.'

Amend the bill by inserting after section 11 the following:

- 'Sec. 12. 36 MRSA §2551, sub-§10, as amended by PL 2007, c. 438, §53, is further amended to read:
- 10. Private nonmedical institution or personal home care. "Private nonmedical institution or personal home care" means a person licensed by the Department of Health and Human Services to provide private nonmedical institution or personal home care services to 4 or more MaineCare-eligible and other residents in single or multiple facilities under a written agreement with the Department of Health and Human Services. "Private nonmedical institution or personal home care" does not include a health insurance organization, hospital, nursing home or community health care center.
- **Sec. 13. 36 MRSA §2551, sub-§11,** as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is amended to read:
- 11. Private nonmedical institution or personal home care services. "Private nonmedical institution or personal home care services" means services, including food, shelter and treatment, that are provided by a private nonmedical institution or personal home care.

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and affected by §9, is further amended to read:

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3	G. Private nonmedical institution or personal home care services;
4 5 6	Amend the bill in section 20 in §4303 in the 2nd paragraph in the last line (page 6, line 28 in L.D.) by inserting after the following: "under this section" the following: 'from the seller'
7 8	Amend the bill in section 25 in §4307 in the first paragraph in the 3rd line (page 7, line 6 in L.D.) by inserting after the following: "of" the following: 'unprocessed'
9 10	Amend the bill in section 25 in §4307 in the first paragraph in the 4th line (page 7, line 7 in L.D.) by inserting after the following: "shipper" the following: 'that are'
11 12	Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.
13	SUMMARY
14 15	This amendment adds Parts A and B to the bill and makes the contents of the bill Part C, as well as making further changes to the bill in Part C.
16	Part A:
17 18 19	1. Amends tax law regarding the issuance and renewal of resale certificates to provide the State Tax Assessor with greater flexibility in allowing the renewal of resale certificates;
20 21 22 23	2. Amends tax law regarding the imposition of the Maine estate tax lien to exempt real property passing to a surviving joint tenant who is also a surviving spouse of the decedent from the Maine estate tax lien and to provide a 10-year expiration period for Maine estate tax liens; and
24 25 26	3. Amends tax law concerning the income addition modification regarding certain estate tax administration expenses to include the new Maine estate tax law applicable to estates of decedents dying on or after January 1, 2013.
27	Part B:
28 29 30 31 32	1. Gives taxpayers 20 days after filing a statement of appeal with the Maine Board of Tax Appeals in which to request an appeals conference. Unlike the current statutory language, which requires a conference to be requested in the statement of appeal, this gives a taxpayer who does not realize that conferences are available until after filing a statement of appeal the ability to request one within a reasonable amount of time; and
33 34 35 36 37 38 39	2. Provides in the exemptions provisions of the law regarding the confidentiality of tax records that the Department of Administrative and Financial Services, Bureau of Revenue Services may disclose to the Maine Board of Tax Appeals only confidential taxpayer information that is pertinent to an appeal before the board and that the board may disclose confidential taxpayer information only to the extent that it is necessary for the resolution of an appeal. The board may also publish its decisions in redacted format to provide guidance regarding Maine tax law to taxpayers and professionals while

Sec. 14. 36 MRSA §2552, sub-§1, ¶G, as amended by PL 2005, c. 386, Pt. S, §4

protecting the identity of the taxpayer involved in the appeal and any confidential tax information.

#### Part C:

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- 1. Adds to the bill's changes to a definition of "board," referring to the Maine Board of Tax Appeals, a reference to language added in Part B regarding confidential taxpayer information;
  - 2. Changes the bill to take into account recently enacted law; and
- 3. Changes the bill to clarify that personal home care services are subject to the service provider tax as private nonmedical institution services are, aligning the language with that used in Department of Health and Human Services rules. It makes changes to the wild blueberry tax provisions to clarify which party is responsible for paying the tax and that the tax is levied on the unprocessed weight of the blueberries received by a processor.