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## **An Act To Replace Municipal Revenues Subject to Business Equipment Property Tax Exemption**

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

**Sec. 1. 36 MRSA c. 105, sub-c. 4-C** is enacted to read:

### **SUBCHAPTER 4-C**

### **BUSINESS EQUIPMENT TAX EXEMPTION**

#### **§ 691. Definitions; exemption limitations**

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

A. "BETR-expired property" means property that was eligible for property tax reimbursement under chapter 915, but is no longer eligible for such reimbursement due to the fact that reimbursements have been made for the entire length of time for which reimbursements were allowed under section 6652, subsection 1.

B. "Eligible business equipment" means qualified property that, in the absence of this subchapter, would first be subject to assessment under this Part on or after April 1, 2008 and BETR-expired property. "Eligible business equipment" includes, without limitation, repair parts, replacement parts, replacement equipment, additions, accessions and accessories to other qualified business property that first became subject to assessment under this Part before April 1, 2008 if the part, addition, equipment, accession or accessory would, in the absence of this subchapter, first be subject to assessment under this Part on or after April 1, 2008. "Eligible business equipment" also includes inventory parts.

"Eligible business equipment" does not include:

(1) Office furniture, including, without limitation, tables, chairs, desks, bookcases, filing cabinets and modular office partitions;

(2) Lamps and lighting fixtures used primarily for the purpose of providing general purpose office or worker lighting;

(3) Property owned or used by an excluded person;

(4) Telecommunications personal property subject to the tax imposed by section 457;

(5) Gambling machines or devices, including any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity as that term is defined in Title 8, section 1001, subsection 15, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. "Gambling machines or devices" includes, without limitation:

(a) Associated equipment as defined in Title 8, section 1001, subsection 2;

(b) Computer equipment used directly and primarily in the operation of a slot machine as defined in Title 8, section 1001, subsection 39;

(c) An electronic video machine as defined in Title 17, section 330, subsection 1-A;

(d) Equipment used in the playing phases of lottery schemes; and

(e) Repair and replacement parts of a gambling machine or device; or

(6) Property located at a retail sales facility exceeding 100,000 square feet of interior customer selling space and used primarily in a retail sales activity, unless the facility is owned by a business whose Maine-based operation derives less than 50% of its total annual revenue on a calendar-year basis from sales that are subject to Maine sales tax. For purposes of this subparagraph, the following terms have the following meanings:

(a) "Primarily" means more than 50% of the time;

(b) "Retail sales activity" means an activity associated with the selection and purchase of goods or the rental of tangible personal property; and

(c) "Retail sales facility" means a structure used to serve customers who are physically present at the facility for the purpose of selecting and purchasing goods at retail or for renting tangible personal property. "Retail sales facility" does not include a separate structure that is used as a warehouse or call center facility.

C. "Excluded person" means:

(1) A public utility as defined in Title 35-A, section 102, subsection 13;

(2) A person that provides radio paging service as defined in Title 35-A, section 102, subsection 15;

(3) A person that provides mobile telecommunications services as defined in Title 35-A, section 102, subsection 9-A;

(4) A cable television company as defined in Title 30-A, section 2001, subsection 2;

(5) A person that provides satellite-based direct television broadcast services; or

(6) A person that provides multichannel, multipoint television distribution services.

D. "Exempt business equipment" means eligible business equipment that is exempt under this subchapter.

E. "Inventory parts" includes repair parts, replacement parts, replacement equipment, additions, accessions and accessories on hand but not in service and stocks or inventories of repair parts, replacement parts, replacement equipment, additions, accessions and accessories on hand but not in service and other machinery and equipment on hand for future use but not in service if acquired after April 1, 2007, regardless of when placed in service.

F. "Municipal tax increment percentage" means, with respect to tax increment financing districts, the specified percentage of captured assessed value retained as provided in Title 30-A, section 5227 and allocated to the municipality for the municipality's own authorized project costs as provided in Title 30-A, section 5225. With respect to tax increment financing districts authorized pursuant to Title 30-A, former chapter 207, "municipal tax increment percentage" means the specified percentage of captured assessed value retained as provided in Title 30-A, former section 5254, subsection 1 and allocated to the municipality for the municipality's own authorized project costs as provided in Title 30-A, former section 5252, subsection 8.

G. "Qualified property" means tangible personal property that:

(1) Is used or held for use exclusively for a business purpose by the person in possession of it or, in the case of construction in progress or inventory parts, is intended to be used exclusively for a business purpose by the person who will possess that property; and

(2) Either:

(a) Was subject to an allowance for depreciation under the Code on April 1st of the property tax year for which a claim for exemption under this subchapter is filed or would have been subject to an allowance for depreciation under the Code as of that date but for the fact that the property has been fully depreciated; or

(b) In the case of construction in progress or inventory parts, would be subject under the Code to an allowance for depreciation when placed in service or would have been subject to an allowance for depreciation under the Code as of that date but for the fact that the property has been fully depreciated.

"Qualified property" also includes all property that is affixed or attached to a building or other real estate if the property is used primarily to further a particular trade or business activity taking place in that building or on that real estate.

"Qualified property" does not include components or attachments to a building if they are used primarily to serve the building as a building, regardless of the particular trade or activity taking place in or on the building. "Qualified property" also does not include land improvements if they are used primarily to further the use of the land as land, regardless of the particular trade or business activity taking place in or on the land. In the case of construction in progress or inventory parts, the term "used" means "intended to be used." "Qualified property" also does not include any vehicle registered for on-road use on which a tax assessed pursuant to chapter 111 has been paid or any watercraft registered for use on state waters on which a tax assessed pursuant to chapter 112 has been paid.

H. "TIF exempt business equipment" means exempt business equipment that is located within a tax increment financing district but does not include any BETR-expired property.

**2. Additional limitations.** The exemptions provided pursuant to this subchapter are limited pursuant to this subsection.

A. Exemption for certain energy facilities under this subchapter is limited as follows.

(1) The exemption provided by this subchapter does not apply to a natural gas pipeline, including pumping or compression stations, storage depots and appurtenant facilities used in the transportation, delivery or sale of natural gas, but not including a pipeline that is less than a mile in length and is owned by a consumer of natural gas delivered through the pipeline.

(2) The exemption provided in this subchapter does not apply to property used to produce or transmit energy primarily for sale. Energy is primarily for sale if during the immediately preceding property tax year 2/3 or more of the useful energy is directly or indirectly sold and transmitted through the facilities of a transmission and distribution utility.

(3) For purposes of this paragraph, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Transmission and distribution utility" has the same meaning as in Title 35-A, section 102, subsection 20-B.

(b) "Useful energy" is energy in any form that does not include waste heat, efficiency losses, line losses or other energy dissipation.

B. Pollution control facilities that are entitled to exemption pursuant to section 656, subsection 1, paragraph E are not entitled to an exemption under this subchapter, except if:

(1) The property is entitled to an exemption under section 656, subsection 1, paragraph E but has not yet been certified for exemption under that paragraph;

(2) The property has been placed in service after the December 1st immediately preceding April 1st of the tax year for which the exemption is sought but prior to April 1st of the property tax year for which the exemption is sought; and

(3) The taxpayer has submitted the required application for certification to the Commissioner of Environmental Protection prior to April 1st.

The exemption under this subchapter continues for property that meets the requirements of subparagraphs (1), (2) and (3) only until the certification for exemption under section 656, subsection 1, paragraph E has been granted. If the State Tax Assessor or an assessor denies an exemption on the ground that the property in question is entitled to exemption under section 656, subsection 1, paragraph E and the taxpayer appeals the denial, the State Tax Assessor or assessor shall, at the taxpayer's request, allow the taxpayer up to one year to obtain a statement from the Commissioner of Environmental Protection that the property at issue is not exempt under section 656, subsection 1, paragraph E. If the taxpayer timely produces such a statement or otherwise demonstrates that the property is not exempt under section 656, subsection 1, paragraph E, the State Tax Assessor or an assessor shall allow the exemption under this subchapter, but only for the year in question.

## **§ 692. Exemption of business equipment**

**1. Eligible business equipment exempt.** Eligible business equipment is exempt from all taxation under this Part, except chapters 111 and 112.

**2. Just value of exemption.** In determining the just value of exempt business equipment, the assessor shall determine the just value of the property in the same manner as prescribed in section 701-A as if the property were subject to taxation.

**3. Effect on state valuation.** The exemption has the following effect on state valuation.

**A.** Except as provided in paragraph B, the percentage of just value of exempt business equipment to be included in the annual determination of state valuation under sections 208 and 305 for tax year 2008 and subsequent tax years is as follows:

(1) Fifty percent for exempt business equipment for which the municipality receives reimbursement under section 694, subsection 2, paragraph A;

(2) One hundred percent for exempt business equipment for which the municipality receives reimbursement under section 694, subsection 2, paragraph B;

(3) The applicable percentage calculated under section 694, subsection 2, paragraph C for exempt business equipment for which the municipality receives reimbursement under section 694, subsection 2, paragraph C; and

(4) Zero for exempt business equipment for which the municipality receives reimbursement under section 694, subsection 2, paragraph D.

B. In the case of a municipality that has one or more tax increment financing districts authorized pursuant to Title 30-A, chapter 206, subchapter 1 and effective under Title 30-A, section 5226, subsection 3 prior to April 1, 2008 or authorized pursuant to Title 30-A, former chapter 207 and effective under Title 30-A, former section 5253, subsection 1, paragraph F prior to April 1, 2008, for the 2008 tax year and subsequent tax years, the percentage of just value of TIF exempt business equipment located in such a tax increment financing district that must be included in the annual determination of state valuation pursuant to paragraph A, subparagraph (1) or (3) is decreased, but not below zero, by a percentage amount equal to the municipal tax increment percentage for the tax increment financing district in which the TIF exempt business equipment is located.

**4. Property tax rate.** The following percentages of the value of exempt business equipment must be included in the total municipal valuation used to determine the municipal tax rate for 2008 and subsequent tax years:

A. Fifty percent for exempt business equipment for which the municipality receives reimbursement under section 694, subsection 2, paragraph A;

B. One hundred percent for exempt business equipment for which the municipality receives reimbursement under section 694, subsection 2, paragraph B;

C. The applicable percentage calculated under section 694, subsection 2, paragraph C for exempt business equipment for which the municipality receives reimbursement under section 694, subsection 2, paragraph C; and

D. The applicable percentage calculated under section 694, subsection 2, paragraph D for exempt business equipment for which the municipality receives reimbursement under section 694, subsection 2, paragraph D.

### **§ 693. Forms; reporting**

**1. Reporting.** On or before May 1st of each year, a taxpayer claiming an exemption under this section shall file a report with the assessor of the taxing jurisdiction in which the property would otherwise be subject to taxation. The report must identify the property for which exemption is claimed and must be made on a form prescribed by the State Tax Assessor or substitute form approved by the State Tax Assessor. The State Tax Assessor shall furnish copies of the form to each municipality in the State and the form must be made available to taxpayers prior to April 1st annually. The assessor of the

taxing jurisdiction may require the taxpayer to sign the form and make oath to its truth. Upon written request, the assessor may at any time grant extensions of time to file the report. Failure to file the report in a timely manner, including any extensions of time, disqualifies the property involved from exemption for that tax year. The assessor of the taxing jurisdiction may require in writing that a taxpayer answer in writing all reasonable inquiries as to the property for which exemption is requested. A taxpayer has 30 days from receipt of such an inquiry to respond. Upon written request, a taxpayer is entitled to a 30-day extension to respond to the inquiry and the assessor may at any time grant additional extensions upon written request. The answer to any such inquiry is not binding on the assessor.

All notices and requests provided pursuant to this subsection must be made by personal delivery or certified mail and must conspicuously state the consequences of the taxpayer's failure to respond to the notice or request in a timely manner.

If an exemption has already been accepted and the State Tax Assessor subsequently determines that the property is not entitled to exemption, a supplemental assessment must be made within 3 years of the original assessment date with respect to the property in compliance with section 713, without regard to the limitations contained in that section regarding the justification necessary for a supplemental assessment.

**2. False filing.** An individual who knowingly gives false information for the purpose of claiming an exemption under this subchapter commits a Class E crime.

**3. Continuation of eligibility** . A person must annually file the report required by this section for all eligible business equipment, even though there may be no substantive change in the property from one year to the next.

## **§ 694. Duty of assessor; reimbursement by State**

**1. Examination and identification.** The assessor shall examine each report pursuant to section 693 that is timely filed, determine whether the property identified in the report is entitled to an exemption under this subchapter and determine the just value of the property.

**2. Entitlement to reimbursement by State; calculation.** Reimbursement is calculated as follows:

A. Notwithstanding section 661, upon proof in a form satisfactory to the bureau, a municipality that has accepted a valid exemption under this subchapter is entitled to recover from the State the applicable percentage of property tax revenue lost by reason of the exemption. The applicable percentage is 50%, except as otherwise provided in this subsection.

B. In the case of BETR-expired property, the applicable percentage is 100%.

C. In the case of municipalities in which the taxable value of the exempt business equipment, other than BETR-expired property, exceeds 10% of the entire assessed taxable value in the municipality, the applicable percentage for exempt business equipment other than BETR-expired property is 50% plus an amount equal to 1/2 of the percentage that the taxable value of the exempt business equipment, other than BETR-expired property, represents of the municipality's entire assessed

taxable value. For purposes of this paragraph, the taxable value of exempt business equipment means the value that would have been assessed on that equipment if it were taxable. For purposes of this paragraph, the term "entire assessed taxable value" includes the value of all taxable property plus that percentage of the value of exempt business equipment for which the municipality is eligible to be reimbursed under this subchapter for that tax year.

D. In the case of a municipality that has one or more tax increment financing districts authorized pursuant to Title 30-A, chapter 206, subchapter 1 and effective under Title 30-A, section 5226, subsection 3 prior to April 1, 2008 or authorized pursuant to Title 30-A, former chapter 207 and effective under Title 30-A, former section 5253, subsection 1, paragraph F, prior to April 1, 2008, the applicable percentage with respect to TIF exempt business equipment is 50% plus a percentage amount equal to the percentage amount, if any, by which the municipal tax increment percentage for the tax increment financing district in which the TIF exempt business equipment is located exceeds 50%. This paragraph applies only when it will result in a greater percentage of reimbursement for the TIF exempt business equipment than would be provided under paragraph C.

**3. Reimbursement to unorganized territory education and services.** The bureau shall reimburse the Unorganized Territory Education and Services Fund for taxes lost by reason of the exemption at the same percentages as are applicable to municipalities.

**4. Information provided to State; deviations in assessment ratio.** The assessor shall provide by June 1st annually any relevant information requested by the bureau for the purpose of determining the actual assessment ratio in use for personal property in the municipality. The certified ratio declared by the municipality must be considered accurate by the bureau if it is within 10% of the assessment ratio last determined by the bureau in its annual report of ratio studies. The assessor may submit additional information on the relevant assessment ratio to the bureau in order to prove that a different ratio should apply. The bureau may accept a certified ratio that deviates more than 10% from the bureau's most recent state valuation report only if the information submitted by the municipality clearly indicates that the certified ratio is more accurate than the assessment ratio contained in the bureau's most recent report.

Any municipality that is eligible for an applicable percentage of reimbursement other than the general 50% applicable percentage described in subsection 2, paragraph A shall, annually by June 1st, provide any relevant information requested by the bureau to determine the percentage of value of exempt business equipment to be included in the determination of state valuation under sections 208 and 305.

**5. Payments by State.** Reimbursements to municipalities must be made as described in this subsection. A municipality claiming reimbursement under this section shall submit a claim to the bureau by November 1st of the year in which the exemption applies or within 30 days of commitment of taxes, whichever occurs later. The bureau shall review the claims and determine the total amount to be paid. The bureau shall certify and the Treasurer of State shall pay by December 15th of the year in which the exemption applies the amount that the bureau determines for that tax year. Municipal claims that are timely filed after November 1st must be paid as soon as reasonably possible after the December 15th payment date.



**6. Reimbursement for state-mandated costs.** The bureau shall reimburse municipalities and the Unorganized Territory Education and Services Fund for state-mandated costs in the manner provided in Title 30-A, section 5685.

### **§ 695. Denial of exemption; appeals**

If the assessor determines that a property is not entitled to an exemption under this subchapter, the assessor shall provide a written notice of denial prior to the tax commitment date in that municipality, including the reasons for the denial, to the applicant by either personal delivery or certified mail. An applicant may contest a denial by the assessor of an exemption under this subchapter either by using the procedures provided in subchapter 8 or by pursuing such other actions or proceedings by which other property tax exemptions under this chapter may be reviewed or adjudicated. If the assessor determines that a property receiving an exemption under this subchapter in any year within the 3 preceding years was not eligible for the exemption, the assessor shall immediately notify the bureau in writing.

### **§ 696. Supplemental assessment**

If the assessor makes a determination under section 695 that property receiving an exemption under this subchapter was not entitled to an exemption under this subchapter, the assessor shall by means of a supplemental assessment assess the property for which the exemption was improperly received, plus costs and interest. The taxpayer may contest a supplemental assessment under this subchapter either by using the procedures provided in subchapter 8 or by pursuing such other actions or proceedings by which other property tax exemptions under this chapter may be reviewed or adjudicated. The supplemental assessment must be assessed and collected pursuant to section 713. The bureau shall deduct the amount of the portion of the supplemental assessment that pertains to any funds previously reimbursed to the municipality under section 694 from the next reimbursement issued to the municipality.

### **§ 697. Audits; determination of bureau**

The bureau may audit the records of a municipality to ensure compliance with this subchapter. The bureau may independently review the records of a municipality to determine if exemptions have been properly approved. If the bureau determines that an exemption was improperly approved for any of the 3 years immediately preceding the determination, the bureau shall ensure, by setoff against other payments due the municipality under this subchapter or subchapter 4-B, that the municipality is not reimbursed for the exemption.

### **§ 698. Appeals**

The bureau shall send notice of its determination that an exemption was improperly or erroneously approved by the municipality to the taxpayer, in the manner provided for in section 151. The taxpayer may seek reconsideration pursuant to section 151 of any such decision. Notwithstanding any other provision of law, if a taxpayer does not timely request reconsideration of the bureau's decision under section 151, the local taxing jurisdiction must issue a supplemental assessment with respect to such property within 90 days after the bureau's determination. The taxpayer may not appeal that supplemental assessment except as to issues unrelated to the applicability of the exemption. Notwithstanding any other provision of law, if a taxpayer appeals a decision of the bureau to disqualify an exemption and does not prevail in that appeal, the local taxing jurisdiction must issue a supplemental assessment with respect to the property at issue within 90 days after the appeal has been resolved in the bureau's favor. The taxpayer may not appeal that supplemental assessment except as to issues unrelated to the applicability of the

exemption. Notwithstanding any other provision of law, if a taxpayer appeals a decision of the bureau that an exemption was improperly or erroneously approved and the taxpayer prevails in that appeal, the bureau shall promptly restore any reimbursement to the municipality that was not made or was set off or otherwise denied the municipality under section 697.

### **§ 699. Legislative findings**

The Legislature finds that encouragement of the growth of capital investment in this State is in the public interest and promotes the general welfare of the people of the State. The Legislature further finds that the high cost of owning qualified business property in this State is a disincentive to the growth of capital investment in this State. The Legislature further finds that the tax exemption set forth in this subchapter is a reasonable means of overcoming this disincentive and will encourage capital investment in this State.

**Sec. 2. 36 MRSA §6651, sub-§1,** as amended by PL 2001, c. 396, §43, is further amended to read:

**1. Eligible property.** "Eligible property" means qualified business property first placed in service in the State, or constituting construction in progress commenced in the State, after April 1, 1995, but does not include property that qualifies for exemption pursuant to chapter 105, subchapter 4-C. "Eligible property" includes, without limitation, repair parts, replacement parts, additions, accessions and accessories to other qualified business property placed in service on or before April 1, 1995 if the part, addition, accession or accessory is first placed in service, or constitutes construction in progress, in the State after April 1, 1995, unless such property qualifies for exemption pursuant to chapter 105, subchapter 4-C. "Eligible property" also includes inventory parts.

## **SUMMARY**

This bill establishes a property tax exemption for eligible business equipment that is first subject to property tax assessment on or after April 1, 2008 in the absence of the exemption. The bill requires the State to reimburse municipalities for 50% of the lost property tax revenue associated with the exemption, as is provided by the Constitution of Maine.

Property that was first subject to property tax assessment prior to April 1, 2008 will remain taxable and eligible for the Business Equipment Tax Reimbursement, "BETR," program for the duration of the 12 years of BETR program entitlement. Property that is no longer eligible for the BETR program because it has received BETR reimbursement for the full 12 years becomes exempt business equipment. The bill requires the State to reimburse municipalities for 100% of the lost property tax revenue associated with this type of property, referred to as "BETR-expired property."

Property that was placed in service on or before April 1, 1995 remains fully taxable.

The bill also provides for additional state reimbursements to municipalities in which the taxable value of exempt business equipment, other than BETR-expired property, exceeds 10% of the entire taxable value in the municipality.

The bill also contains provisions that protect the expectations of municipalities with respect to the sheltering and revenues related to tax increment financing revenues to be used by municipalities on their own qualifying tax increment financing projects.

Finally, the bill phases out the BETR program by eliminating BETR eligibility for property that qualifies for the new exemption.