

I. Executive Summary

Maine’s income tax linkage – referenced in shorthand by the term “conformity” – to the federal Internal Revenue Code as of a certain date is the linchpin for efficient and effective implementation of the state income tax, yet it also presents two distinct, recurring, and pervasive challenges:

- (1) the incorporation of federal income tax law changes by enactment of the annual conformity bill, and related timing issues involved in synchronizing the federal and State legislative calendars and the federal and State tax administration calendars (filing season and payment due dates); and
- (2) a consistent application of the conformity method (“static” or “rolling” conformity) and the scope of the federal law base to which Maine conforms (i.e., determining when the conformity base includes, in addition to the Internal Revenue Code, other federal statutory provisions, federal administrative law, and federal judicial law).

Underlying these two challenges is the Maine State Constitution’s provision in Article IX, Section IX, which provides:

Section 9. Power of taxation. The Legislature shall never, in any manner, suspend or surrender the power of taxation.

Maine Revenue Services (MRS) and the Office of Tax Policy (OTP) have traditionally described a more absolutist view of that prohibition against delegation than has been actual practice in terms of the timing of incorporation of federal changes. In some years Maine income tax filing season forms, processing, and corresponding payments have implemented federal tax law changes prior to the enactment and effective date of Maine adopting those changes through the annual IRC conformity bill. Further, the more absolutist view of linkage to the Code as of a specified date has been an oversimplification of the extent and variety of Title 36 linkages to the federal Code and other sources of federal income tax law enacted by the Maine Legislature. Over the last few years, OTP has noted in testimony and other discussions this more layered explanation, and complexity, of Maine’s income tax conformity.

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III. Background

Maine’s income tax, like other states’ income taxes, is based on the federal income tax.¹ In broad brush, the linkage of state income tax laws to the federal income tax law is phrased as “static” vs. “rolling” conformity. Maine is on the “static” conformity side of the ledger – a position rooted in the Title 36 definition of the term Internal Revenue Code (“IRC” or “Code”) and Article IX, Section IX of the Maine Constitution, as detailed below.² But although these categories are helpful, they are an oversimplification. This memo outlines in detail the linkage between Maine income tax law and federal income tax law through the Title 36 definition of, and citation to, the term “Internal Revenue Code” and various specific provisions of the Code, other Title 36 terms that have corresponding definitions under the Code, and the administrative linkage through tax return instructions and filings. Two issues – timing of incorporation of federal law and consistency in Title 36 application – have presented recurring, problematic, and time-consuming challenges for tax law administration and guidance, revenue forecasting, and policy making and legislative processes. Breaking out of the conformity conundrum starts with examining the elements of “rolling conformity” that exist alongside the State’s primary method of “static conformity,” and the challenges raised by enactment of federal tax legislation *after* the operative date of the most recent State conformity bill.

A. Legal and Practical Description of Conformity: General Rules and Exceptions

State income taxes are largely based on the federal income tax through a mechanism known as IRC conformity. This conformity reduces taxpayer compliance and state administrative burdens.

[Conforming to the IRC] allows state administrators and taxpayers alike to rely on federal statutes, rulings, and interpretations, which are generally more detailed and extensive than what any individual state could produce. It provides consistency of definitions for

¹ Taxes other than income tax in Title 36 also link to federal income tax law in various ways and instances, as do other non-tax provisions in Maine Revised Statutes.

² The limits of the general constitutional “nondelegation doctrine” also apply but for the most part do not add a meaningful limitation in the taxation area beyond the limits of the Maine Constitution Art. IX, Section IX limitation. Both limits are discussed together below.

those filing in multiple states and reduces duplication of effort in filing federal and state taxes. It permits substantial reliance on federal audits and enforcement, along with federal taxpayer data. It helps to curtail tax arbitrage³ and reduce double taxation. For the filer, it can make things easier by allowing the filer to copy lines directly from their federal tax forms. In the words of one scholar, federal conformity represents a case of “delegating up,” allowing states to conserve legislative, administrative, and judicial resources while reducing taxpayer compliance burdens.⁴

State IRC conformity is generally described as either rolling or static conformity. States with rolling conformity automatically conform to federal amendments to the IRC.⁵ On the other hand, states like Maine with static, or fixed-date, conformity incorporate the IRC as of a specific date and only incorporate new amendments to the Code through subsequent state tax legislation. However, as OTP’s study of Maine’s conformity to the federal IRC shows and is discussed further below, conformity can be much more complex, involving multiple linkages to the IRC and elements of both static and rolling conformity.

In addition to conformity with the federal IRC, the State decouples from specific items of federal income tax law. At a statutory level, this is often accomplished by enacting income tax modifications.⁶ Through this method, the State conforms to the IRC as a whole and then makes specific deviations through income tax modifications. The modifications must then be implemented by MRS through, for example, adding additional lines to the Maine income tax return on which to enter the modification. As such, deviations from the IRC generally require MRS to modify the Maine income tax return or its instructions while conformity to the IRC generally does not.

B. Maine Title 36 linkages to the IRC and other Federal Income Tax Laws

Date conformity

In broad terms, Maine is a static conformity state, that is, it generally conforms to the federal Internal Revenue Code, amendments to that Code, and other federal income tax Laws (discussed below) as of a specific date. This conformity is accomplished through several key Title 36 provisions.

³ “Tax arbitrage encompasses tax planning devices that exploit differences in the tax laws of two different jurisdictions. Whereas differences in state tax bases create tax-planning opportunities for both individual and corporate taxpayers, federal-state tax-base conformity may reduce deadweight loss from tax arbitrage by minimizing differences in state tax bases.” Ruth Mason, *Delegating Up: State Conformity with the Federal Tax Base*, 62 Duke L.J. 1267, 1283 n. 7 (2013) (footnotes omitted), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3382&context=dlj>.

⁴ Jared Walczak, *Toward a State of Conformity: State Tax Codes a Year After Federal Tax Reform* (Jan. 2019), available at <https://files.taxfoundation.org/20190201130844/Toward-a-State-of-Conformity-State-Tax-Codes-a-Year-After-Federal-Tax-Reform-FF-631.pdf>. See also Mason, *supra* note 1.

⁵ This is also known as the dynamic incorporation of foreign laws. Dorf, Michael C., *Dynamic Incorporation of Foreign Law* (2008), Cornell Law Faculty Publications, Paper 114, available at <http://scholarship.law.cornell.edu/facpub/114>.

⁶ 36 M.R.S. §§ 5122 & 5200-A.

The primary linkage is the Title 36 definition of “Code”:

§111. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

...

1-A. Code. "Code" means the United States Internal Revenue Code of 1986 and amendments to that Code as of [a certain date – December 31, 2023, currently].⁷

The “United States Internal Revenue Code of 1986” is the federal codification of the tax laws in Title 26 of the United States Code.⁸ Title 36’s definition of “Code” thus incorporates, by reference, the entirety of the IRC into Maine state income tax law, unless otherwise specifically excepted, as of the date specified until the next amendment to the conformity date.

The term “Code” is then used within Title 36, Part 8 (Income Taxes) to define basic income tax terms in Part 8 (definitions in section 5102), other specific provisions of Part 8 and elsewhere in Title 36, and generally for determining Maine tax attributes for any given tax year.

The next basic building block is the Part 8 definition of “other terms” as having “the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless different meanings are clearly required.”⁹ Note that this definition addresses not only the Code, but also other income tax “Laws of the United States” that are in effect as of the conformity date in section 111(1-A)¹⁰ Maine income tax law sometimes refers to the “Laws of the United States” broadly, incorporating all federal income tax laws, and sometimes more narrowly refers to the Code or to specific sections of the Code. One example of when this distinction matters is whether unallocated¹¹ federal income tax law, which is often used in federal disaster relief bills, should apply to Maine income tax law.

The most important Maine tax terms that derive from the Code and other laws of the United States are “Maine taxable income”¹² and “Maine net income.”¹³ These terms form the starting point of the Maine tax computation for individuals and corporations, respectively, and use the federally defined terms of “adjusted gross income” and “taxable income.” These two definitions incorporate every portion of the

⁷ 36 M.R.S. § 111(1-A). The conformity date is updated periodically – usually through either the annual DAFS/MRS conformity bill or an Administration Budget Bill. The current Title 36 conformity date of December 31, 2023 was enacted by PL 2023, c. 619, §1. PL 2023, c. 619, §2 provides that the amendment of the conformity date “applies to tax years beginning on or after January 1, 2023 and to any prior tax year as specifically provided by the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2023.”

⁸ 26 U.S.C. § 7701(29).

⁹ 36 M.R.S. § 5102(11).

¹⁰ ““Laws of the United States” means the Code, as defined in section 111, subsection 1-A, and other provisions of the laws of the United States relating to federal income taxes as of the date specified in section 111, subsection 1-A.” *Id.* § 5102(1-D).

¹¹ An unallocated provision is a statutory provision that will not be codified within the United States Code or the Maine Revised Statutes.

¹² *Id.* § 5121.

¹³ *Id.* § 5102(8).

“Laws of the United States” necessary to define and determine federal adjusted gross income and federal taxable income.¹⁴ Many other provisions of Maine income tax law follow these patterns.¹⁵

Code citation conformity

Some Maine income tax provisions use federal tax terms and cite to the Code for their definition. In addition to the following examples, hundreds of other Code references exist in Title 36.

¹⁴ The definition of “Maine net income” explicitly includes the laws of the United States stating, “taxable income ... under the laws of the United States,” *Id.* On the other hand, “Maine taxable income” relies on the definition of “other terms” to apply the laws of the United States to the term “adjusted gross income,” §§ 5102(11) & 5121.

¹⁵ Some provisions rely on the “other terms” definition and others make specific reference to the Laws of United States.

Examples:

- **General Code reference.** An example of a general Code reference is Maine’s previous definition of Maine taxable income. Prior to September 19, 2019, Maine taxable income referred to the Code definition of “federal adjusted gross income.”

The Maine taxable income of a resident individual is equal to the individual's federal adjusted gross income *as defined by the Code* with the modifications and less the deductions and personal exemptions provided in this chapter.¹⁶

The Department of Administrative and Financial Services included in a department bill a provision removing this Code reference. The bill was enacted into law.¹⁷

- **Specific Code reference.** An example of a specific Code reference is Maine’s previous standard deduction.

1. Amount. For tax years beginning on or after January 1, 2018, the standard deduction of a resident individual is equal to the standard deduction as determined in accordance with the *Code, Section 63*, subject to the phase-out under subsection 2.¹⁸

Maine Revenue Services interpreted the specific Code reference to exclude unallocated federal disaster relief provisions¹⁹ that increased the federal standard deduction in some cases.²⁰ In future years, Maine came into conformity with similar unallocated disaster relief provisions²¹ by enacting a similar Title 36 provision without the Code reference.²²

1-A. Amount; on or after January 1, 2020. For tax years beginning on or after January 1, 2020, the standard deduction of a resident individual is equal to the federal standard deduction, subject to the phase-out under subsection 2.²³

- **Specific Code reference.** Maine’s income tax credit for adult dependent care expenses uses the term “applicable percentage” and cites a specific Code subsection for its definition.

C. "Applicable percentage" has the same meaning as in the *Code, Section 21(a)(2)*.²⁴

The federal American Rescue Plan Act of 2021 increased the applicable percentage but did so by enacting a new subsection (g)(3) instead of amending subsection (a)(2).

(3) Increase in applicable percentage. Subsection (a)(2) shall be applied—
(A) by substituting “50 percent” for “35 percent”, and
(B) by substituting “\$125,000” for “\$15,000”.²⁵

This raised the question of whether the applicable percentage was 35 percent, as stated in the cited subsection, or 50 percent, as it was under federal law when applying the Code, Section 21. Maine Revenue Services applied IRC Sec. 21(a)(2) as modified by (g)(3)²⁶.

Federal action conformity

The preceding section and examples discuss conformity through the incorporation of federal Code definitions. At times, however, instead of incorporating federal definitions, a Maine income tax provision may refer to a specific action taken, or required to be taken, by the taxpayer at the federal level. For example, a taxpayer's State filing status,²⁷ accounting period,²⁸ and whether they may claim itemized deductions²⁹ are all based on positions taken on the taxpayer's federal income tax return.³⁰

Likewise, the Law Court held that a taxpayer's federal election to receive a credit instead of a deduction for foreign taxes paid was binding at the State level.³¹ The benefit of applying federal action conformity for Maine income tax purposes is clear: requiring taxpayers (and the State) to abide by valid elections made at the federal level drastically simplifies the computation of Maine tax and reduces tax arbitrage opportunities.

Title 36 exceptions to static conformity: express and implicit rolling conformity

Express rolling conformity. Despite being largely regarded as a "static conformity" state, Maine tax law includes several examples of rolling conformity to the Code or other dynamic incorporation of non-Maine laws, or at least suggest as much. On the other hand, some of these may be better characterized as Maine tax consequences that are triggered by federal law determinations. For instance:

- Distributions from "529 plans" used for the purpose of paying higher education expenses does not subject the plan participant to any state income or estate tax liability.³² Higher education

¹⁶ 36 M.R.S. § 5121 (LEXIS 2018 Maine Code Archive) (emphasis added) *amended by* P.L. 2019, c. 379, Pt. C, § 2 (effective September 19, 2019).

¹⁷ An Act To Make Technical Changes to the Maine Tax Laws, P.L. 2019, c. 379, Pt. C, § 2.

¹⁸ 36 M.R.S. § 5124-C(1) (LEXIS 2018 Maine Code Archive) (emphasis added) *amended by* P.L. 2019, c. 616, Pt. X, § 3 (emergency, effective March 18, 2020).

¹⁹ Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. No. 115-63, § 504(b)(1)(C), 131 Stat. 1168, 1183 (2017).

²⁰ 2018 Maine Resident, Nonresident or Part-year Resident Individual Income Tax Booklet, p. 4, Line 17 instructions.

²¹ Further Consolidated Appropriations Act, 2020, 116 P.L. 94, Division Q, § 204(b)(1)(C), 133 Stat. 2534, 3243.

²² An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021, P.L. 2019, c. 616, Pt. X, § 3.

²³ 36 M.R.S. § 5124-C(1-A).

²⁴ *Id.* § 5218-A(1)(C) (emphasis added).

²⁵ American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9631, 135 Stat. 4, 159 (2021) (codified at IRC § 21(g)).

²⁶ MRS Adult Dependent Care Credit Worksheet for Tax Year 2021, p. 2, specific instructions line 4.

²⁷ 36 M.R.S. § 5221(1).

²⁸ *Id.* § 5226(1).

²⁹ *Id.* § 5125(1).

³⁰ Other examples exist in Title 36, for instance, federal tax residency was used as a criterion for State tax residency until recently when it was determined that the State residency statutory provisions did not support that construction. *Id.* § 5102(5).

³¹ "[The taxpayer] was bound by that election under the federal tax law, and we find nothing in the Maine law that can be construed to relieve the corporation of the consequences of its choice for purposes of the state income tax." *Albany Int'l Corp. v. Halperin*, 388 A.2d 902, 906 (Me. 1978)

³² 20-A M.R.S. § 11479.

expenses is “defined in Section 529 of the federal Internal Revenue Code of 1986 and *amendments* to that Code.”³³

- Sales to “[i]ncorporated nonprofit home health agencies certified under the United States Social Security Act of 1965, Title XVIII, *as amended*,” are exempt from Maine sales tax.³⁴
- “Corporate small business investment companies, licensed under the United States Small Business Investment Act of 1958, *as amended*” are exempt from Maine income tax.³⁵
- The tax credit for Maine shipbuilding facility investment, the expired jobs and investment tax credit, and the expired shipbuilding facility credit all include a requirement that certain employees or jobs are covered by a retirement program “subject to the Employee Retirement Income Security Act of 1974 ... *as amended*.”^{36,37,38}
- In addition, there are dozens of references to federal statutes not in the Internal Revenue Code throughout Title 36 that lack a conformity date or a reference to amendments.

Compare the above examples with the recently enacted amendment to the retirement subtraction modification which provides “may receive under the federal Social Security Act and *amendments to that Act as of June 28, 2023*”³⁹.

Implicit rolling conformity. Conforming to taxpayer filing actions taken at the federal level (e.g., choice of filing status) implicitly involves some degree of rolling conformity because the actions taken at the federal level are controlled by current federal law, not the law as of the conformity date. For example, the federal Tax Cuts and Jobs Act (“TCJA”) changed the accounting method determination; broadening the small-business exception by increasing the gross-receipts-test amount to \$25 million or less, up from \$10 million or less.⁴⁰ This change allowed larger business to use cash method accounting at the federal level. Maine’s requirement that a taxpayer use the same accounting method for State purposes that they use for federal purposes⁴¹ raised an interesting dilemma: If a taxpayer used cash method accounting as allowed by current federal law but disallowed under federal law as of the conformity date, were they required to use the current federal accounting method for State purposes? MRS took the position that they were so required.

Another example of implicit rolling conformity is the linkage of Title 36 to changes in IRC-qualified retirement plans, such as an employer 401(k) plan or an Individual Retirement Arrangement (IRA). In some instances when federal tax laws have changed the definitions of eligible retirement plans, the Office of Tax Policy has not estimated the fiscal cost of conforming to those changes.⁴²

³³ *Id.* § 11471(7) (emphasis added).

³⁴ 36 M.R.S. § 1860 (16)(E) (emphasis added).

³⁵ *Id.* § 5202-A (emphasis added).

³⁶ *Id.* § 5215(3)(B).

³⁷ *Id.* § 5219-RR(1)(H)(3).

³⁸ *Id.* § 6851(8)(C).

³⁹ P.L. 2023, ch. 412, § ZZZ-2 (effective October 25, 2023, amending 36 M.R.S. § 5122(2)(M-2)).

⁴⁰ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, § 13102, 131 Stat. 2054 (2017) (codified at IRC § 448).

⁴¹ 36 M.R.S. § 5226(1).

⁴² For instance, the SECURE Act generally increased from 10 percent to 15 percent the maximum automatic elective deferral under an automatic enrollment safe harbor plan. The Setting Every Community Up for Retirement

Other types of conformity linkages

Without going into detail here, it should be noted that there are “second tier” levels of state tax law – federal tax law conformity issues that may be relevant in certain circumstances, including conformity to federal administrative law, sub-regulatory federal guidance, and federal judicial law.

D. The Maine Constitutional Limits on Delegation for Tax Conformity: Maine Const. Art. IX, § 9 and the Nondelegation Doctrine

The backdrop for Maine’s tax policy practice and Title 36 codification of IRC conformity, with its corresponding timing issues is the Maine State Constitution’s provision in Article IX, § 9, which provides:

Section 9. Power of taxation. The Legislature shall never, in any manner, suspend or surrender the power of taxation.⁴³

The key reference points for discerning and applying the boundaries of the Art. IX, § 9 limitation, and the nondelegation doctrine generally, are a handful of Maine Law Court cases and advisory opinions, various opinions of the Maine Office of the Attorney General, and the past administrative and legislative practice discussed above.⁴⁴

The original purpose of Art. IX, § 9, which became effective January 5, 1876, was to curb a legislative practice of including in charters of railroads and canal companies clauses purporting to create certain permanent immunities from taxation.⁴⁵ Since its enactment, however, § 9 has been applied beyond its original purpose with the Maine Supreme Court reasoning that “[t]he words “never” and “in any manner” create a strong and sweeping prohibition.”⁴⁶

Art. IX, §§ 8⁴⁷ & 9 have a long history in resolving the question of whether the Legislature may delegate the power to enact a tax or tax exemption to municipalities or other institutions. While there is still significant uncertainty on what the constitutional limits are, and whether they arise from §8 or §9, some guideposts have emerged. A municipality may not enact exemptions from the State property tax,⁴⁸ a municipality may not enact a property tax rebate or repayment without State authorization,⁴⁹ a municipality may not enact a non-property tax without State authorization, but possibly may with State

Enhancement (SECURE) Act of 2019, Pub. L. 116–94, Sec. 102 (enacted as part of the Further Consolidated Appropriations Act, 2020).

⁴³ Me. Const. art. IX, § 9.

⁴⁴ See also Appendix C “Maine Constitution, Article IX, Section 9 Case Law and Opinion Compilation.”

⁴⁵ *Bos. Milk Producers, Inc. v. Halperin*, 446 A.2d 33, 40 (Me. 1982).

⁴⁶ *Id.*

⁴⁷ Which, in addition to subsections on intangible property and current use programs, states “Section 8. Taxation. All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.”

⁴⁸ *Brewer Brick Co. v. Brewer*, 62 Me. 62 (1873); 1977 Me. AG LEXIS 249; 1979 Me. AG LEXIS 79; AG Letter, March 19, 2019.

⁴⁹ *Delogu v. City of Portland*, 2004 ME 18, 843 A.2d 33.

authorization,⁵⁰ a tax cannot be conditioned on approval by the taxpayers,⁵¹ a tax can be conditioned on the activity of a third-party if that activity is set on legislatively sufficient criteria for a significant independent purpose⁵².

Prohibition era criminal cases considering the delegation of Legislative authority held that incorporating federal law made after the State enactment would violate constitutional nondelegation principles.⁵³ Although these cases have not been overruled, more recent opinions have used more measured language when considering similar issues – even arguably going as far as reserving the issue of IRC rolling conformity for issues of trust taxation.⁵⁴

Apparent examples of ongoing incorporation of non-Maine law (referred to as rolling conformity in the context of IRC incorporation), or Maine tax events that are based on classifications under federal law, exist within Maine State tax law, and possibly in other areas of Maine law.⁵⁵ The Maine Supreme Court's opinion on the constitutionality of indexing individual income taxes to an external standard in the form of the Consumer Price Index sheds some light on the constitutional questions raised by these delegations.⁵⁶ In particular, the court's positive discussion of a Michigan case wherein a "state statute that limited a particular property tax exemption to nonprofit corporations obtaining financing under the National Housing Act was held not to be an unconstitutional delegation to the Secretary of Housing and

⁵⁰ *Auburn v. Paul*, 84 Me. 212, 24 A. 817, (1892); *Opinion of Justices*, 159 Me. 420, 1975 Me. AG LEXIS 49; AG Letter, March 26, 1990; AG Letter, April 24, 2019.

⁵¹ *Bos. Milk Producers*; 1975 Me. AG LEXIS 291/300; 1996 Me. AG LEXIS 2; 2006 Me. AG LEXIS 1; 2006 Me. AG LEXIS 5.

⁵² See Appendix C discussion of taxes conditioned on third-party activity.

⁵³ The precise question presented for our decision, therefore, is whether the Act of April 4, 1919, so far as it purports to incorporate by reference into the section thereby amended, future enactments of Congress establishing a rule, test or definition of intoxicating liquors, and declaring such liquors to be intoxicating within the meaning of Chap. 127 of the Revised Statutes, is valid.

We have no hesitation in answering the question in the negative. Under a constitution in which the legislative power is vested, as in the Constitution of Me. "in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other and both to be styled the Legislature of Maine," subject to the reservations of the initiative and referendum amendment, such legislation constitutes an unlawful delegation of legislative power, and an abdication by the representatives of the people of their power, privilege and duty to enact laws. The authorities are so unanimous on the question that extended citation is unnecessary.

State v. Intoxicating Liquors, 121 Me. 438, 442-43, 117 A. 588, 590 (Me. 1922), see also *State v. Webber*, 125 Me. 319, 321, 133 A. 738, 740 (Me. 1926).

⁵⁴ Questions raised by the incorporation of future federal law are not presently before us. No claim is made as to an amendment to the existing Internal Revenue laws incorporated into Section 3956 after its enactment in 1971, and our perusal of the pertinent federal statutes reveals none. Hence, we now have no concern with the constitutional validity of Section 3956 conceived as purportedly operative to incorporate future federal law, and we intimate no opinion on the subject.

Canal Nat'l Bank v. Old Folks' Home Asso., 347 A.2d 428, 440 (Me. 1975).

⁵⁵ See Exceptions to Static Conformity: Practical Considerations and Certain Legislative provisions, *infra*.

⁵⁶ See Appendix C discussion of taxes conditioned on third-party activity.

Urban Development, even though the Secretary, in effect, determined who would obtain financing under the National Housing Act”⁵⁷

Given the Law Court’s statements in *Canal Bank* and in the 1982 Advisory Opinion, it seems likely that the broad statements made in criminal prohibition era cases do not completely apply to civil tax questions and that the contours of allowable dynamic incorporation are unknown. However, the delegation principles so far articulated by the Law Court likely preclude complete rolling conformity with the entire IRC or with all federal laws related to income tax because doing so would be delegating broad policy decisions to Congress without meaningful standards to guide the delegated powers. The only policy decision reserved to the Maine Legislature would be that of ongoing conformity. On the other hand, Congressional tax bills address countless important policy decisions (revenue, climate, equity, economic, etc.).

While complete rolling conformity to the IRC is likely off the table, the cases discussed in Appendix B show that Legislature has significant authority to delegate, but not surrender, its tax authority. Some key principles are that the delegation is authorized by State law,⁵⁸ may be revoked by the Legislature,⁵⁹ and has legislatively sufficient criteria to guide it⁶⁰.

E. “Late” federal changes - MRS tax admin forms and systems timing

MRS is routinely faced with conformity issues caused by Congress enacting federal tax legislation after the Maine Legislature has adjourned.⁶¹ These issues are further compounded when the federal tax legislation is enacted after Maine income tax form, instructions, and information systems design work design is largely complete.

For the State tax filing season to begin roughly concurrent with the federal tax filing season, form design must be complete before the upcoming Legislative Session, see the Timeline sidebar. This creates a recurring tension between implementing the filing season based on current State law, complete nonconformity with any post-conformity date federal changes, or expected legislation that will very likely conform to most federal changes with potentially important, but limited, decoupling.

⁵⁷ *Op. of Justices*, 460 A.2d 1341, 1348 (Me. 1982).

⁵⁸ *See generally Delogu*.

⁵⁹ *See* Appendix C discussion of the original purpose of Art IX, § 9.

⁶⁰ *See* Appendix C discussion of taxes conditioned on third-party activity.

⁶¹ *See* Appendix A, *infra*, for the recent history of late-enacted federal tax legislation and the corresponding State responses.

When federal tax legislation is enacted after MRS system design is complete, the recurring practice has been to begin filing season with Maine tax forms that largely conform to the federal legislation as reflected in IRS returns. When conformity is subsequently enacted by the Legislature, no administrative difficulties are presented. However, as shown by the TCJA example, when the federal tax legislation is controversial, State conformity legislation may be delayed and the State may choose to decouple from some of the federal provisions. This requires the issuance of new forms or instructions, or both, and related IT systems changes; MRS has developed techniques to allow for these changes, including reserving blank lines and amending form instructions to limit the need to issue new forms or revise computer software. However, using these methods still creates a significant burden on taxpayers and the State, and compliance with the changes can be low, with the possibility of delayed filings, amended returns, and interest and penalty waivers.

When federal tax legislation is enacted before, or during, the tax systems design process, including form and instruction design, MRS' recurring practice across recent Administrations and Legislatures has been to develop income tax forms based on the current Administration's upcoming tax conformity proposal.⁶² This method is useful if it appears likely that the Legislature will agree to the Administration's proposal, thereby avoiding taxpayer and MRS costs described in the previous paragraph due to changes being made to returns or instructions during the filing season. As such, best practice is to involve key Legislative leaders, including Legislative and Taxation Committee leadership and ranking members, early in this process. If the Maine Legislature enacts conforming legislation that deviates from the developed forms, MRS must update forms or instructions, or both, and notify taxpayers. If the filing season has already started, this may require taxpayers to file amended returns.

This balance between competing mandates, and the corresponding best practices in addressing conformity issues, shifts through the year.

⁶² Another option would be to delay filing season, at least for affected taxpayers, while the Legislature considers conformity and, if necessary, forms are redesigned. Historically, the State has not chosen this option. Likely due to the potentially large negative impact on both taxpayers and the State that delaying filing season could cause. The State has generally chosen not to conform to federal tax legislation affecting prior tax years.

Timeline

After the close of the Maine legislative session, MRS develops the necessary forms, worksheets, instructions, and booklets for the upcoming tax filing season to reflect the Maine tax law changes.

After the forms are completed by the Income Tax Division, generally a two-month process finishing in the end of August, the forms are reviewed by the Quality Assurance (QA) Division. During the month of September, QA will identify any necessary systems changes and begin working with the tax software vendors to implement the forms.

Throughout September, as the forms are finalized, they are provided to software vendors, who will develop and test their tax software products. During October and November, the vendors develop their products and MRS, OIT, and outside contractors develop, test, and implement any necessary system changes. Finally, MRS reviews and approves vendor tax software and distributes print and downloadable copies of tax materials during the month of December.

A critical point in this process occurs when the forms are provided to software vendors and MRS begins making system changes. After this point, it becomes increasingly difficult for MRS to administer any further changes.

- At all points along the process, and no matter when Congress enacts tax legislation, MRS should make clear to taxpayers and tax professionals the legal status of the forms and guidance that it is issuing.
- Before the filing season begins, the form design process is in preparation for a potential future legal requirement, as such, the balance is shifted *toward preparing for the likely future legal requirement*, in most cases, the enactment of conformity legislation.
- After the filing season, however, the forms are being used to calculate the tax liability, or refund amount, of actual taxpayers. This can only be done based on current law. As such, the balance has shifted toward implementing the law as it currently stands despite the possibly contrary returns and instructions that have been sent to taxpayers.
- In the case of calculating tax liability and administering the resulting underpayments or overpayments, the balance shifts heavily toward implementing current law as the tax due date approaches – at this time, taxpayers should have the forms and guidance necessary to calculate their tax liability before it is due.

IV. Conclusion and Recommendations

While Maine’s historical conformity practices are functional, have referenced best practices in the context of the shifting balance of competing mandates, and are based on sound principles of fair and effective administration of the tax law, our review of the variety of conformity circumstances, administrative practices, and underlying law have highlighted important issues in the incorporation of federal income tax law and related timing issues, and the consistent application of conformity methods and conformity scope. These issues have constitutional, statutory, and administrative dimensions and should be addressed directly while engaging key players and adopting a broader, more layered view on limited rolling conformity and related delegation questions.

Appendix A – Brief review of late enacted federal tax legislation

The period of 2016-2021 provides examples of different challenges faced by the State due to late enacted federal tax legislation and the ways they were resolved. Except for the TCJA, in during this period conformity legislation has been unnecessary for the concurrent filing season or has been enacted near the beginning of the filing season, though sometimes after refunds have begun issuing.

2016. Federal changes for tax year 2016 were extremely limited, impacting only a very small number of taxpayers.⁶³ MRS did not include conformity modifications on tax year 2016 forms and retroactive conformity legislation became law on April 26, 2017.

2017. On December 22, 2017, the most significant federal tax legislation in decades, the Tax Cuts and Jobs Act, was signed, with some of the tax law provisions becoming effective in tax year 2017.⁶⁴ Because MRS forms for tax year 2017 were developed before the enactment of the TCJA, they did not include any modifications to decouple from TCJA provisions; in effect, they fully conformed with the TCJA. Due to the significance of the changes in the TCJA and the political climate surrounding its enactment and conformity legislation, full conformity with the TCJA was not expected, in fact, conformity legislation was not enacted until September 12, 2018 – well past the tax due date of April 17th.

In January of 2018, MRS issued a tax alert notifying taxpayers of the discrepancy between the tax forms and current law, the intent of the administration to propose conformity legislation, and to expect future direction from MRS if the Legislature did not enact full conformity legislation.⁶⁵ In May, after the close of the filing season, MRS issued another tax alert notifying taxpayers that Maine had not enacted conforming legislation and that MRS expected “to issue guidance within the next six weeks to inform taxpayers of the specific tax items and the procedures to be used to correctly file 2017 Maine income tax returns, amend 2017 Maine income tax returns already filed, and make changes to 2018 Maine estimated tax and withholding payments.”⁶⁶ In July, MRS issued another tax alert with those instructions.⁶⁷ In September, after the enactment of conformity legislation⁶⁸, MRS issued another tax alert detailing how to file consistent with that legislation and providing interest and penalty relief for affected taxpayers. Finally, MRS released additional guidance on withholding and the Maine tax treatment of federal deferred foreign income (also known as repatriation) in October.⁶⁹

⁶³ The “United States Appreciation for Olympians and Paralympians Act of 2016”, PL 114-239, excludes from federal gross income the value of any medal and the prize money paid by the United States Olympic Committee as a result of Olympic and Paralympic games for tax years beginning after December 31, 2015, for taxpayers whose federal adjusted gross income is not more than one million dollars (\$500,000 if married filing separately).

⁶⁴ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97.

⁶⁵ Maine Tax Alert, Volume 28, Issue 1.

⁶⁶ Maine Tax Alert, Volume 28, Issue 2.

⁶⁷ Maine Tax Alert, Volume 28, Issue 5.

⁶⁸ An Act To Conform to the United States Internal Revenue Code of 1986 and Provide Tax Relief to Maine Families, PL 2017, c. 474.

⁶⁹ Maine Tax Alert, Volume 28 Issues 9 & 11.

2018. In 2018 no federal tax legislation was enacted after the then current March 23, 2018 conformity date.

2019. In 2019, there were again retroactive federal income tax provisions enacted in December.⁷⁰ This bill included federal “extenders” and disaster relief provisions. The timing and content of this bill was similar to many before it, and likely many after it, making MRS response to the bill much more routine than with the TCJA. Because the federal changes were enacted after MRS form development, no modifications were included on the forms to deviate from the new legislation – in effect, the Maine tax forms conformed to these federal changes prior to the enactment of any conformity legislation.⁷¹ In January, MRS released a tax alert notifying taxpayers that the available forms were consistent with conformity to the federal changes and the Maine conformity legislation being proposed by the Administration.⁷² It went on to note that amended returns could be required if the Legislature did not enact the Administration’s proposal. Conformity legislation was enacted on March 18, 2020.⁷³

2020. 2020 brought federal COVID relief legislation with significant tax components and effective dates applying as far back 2018 (causing form updates for TY 2018 and 2019). Two federal bills were enacted over the spring and summer of 2020.⁷⁴ MRS presented a proposed conformity bill to these items to the Taxation Committee in July, but the Legislature did not return to session to address it. A third federal law was enacted on December 27, 2020.⁷⁵ And finally a fourth bill affecting tax year 2020 was enacted on March 11, 2021.⁷⁶

MRS developed tax year 2020 forms and computer systems consistent with the Administration’s conformity proposal to the first two bills. Because the forms were prepared before the third bill, they did not include modifications to decouple from any of these provisions, even though the Administration was proposing to decouple from some of them. On March 18, 2021, conformity legislation was enacted largely consistent with the forms that had been issued, however, some form updates were required.⁷⁷ Another conformity bill was enacted before the end of the session, though this one dealt only with the upcoming tax year.⁷⁸

⁷⁰ Further Consolidated Appropriations Act, 2020, Public Law No: 116-94.

⁷¹ As discussed above, the standard deduction was not in full conformity because of the use of federal unallocated language and the specific statutory links between the state and federal standard deduction.

⁷² Maine Tax Alert, Volume 30, Issue 1.

⁷³ An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021, PL 2020, c. 616, pt. X.

⁷⁴ Families First Coronavirus Response Act, Pub. L. No. 116-127 and Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136.

⁷⁵ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260.

⁷⁶ American Rescue Plan Act of 2021, Public Law No: 117-2.

⁷⁷ An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2021, PL 2021, c. 1. Maine Tax Alert, Volume 31, Issues 3, 8, & 10.

⁷⁸ An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2021, June 30, 2022 and June 30, 2023, PL 2021, c. 398, pt. H.

2021. In 2021 no federal tax legislation was enacted after the then current April 30, 2021 conformity date. A conformity bill was not necessary for the tax year 2021 filing season, though one was eventually enacted⁷⁹ when it became clear no further federal legislation would be enacted while the Maine Legislature was in session.

2022. In 2022, three pieces of significant federal tax legislation were enacted: the Inflation Reduction Act (signed August 16, 2022)⁸⁰, the CHIPS and Science Act of 2022 (signed August 9, 2022)⁸¹, and the SECURE Act 2.0 (part of the Consolidated Appropriations Act of 2023, signed December 29, 2022)⁸². MRS developed forms consistent with the Administration's proposal to conform these federal tax law changes. On July 11, 2023, conformity legislation updating the conformity date to December 31, 2022, was enacted consistent with the forms that had been issued.⁸³ This conformity legislation became effective October 25, 2023.

In addition, the conformity legislation decoupled the State standard deduction, personal exemption, and dependent exemption credit from the IRC for tax years beginning in 2026 and later in order to avoid the effect of the federal provisions' scheduled expiration.

2023. In 2023 no federal tax legislation was enacted. A conformity bill was not necessary for the tax year 2023 filing season, though one was eventually enacted⁸⁴ when it became clear no further federal legislation would be enacted while the Maine Legislature was in session. The emergency legislation became effective April 12, 2024.

⁷⁹ An Act To Update References to the United States Internal Revenue Code of 1986 Contained in the Maine Revised Statutes, PL 2021, c. 594.

⁸⁰ Pub. L. 117-169.

⁸¹ Pub. L. 117-167.

⁸² Pub. L. 117-328.

⁸³ An Act Making Unified Appropriations and Allocations from the General Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2023, June 30, 2024 and June 30, 2025, PL 2023, 412.

⁸⁴ An Act To Update References to the United States Internal Revenue Code of 1986 Contained in the Maine Revised Statutes, PL 2023, c. 619.

Appendix B – Maine Constitution, Article IX, Section 9 Case Law and Opinion Compilation

Maine Constitution, Article IX, Section 9

§ 9. Power of taxation. The Legislature shall never, in any manner, suspend or surrender the power of taxation.⁸⁵

Law Court Decisions, Supreme Court Advisory Opinions, and Attorney General Opinions

There is a threshold issue of whether the levy in question constitutes a fee or a tax. Those that are considered fees are not subject to Art. IX, § 9.⁸⁶

Original purpose. “The original purpose of article IX, section 9 of the Maine Constitution, which was adopted by the people of Maine to become effective January 5, 1876, was to curb a legislative practice of including in charters of railroads and canal companies clauses purporting to create certain permanent immunities from taxation.”⁸⁷ Early Art. IX, § 9 cases addressed this issue in some depth, but the issue recurs in even more recent opinions.⁸⁸ Since its enactment, § 9 has been applied beyond its original

⁸⁵ Me. Const. art. IX, § 9.

⁸⁶ 1978 Me. AG LEXIS 66 (advising that Maine turnpike tolls are a user fee and not a tax); 1979 Me. AG LEXIS 79 (advising that certain municipal service chargers were a fee and not a tax so long as certain criteria were met but that levies labeled service charges could be disguised property taxes under certain circumstances); *Bd. of Overseers of the Bar v. Lee*, 422 A.2d 998, 1004 (Me. 1980) (finding Maine Bar Rule 10 imposing attorney registration fees was a fee and not a tax); *Bos. Milk Producers, Inc. v. Halperin*, 446 A.2d 33, 40 (Me. 1982) (holding that the milk tax was a tax subject to Art. IX, § 9 and not a license fee); *Me. Milk Producers, Inc. v. Comm’r of Agric., Food & Rural Res.*, 483 A.2d 1213, 1218-19 (Me. 1984) (“The amounts deducted from the Maine Milk Pool for promotional purposes were correctly characterized by the Superior Court as taxes while the funds taken out of the pool for the purpose of covering expenses of administration do not constitute a tax and the payments made into the pool by Maine market dealers for redistribution to producers are not assessments at all.”); 1996 Me. AG LEXIS 2, *8 (the Sardine Excise Tax is a tax within the meaning of Art. IX, § 9); *Daley v. Comm’r, Dep’t of Marine Res.*, 1997 ME 183, ¶ 9, 698 A.2d 1053, 1057 (“because the [per tag] fee is designed to pay for administrative costs and not to raise general revenue, the Legislature did not improperly delegate its power to tax to the [Department of Marine Resources]”); *Me. Assoc. of Health Plans v. State*, 2006 Me. Super. LEXIS 169, *11 (“the [Dirigo Health] savings offset payments are appropriately characterized as costs of administering a program under the police power of government, not a tax”).

⁸⁷ *Bos. Milk Producers*, 446 A.2d at 40.

⁸⁸ *State v. Dexter & N. R. Co.*, 69 Me. 44, 49 (1879) (The Maine Supreme Court held that the Legislature was prohibited from applying a new tax to a railroad company by the terms of its articles of incorporation which stated that “no other tax than that therein provided for shall ever be levied or assessed on said corporation or any of its privileges or franchises.” The court rejected the argument that such a prohibition was unconstitutional under Art. IX, § 9 because § 9 had not been enacted at the time the charter had been granted.); *GREAVES v. HOULTON WATER Co.*, 143 Me. 207, 213, 59 A.2d 217, 220 (1948) (The State argued that an exemption for the Houlton Water Co. was unconstitutional under Art. IX, § 9 because it purported to prohibit future amendment or repeal of the exemption. The Maine Supreme Court upheld the exemption reasoning “it is apparent that the power to repeal the exemption is retained by the Legislature both under the Constitution and under the statute, so, of course, this power cannot be said to be suspended.”); *Op. of Justices*, 155 Me. 30, 48, 152 A.2d 81, 90 (1959) (The Maine Supreme Court advised that certain provisions of a proposed statute were prohibited by Art. IX, § 9, reasoning “The Act purports first, to immunize “Forest Crop Land” from legislative power ever to change or repeal its tax status or liability by the device of an asserted contract between the State and the owner through a period of fifty

purpose with the Maine Supreme Court reasoning that “[t]he words “never” and “in any manner” create a strong and sweeping prohibition.”⁸⁹

Local (or other institution or taxpayer) option taxes and exemptions. Art. IX, §§ 8 & 9 have a long history in resolving the question of whether the Legislature may delegate the power to enact a tax or exemption to municipalities or other institutions. See, e.g., the following:

- ***Brewer Brick Co. v. Brewer.***⁹⁰
- ***Auburn v. Paul.***⁹¹
- ***Opinion of Justices, 159 Me. 420.***⁹²
- **1975 Me. AG LEXIS 291/300.**
- **1977 Me. AG LEXIS 249.**
- **1977 Me. AG LEXIS 346.**
- ***Boston Milk Producers, Inc. v. Halperin.***⁹³
- **1984 Me. AG LEXIS 2.**
- **AG Letter, March 26, 1990.**
- **1996 Me. AG LEXIS 2.**
- ***Delogu v. City of Portland.*** The city of Portland enacted a tax rebate or tax repayment program without state statutory authorization leading to a challenge that the program violated Art. IX, §§ 8 & 9. The Maine Supreme Court held “the Portland Property Tax Relief Program violative of Article IX, Section 8 of the Maine Constitution and the principles we have stated in interpreting Article IX, Section 8 to bar individual municipalities, without legislative authorization that meets the standards of Article IX, Section 9, from creating exemptions or abatement that result in unequal apportionments or assessments of real property taxes.”⁹⁴ The Court reasoned that “the history of Article IX, Section 8, combined with Article IX, Section 9, indicates that individual municipal governments must be treated very differently from the Maine Legislature, and that municipalities are prohibited from taking unilateral actions to adopt exemption, abatement, or repayment

years, unless sooner terminated, and second, to set for the life of such contract a tax, designated “acreage share,” on the land without regard to just value. The Legislature cannot so suspend or surrender its power to tax under the Constitution.”); *Blair v. State Tax Assessor*, 485 A.2d 957, 959 (Me. 1984) (the Legislature creating a contractual right to an ongoing exemption would violate Art. IX § 9 by contracting away the power of taxation and went on to hold that “the plaintiffs have no contractual entitlement to tax-exempt retirement benefits.”).

⁸⁹ *Bos. Milk Producers*, 446 A.2d at 40.

⁹⁰ *Brewer Brick Co. v. Brewer*, 62 Me. 62, 74 (1873). While this case predates Art. 9, § 9, it is informative because it deals with the issue of whether, or to what extent, the Legislature may delegate tax authority to municipalities. See also 1979 Me. AG LEXIS 79, *17-20 (applying *Brewer Brick*).

⁹¹ *Auburn v. Paul*, 84 Me. 212, 215, 24 A. 817, 818 (1892); see also 1975 Me. AG LEXIS 49 (applying the reasoning of *Auburn*).

⁹² Op. of Justices, 159 Me. 420, 428, 191 A.2d 627, 632 (1963), see also 1977 Me. AG LEXIS 249 *supra*.

⁹³ *Id.* at 39.

⁹⁴ *Delogu v. City of Portland*, 2004 ME 18, ¶ 30, 843 A.2d 33, 40.

schemes that result in unequal apportionment of property tax burdens within their boundaries.”^{95, 96, 97}

- **AG Letter, March 19, 2019.**
- **AG Letter, April 24, 2019.**
- **2006 Me. AG LEXIS 1; 2006 Me. AG LEXIS 5.**

Several AG opinions consider the contours of county authority and the application of Art. IX, § 9, applying the constitutional principles developed regarding municipalities to the counties.⁹⁸

Third-party activity. Several opinions approved of taxes, or spoke approvingly of taxes, that were conditioned on the activity of a third-party if that activity is set on legislatively sufficient criteria for a significant independent purpose or disapproved of taxes when those criteria were not present. See, e.g., the following:

- ***Opinion of Justices, 155 Me. 30.***⁹⁹
- ***Acton v. McGary.***¹⁰⁰
- ***Opinion of the Justices, 460 A.2d 1341.*** In an advisory opinion, the Maine Supreme Court advised that indexing individual income taxes to an external standard in the form of the Consumer Price Index does not violate Art. IX, § 9 reasoning that the goal of constitutional prohibitions against legislative delegation “is to make certain that delegated powers were guided by meaningful standards.” Because the considered formula “uses the Consumer Price Index, which is determined by objective economic criteria and is widely used to measure adjustments in wages, pensions, and other money transfers” those standards were in place. The court went on to state that it is “Maine voters, not the United States Department of Labor, enact[ing] the formula for adjusting dollar bracket amounts in the tax rate schedules, standard deduction, and personal exemption.”¹⁰¹

The Maine Supreme Court approvingly quoted from other state courts “the Massachusetts legislature did not unconstitutionally delegate its taxing powers by enacting a statute providing that state tax deductions for savings and loan associations were to be determined in part by reserve requirements imposed by a federal agency” and a Michigan “state statute that limited a particular property tax exemption to nonprofit corporations obtaining financing under the National Housing Act was held not to be an unconstitutional delegation to the Secretary of

⁹⁵ *Id.* at 37.

⁹⁶ The dissent, on the other hand, would have differentiated between a tax rebate and a tax exemption, and considered the Portland program to be a tax rebate outside the scope of Art. IX, § 8, but still would have held it a violation of Art. IX, § 9, *id.* at 32.

⁹⁷ The State has since adopted statutory authorization for municipalities to enact property tax relief programs, 36 M.R.S. § 6232, and the City of Portland has enacted the Portland Senior Tax Equity Program (P-STEP). The programs allowed pursuant to §6232 generally, and the P-STEP program specifically, provide benefits that do not resemble property tax exemptions to the same extent as the program in *Delogu* which, like a tax exemption, provided benefits based on a portion of assessed value and the property tax rate.

⁹⁸ 1975 Me. AG LEXIS 49; 1976 Me. AG LEXIS 67; 1976 Me. AG LEXIS 397; 1977 Me. AG LEXIS 286; 1978 Me. AG LEXIS 85.

⁹⁹ *Op. of Justices, 155 Me. 30, 48-49, 152 A.2d 81, 90 (1959).* See also discussion of binding future Legislatures *supra* n. 3.

¹⁰⁰ *Acton v. McGary, 356 A.2d 700, 708 (Me. 1976).*

¹⁰¹ *Op. of Justices, 460 A.2d 1341, 1347-49 (Me. 1982).*

Housing and Urban Development, even though the Secretary, in effect, determined who would obtain financing under the National Housing Act.”¹⁰²

- ***Lucas v. Me. Com. of Pharmacy***. While not a tax case, *Lucas* deals with issues of delegation and is cited in Art. IX, §9 cases. The Maine Supreme Court reasoned “Courts have long recognized that a fact or event that has a significance independent of a legislative act may be incorporated by reference into a statute without running afoul of the nondelegation doctrine. Professor Davis has written that ‘statutes whose operation depends upon private action which is taken for purposes which are independent of the statute usually pass constitutional muster.’”¹⁰³
- ***Me. Milk Producers, Inc. v. Comm’r of Agric., Food & Rural Res.*** ¹⁰⁴
- **1984 Me. AG LEXIS 2.**
- **1996 Me. AG LEXIS 3.**

Other opinions:

- ***Frankfort v. Waldo Lumber Co.***¹⁰⁵
- **1976 Me. AG LEXIS 377.**
- **1977 Me. AG LEXIS 244.**
- **1977 Me. AG LEXIS 476; 1977 Me. AG LEXIS 472.**

¹⁰² *Id.* at 1348.

¹⁰³ *Lucas v. Me. Com. of Pharmacy*, 472 A.2d 904, 909 (Me. 1984).

¹⁰⁴ *Me. Milk Producers*, 483 A.2d at 1220; *see also Bos. Milk Producers*, 446 A.2d at 39 (“We may suppose for the sake of argument that a contingent taxing statute would be valid if the contingency on which it was to go into effect were an event having significance independent of a decision by potential tax payers of the question whether to make the statute effective by voting for the tax.”).

¹⁰⁵ *Frankfort v. Waldo Lumber Co.*, 128 Me. 1, 5-6, 145 A. 241, 243 (1929).