

## NOT THIS, NOT NOW Coalition

June 9, 2009

Delivered by Hand

Governor John E. Baldacci  
State House Station 1  
Augusta, ME 04333-0001

RE: Veto of LD 1088

Dear Governor Baldacci,

We are writing to respectfully request that you veto the tax reform legislation rushed through the Senate and House late last week. Below are some of the reasons and concerns that we believe warrant your veto of LD 1088.

- 1. The Legislature acted too quickly when it enacted within a span of 24 hours the most major change in Maine tax law in 40 years, leaving up in the air many unknown effects and unresolved questions.**

LD 1088 was introduced on March 17, received a nearly 8-hour public hearing on April 2, and was worked on by the Taxation Committee only 5 times between May 21 and June 1 (when it was reported out of committee with a far-reaching amendment along party lines). Although the tax reform issue has been discussed for many years, the specific proposal considered this year received very little formal discussion or scrutiny. Also, 7 members of the Taxation Committee were new to the committee; they had never before participated in committee deliberations in previous legislative sessions on the complicated issue of major tax reform.

- 2. The sweeping changes in Maine tax law includes the expansion of the 5% sales tax to about 100 services, including services that are used by businesses of all sizes. Some of the services are not taxed anywhere else in New England (2007 FTA Survey).**

LD 1088 significantly expands the sales tax to include 58 listed amusement, entertainment, and recreation services; 23 listed personal property tax services; 17 listed installation, repair, or maintenance services. Some of these services are not taxed anywhere else in New England (2007 survey from the Federation of Tax Administrators, [www.taxadmin.org](http://www.taxadmin.org)); many are taxed in fewer than half the states in the nation, and some are taxed in only a handful of states. Thus, in trade for a 6.5% flat income tax rate, Maine is rising in the ranks of states with the most taxes on consumers and businesses that provide taxable services. Some of these new sales taxes may

have an especially regressive effect on lower-income residents and those living on fixed incomes.

**3. The effect of new and higher taxes on the businesses community has not been adequately evaluated and could prove harmful to the Maine economy.**

Most of the businesses that provide services subject to the sales tax expansion are small companies that collectively help form the backbone of the Maine economy and will be needed as a source of jobs for Maine workers. The effect of LD 1088 on these businesses and their owners has not been considered or, if considered, dismissed by proponents of the taxes.

**4. The new household credits, which are phased out for taxpayers after certain income thresholds, are a particularly significant change that is not well understood or adequately analyzed.**

LD 1088 eliminates all deductions and exemptions and replaces them with a complicated system of household credits. Some initial analyses suggest the household credit system may particularly harm middle income families (e.g., \$60,000 to \$200,000 taxable income range) and people with high deductible expenses (e.g., healthcare costs, cost of nursing home care, etc.) in relation to their incomes. The new household credits may help explain why Maine Revenue Services estimates 31,000 people will see an income tax increase. Many people will be worse off under the new flat rate and household credit plan than they are under the current income tax law.

**5. LD 1088 increases taxes on the tourism sector and harms the ability of affected companies to weather the current recession.**

Owners of businesses in the tourism sector presented sobering testimony last April on the heavy toll the recession is taking on their businesses and employees. Tourism revenues were down by some \$40 million during the last four months of 2008 and Maine's lodging sales were down 9.5% through March 2009. This downturn will be hard to overcome, especially in this economy. (Economists forecast the recession may not turn around until sometime in 2010.) Many tourism businesses are struggling and a number of them are either closing, on the verge of closing, or cutting back on the length of season they are open.

While on the one hand we are aggressively marketing Maine with an excellent new advertising campaign, on the other hand we have LD 1088 sending a message of higher taxes and more costly services to these very same visitors we are trying to attract. People do shop price and they do care how much their vacation costs – they vacation on budgets. In addition, these new and expanded taxes will be paid by Maine people when they go out to eat, stay at a hotel, plan a

wedding reception, or hold an anniversary party. A successful “Staycation” marketing effort may have the perverse effect of concentrating more of the new tax burden on Maine residents if LD 1088 becomes law.

**6. This is not meaningful tax reform; rather, it is a shift of the tax burden from some taxpayers to others. It is “I win, you lose” tax reform.**

When one combines the impact of the sales tax and income tax changes, more than 103,000 families would see an overall tax increase (amounting to over \$37 million) in 2010, according to a tax incidence analysis provided June 1 by Maine Revenue Services. Over 22,000 families in the \$114,000+ income category would see an increase averaging more than \$1,100 per taxpayer. Another 16,000 families in the \$79,000-\$114,000 income category would see an increase averaging about \$340 per taxpayer. Overall, with the income and other tax changes, the legislation will produce winners and losers, and that creates a problem: true tax reform would make everyone a winner; there would be no losers. We do not believe Maine can afford to risk tax reform that sends a negative signal – higher tax burdens – to so many people, including people who may be making decisions on creating a new business or investing in expansion of an existing business.

**7. Several legal issues are raised that could undermine state finances and destabilize the State Budget if LD 1088 becomes law.**

As you undoubtedly know, in their haste to enact this legislation it appears the Legislature inadvertently repealed the income tax on non-residents. While we recognize this was not intended and that the Legislature will undoubtedly correct the oversight, it certainly raises the question as to how many other unintended consequences will emerge. We are still reviewing the final language and have found the bill to be as complex as it is far reaching. In all likelihood, more unintended consequences will manifest themselves as this legislation is implemented, if it is signed into law.

Also, as with the original proposal in 2007, we question the very constitutionality of the so called resident “household credit.” This legislation eliminates the standard deduction, itemized deductions, and personal exemptions. To compensate for the loss of these items, the legislation creates instead a household credit. The problem is that the credit is available only to residents, not nonresidents who have earnings in Maine.

We believe the courts would strike down the law (if signed) as a violation of the Commerce Clause of the U.S. Constitution. In a relatively recent decision, the U.S. Supreme Court struck down a Maine property tax law that similarly discriminated between residents and nonresidents. *Camps Newfound/Owatonna v. Town of Harrison*, Maine 520 U.S. 564 (1997.) The statute in

question provided a property tax exemption for charitable institutions incorporated in Maine. That same statute, however, provided only a limited exemption for charitable institutions in Maine that are operated principally for the benefit of nonresidents and denied the exemption entirely for such institutions whose charges for services exceeded a certain threshold. In its decision, the court held that the statute discriminated on its face against interstate commerce since it singled out organizations that serve mostly Mainers for a tax exemption while penalizing those that do a business in interstate commerce by serving mostly nonresidents.

If the court considered those facts to raise interstate commerce issues, they would certainly extend that same reasoning to a nonresident construction worker who has Maine earnings from a summer project, a paper company executive who spends weeks in Maine overseeing a paper machine rebuild or a nonresident salesman who frequently comes to Maine to service accounts.

If a court were to conclude that the statute violates the Commerce Clause, it is not clear what remedy it would impose. Yet such an outcome could pose serious budgetary problems. Under the legislation, both the income tax changes and the sales tax changes become effective on January 1, 2010. If the court were to strike down the credit only, Maine would be required to refund payments of estimated taxes and withholding payments at least to nonresidents. This would also produce a budget deficit. On the other hand, it is also possible that the court could strike down the whole tax reform package, particularly so in the absence of a severability clause. If the later situation occurred, the state would be required to issue not only income tax refunds to nonresidents but also sales tax refunds. This scenario could also have serious budget implications.

**8. The increase to the real estate transfer tax from \$4.40 per \$1000 to \$10.00 per \$1000 for the portion of a sales price over \$500,000 is an unprecedented increase to a segment of the market that proponents of LD 1088 mistakenly believe is made up of people from away. And this is a tax that will go into effect Oct 1, 2009, well before any of the so-called benefits of the bill will be felt.**

The sale of real estate is essential to a robust economy. Any economist will say real estate sales are the foundation of the economy and that no true economic recovery can occur without real estate coming back as a vibrant and busy part of the financial sector. This is as true of homes as it is of commercial property. Perhaps more so, in that a homebuyer almost always spends more than just the purchase price for upgrades, landscaping, furniture, appliances and more creating far reaching positive economic spin-off. Also the numbers of people employed in the sale of a home are huge: Realtors, cleaners, surveyors, title agents, insurance agents, closers, building inspectors, appraisers, bankers, just to name a few. LD 1088 proposes to more than double the transfer tax on a portion of the single family home buyers and sellers under the guise of “exportability,” that being those homes selling for more than \$500,000. Many Maine

homeowners have properties in this price range, particularly our older citizens who bought their homes many years ago, have been good citizens and taxpayers, are long-standing members of their communities, and who now will be saddled with part of the “pay-for” of LD 1088. Also, buyers in this price range are many of the folks we want to attract to Maine since they bring their businesses here, as well as their desire to become active in local community activities.

**9. LD 1088 was adopted with minimal public understanding or acceptance, which make it more difficult for political leaders to enlist public support for dealing with other fiscal policy matters of the State.**

The Majority Report amendment to LD 1088 was printed just hours before the legislation was rushed through the Senate and House. There was no detailed explanation of the provisions that would aid the public in understanding and evaluating the changes and effects of the legislation on their personal lives. There were few news reports that gave in-depth coverage to the contents of the legislation. Even tax practitioners and small business financial advisors had little or no time to analyze the amended legislation and consult with their clients. This lack of understanding may well be illustrated in the Spring 2009 Omnibus Poll™ by Strategic Marketing Services. That poll indicated: “By a margin of almost two to one Mainers polled oppose the proposed tax change measure – 56.3% oppose and 28.8% support.”

**10. LD 1088 complicates the state’s ability to get through the current recession and create new jobs in the private sector.**

We note the state’s official economic forecast paints a sobering picture of the Maine economy over the next several years. As recently as April, the Economic Forecasting Commission advised the Appropriations Committee that the state is likely to lose as many as 40,000 jobs before this economic downturn runs its course. Significant tax increases for many companies may exacerbate the problem. The forecast also indicates there may be only 4,500 net new jobs in 2013 compared to 2005. Most of these new jobs will be in the healthcare and education sector. Nine of the 12 sectors listed in the forecast will see a net job loss – fewer employment opportunities – in 2013 compared to 2005. As economist Charles Lawton notes in his May 31 column, Maine needs “to find ways to accelerate the growth of private-sector employment, to find and nourish new businesses.” We believe the legislation could put a damper on future job growth, something the state cannot afford to risk.

We share the belief that reducing Maine’s 8.5% top income tax rate is an important priority, but LD 1088 is a seriously flawed and unacceptable way to accomplish income tax relief.

Thank you for considering our concerns.

Members, NOT THIS, NOT NOW Coalition

Acton Fair	Maine Restaurant Association
Associated Builders and Contractors of Maine	Maine State Chamber of Commerce
Associated General Contractors	Maine Tourism Association
Bar Harbor Chamber of Commerce	Monmouth Fair
Bath Sweet Shoppe	New England Convenience Store Association
Blue Hill Fair	New England Tire and Service Association
Cinemagic	New Portland Lions Fair
Clinton Lions Fair	NFIB
Cumberland Fair	Northern Maine Fair
Ellsworth Chamber of Commerce	Ogunquit Chamber of Commerce
Farmington Fair	Ossipee Valley Fair
Fryeburg Fair	Oxford County Fair
Funtown Splashtown USA	Penobscot Bay Regional Chamber of Commerce
Harmony Fair	Piscataquis Valley Fair
Enterprise Rent A Car	Pittston Fair
Maine Association of Agricultural Fairs	Ski Maine Association
Maine Association of Realtors	Skowhegan State Fair
Maine Auto Dealers Association	Southern Mid Coast Chamber of Commerce
Maine Campground Owners Association	Springfield Fair
Maine Confectioners Association	Theatre Owners of New England
Maine Innkeepers Association	Topsham Fair
Maine Grocers Association	Union Fair
Maine Merchants Association	Windsor Fair
Maine Motor Transport Association	

Collectively these associations and entities represent thousands of businesses, employ tens of thousands of Maine workers, and provide hundreds of millions of dollars in economic activity.