Report on Corporate Income Tax Data

A Report Prepared for the:
Joint Standing Committee on Taxation

Department of Administrative and Financial Services
Maine Revenue Services – Office of Tax Policy

January 31, 2025

Introduction

The Maine Revenue Services' Office of Tax Policy ("MRS/OTP") is providing this report in compliance with Maine Revised Statutes Title 36, section 5202-E, which requires MRS/OTP to provide a biennial report to the Joint Standing Committee on Taxation on matters related to corporate income tax liability.

This report is one of several that provides information to the Maine State Legislature on the functioning of Maine Corporate Income Tax ("CIT"). It arose out of L.D. 1337 of the 131st Legislature, which was one of several bills aimed at increasing access to CIT tax data. L.D. 1337 is part of a larger trend of legislators and stakeholders assessing the equity and effectiveness of corporate income taxes throughout the United States. In addition to the statistics required in statute, this report provides an overview of the Maine corporate income tax system and an explanation of results to assist with interpretation.

The report is divided into four sections. The first section goes through a sequence of steps that together determine corporate income tax liability, providing a high-level description of each step and comments on where Maine corporate income tax revenue may be foregone along the way—either due to Maine laws that represent a deviation from a comprehensive tax base (tax expenditures), Maine laws that tax certain corporations under a tax type other than the corporate income tax, or corporate tax avoidance.[1] The second section shows the recent history of corporate income tax revenue and tax liability. The third section presents both the requested statistics and additional statistics so policy makers can better assess the CIT. And the fourth section provides some technical details about the tax data.

[1] Revenue may also be lost due to compliance issues. However, this report does not shed light on this possibility. All tax data is treated as correct even though it may later be changed by taxpayer amendment or MRS compliance efforts. The Internal Revenue Service ("IRS") attempts to estimate federal revenue loss from compliance issues, termed the "tax gap". While this analysis is not specific to Maine or the CIT, because the Maine income tax is built on the federal income tax it may still be useful. See, https://www.irs.gov/statistics/irs-the-tax-gap.

I. Description of Corporate Income Taxation in Maine

The Maine CIT is based on the federal CIT through a process known as Internal Revenue Code ("the Code" or the "IRC") conformity wherein the entities subject to tax and the tax base (i.e., net income) is first determined under federal law and then modified by State law. The general structure of the Maine CIT is as follows:

1. Identification of entities subject to tax under federal and State law
2. Determination of federal taxable income
3. Determination of adjusted federal taxable income under State law
4. Application of State tax rate schedule to calculate Maine tax liability without apportionment
5. Determination of the apportionment factor to arrive at the final tax liability prior to State tax credits
6. Application of State credits

1) Identification of entities subject to CIT under federal and State law

Federal and State law work in conjunction to determine the entities subject to the Maine CIT. These laws impose tax on certain corporations and differentiate between entities subject to corporate income tax as opposed to some other tax (e.g., S-Corporations[2], insurance companies[3] and financial institutions[4]), those not subject to federal or State tax (e.g., certain nonprofit corporations and foreign entities in some situations), and those not subject to State taxation[5].

With some exceptions, every corporation that is required to file a federal income tax return, has sufficient connection, or nexus[6], with the state, and, at any time during that taxable year realized

[2] S-Corporations generally do not pay corporate income tax but rather their owners pay individual income tax on their share of the corporation's income.

[3] Insurance companies are generally subject to the Maine insurance premiums tax equal to 2% of all gross direct premiums; they are not subject to tax on their corporate income.

[4] Financial institutions subject to the franchise tax elect to pay tax under one of two methodologies: 1) One percent of Maine net income plus .008% of Maine assets, or 2) .039% of Maine assets.

[5] See the discussion in footnote 6 of Public Law 86-272 and non-Maine spirits manufacturers.

[6] The method for determining nexus for tax years beginning prior to 2022 (general "economic nexus") is different than the standard that applies to tax years beginning in 2022 and later ("factor presence"). Under factor presence, a corporation has nexus if the corporation's property, payroll or sales in this State exceed any of the following thresholds for the taxable year: (1) For property, $250,000; (2) For payroll, $250,000; (3) For sales, $500,000; or (4) Twenty-five percent of the corporation's property, payroll or sales. Although factor presence allows corporations under the thresholds to not file a tax return even if they have economic nexus, it could increase filing among corporations above the thresholds that previously took the position that they did not satisfy the economic nexus standard. Nexus is determined under United States Constitutional principles and State law.

Federal law also limits the state's taxation powers. In particular, Public Law 86-272 (Interstate Income Act of 1959, codified at 15 U.S.C. §§ 381–384) prohibits state income taxation when the corporation's activities in Maine are limited to the solicitation of sales of tangible property. Corporations exempt from Maine taxation under Public Law 86-272 may or may not file a tax return; if they file a return then they report that none of their income is apportionable to Maine.

Maine net income is required to file a Maine income tax return. Failure to file a corporate income tax return when required is one area where state corporate income tax revenue could be lost.

Corporate organizations often have large complex structures that consist of numerous entities. These structures raise the question of what entity or group of entities must file a Maine income tax return. Maine is a combined reporting state, meaning that a taxable corporation that is a member of an affiliated group and that is engaged in a unitary business with one or more other members of that affiliated group must file a combined report. Simply put, combined reporting requires a company to add together profits and tax attributes of all its group members (e.g., subsidiaries), regardless of their location, into one report from which the taxable corporation's taxable share is calculated. Combined reporting reflects the economic reality that a unitary group of corporations is centrally controlled and managed, acting as a single economic unit generating income together, regardless of the group's corporate structure. By combining the income of the group, both misalignment of income and corresponding tax liability, as well as opportunities to reduce state income taxes by shifting income between controlled corporations through intra-group transactions, is significantly reduced.

Exclusion of corporations from a unitary group filing the State CIT may result in a direct loss of revenue to the extent those corporations earn otherwise taxable income in the State and are not taxed under an alternative tax (or are taxed at preferential rates). In addition, the exclusion of one corporation that would otherwise be included in a combined group may create tax avoidance opportunities by allowing income to be shifted between controlled corporations through intra-group transactions to those corporations not subject to tax.[7]

2) *Federal Taxable Income*

The starting point of the Maine corporate income tax return is federal taxable income, which equals gross income minus allowable deductions as determined under the Code. The definition of federal taxable income incorporates many tax expenditures, or special provisions that reduce revenue.[8]

Maine does not possess tax data to directly measure most Maine tax expenditures created by Maine's conformity to the Code's provision related to the calculation of federal taxable income. The Joint Committee on Taxation and the U.S. Department of Treasury, Office of Tax Analysis, both publish tax expenditure reports which can be helpful in identifying tax expenditures due to Maine's linkage to federal taxable income and estimating the possible magnitude of the revenue loss. In addition, OPEGA's "Information to Support 2021 Expedited Reviews of Maine State

Finally, for tax years beginning on or after 1/1/2022, non-Maine spirits manufacturers with certain limited activities in the state are provided a complete income tax exemption even when they have nexus in the state. 36 M.R.S. §5202-D.

[7] Corporations that may be excluded from a unitary group include those paying tax under the insurance premiums tax or the franchise tax, foreign entities in some situations, and corporations specifically excluded under State law.

[8] Tax expenditures are deviations from a reference law that uses a broader concept of income than statute. For a discussion of the tax expenditure concept and one version of corporate income tax reference law, see the first section of *Estimates Of Federal Tax Expenditures For Fiscal Years 2023-2027*, JCX-59-23, Joint Committee on Taxation, December 7, 2023 https://www.jct.gov/publications/2023/jcx-59-23/ .

Tax Expenditures" report and the Office of Tax Policy's Maine State Tax Expenditure Report contain information on conformity related tax expenditures.

3) *Adjusted Federal Taxable Income*

Maine law provides numerous addition and subtraction modifications to federal taxable income to arrive at adjusted federal taxable income.[9]

Some Maine income modifications are related to constitutional limitations on what income can be taxed by the State, including partial deductions for foreign-sourced income included in the federal taxable income of the water's edge[10] combined reporting group.[11] Subtraction modifications are also used to remove income from group members that are subject to the insurance premiums or franchise tax and allow cannabis businesses to deduct expenses that are not federally deductible due to federal law.

Other Maine modifications decouple from federal tax expenditures or create a Maine-specific tax expenditure. Examples of Maine's decoupling from federal tax expenditures include the disallowance of the increase in depreciation due to federal bonus depreciation and the deduction for foreign-derived intangible income (FDII). Maine income modifications that create new tax expenditures are relatively modest.[12] The Office of Tax Policy's Maine State Tax Expenditure Report and OPEGA's tax expenditure reviews contain information on these tax expenditures.

4) *Application of state tax rate schedule to calculate Maine tax liability without apportionment*

A corporation applies the state tax schedule to adjusted federal taxable income to calculate its tax liability without apportionment. This amount corresponds to its tax liability if all its income was derived from Maine sources. Maine has a graduated rate schedule with four brackets and rates ranging from 3.5% for adjusted federal taxable income under $350,000 to 8.93% for adjusted federal taxable income above $3.5 million.

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[9] Intercompany transactions among members of an affiliated unitary group are also eliminated to arrive at adjusted federal taxable income.
[10] Maine utilizes a "water's edge" combined reporting methodology for determining the apportionable income base. The income subject to apportionment is income required to be reported on the taxpayer's federal income tax return as modified by Maine law. This may include income received from foreign entities (e.g., dividends) or calculated based on the activity of foreign entities (e.g., Subpart F Income and Global Intangible Low-Taxed Income "GILTI"). *See* the Office of Tax Policy reports "Study of the Foreign Derived Intangible Income Deduction Addition Modification" and "Worldwide Combined Reporting of Certain Corporations for Income Tax Purposes" for further information.
[11] The constitutional issue arises because the apportionment factor for the water's edge group, which is discussed in the next section, does not include the sales of the foreign affiliates but potentially includes part of their income.
[12] Subtraction modifications related to differences in deduction timing between Maine and Federal law are not necessarily Maine tax expenditures and, in some cases, undo Federal tax expenditures. For example, Maine disallows Federal bonus deprecation and allows taxpayers to recapture the disallowed first year deprecation through future subtraction modifications.

5) *Determination of the apportionment factor to arrive at the final tax liability prior to State tax credits*

The corporation multiplies the tax liability calculated in the prior step by its apportionment factor to calculate its final income tax liability before credits.

Apportionment is a key feature of state corporate income tax systems and is required by the U.S. Constitution. Generally, the Maine apportionment factor is an amount determined by a fraction, the numerator of which is sales in Maine and the denominator of which is the total sales everywhere.[13] Due to apportionment, corporations with large adjusted federal taxable income may have low or possibly zero Maine income tax liability depending on their Maine sales relative to their total sales. Maine excludes sales from the sales factor denominator when the sales are delivered to a state where the corporations and all members of its combined group are not taxable.[14]

6) *Tax Credits*

Finally, apportioned Maine corporate income tax is reduced by Maine tax credits. Tax credits can be classified as nonrefundable or refundable. Nonrefundable tax credits are limited to income tax liability or less. Most Maine tax credits are nonrefundable, and many nonrefundable tax credits can be carried forward when a portion of the credit entirely offsets tax liability. Refundable tax credits are not limited to tax liability. The State pays the amount by which refundable credits exceed tax liability to corporations.

MRS can directly measure the revenue loss from tax credits with tax return data.[15] Corporate tax credits and the number of corporations with zero or negative tax liability will likely increase with the creation of the refundable Dirigo tax credit for tax years beginning after 2024. The Office of Tax Policy's Maine State Tax Expenditure Report and OPEGA's tax expenditure reviews contain information on these tax expenditures.

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[13] Maine is among the 29 states in tax year 2020 that use single sales factor apportionment. See https://taxfoundation.org/taxedu/glossary/apportionment/. Other apportionment methodologies use payroll and property shares in addition to the sales share to apportion income. The adoption of single sales apportionment has been motivated by concerns that payroll and property factor apportionment discourage locating payroll and property in the State. Based on tax year 2021 data for corporations that report data for payroll and property factors (most but not all corporations) single sales factor apportionment likely raises a small amount (around $5 million annually) compared to three factor or double-weighted sales apportionment. This small impact masks much larger impacts across sectors. Single sales factor apportionment reduces manufacturing tax liability significantly (25 – 32%) but increases tax liability in the retail trade, information, finance and insurance, and management of companies sectors by large amounts relative to other apportionment methodologies.

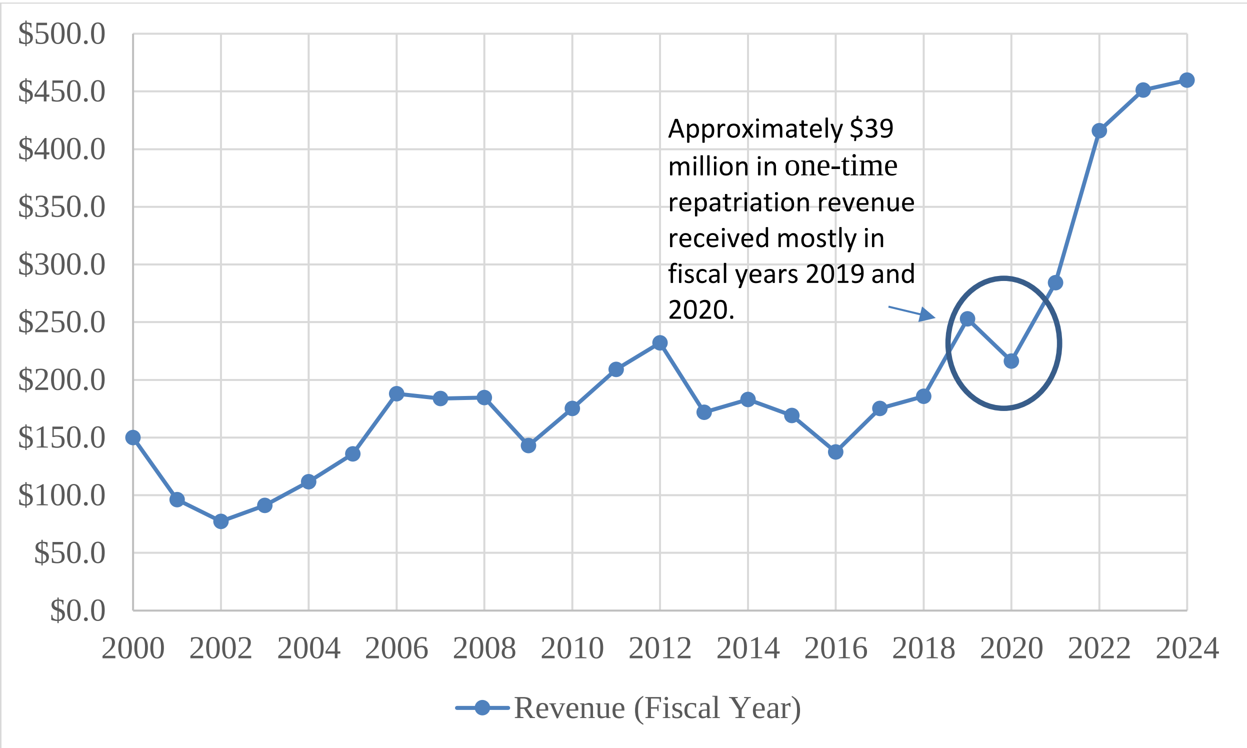
[14] Sales to the federal government are considered Maine sales when the property is shipped from an office, store, warehouse, factory or other place of storage in Maine.

[15] An important consideration with tax credits is that the corporate tax system functions as a spending delivery mechanism for policies that are unrelated to the core function of the corporate income tax. For instance, nonprofits claim refundable historic rehabilitation credits on the corporate income tax return. For tax years beginning in 2022, the corporate historic rehabilitation credit was $9.3 million, or about 37% of the total corporate refundable and allowable nonrefundable tax credits.

II. Recent Corporate Income Tax Revenue Performance

Maine corporate income tax revenues have reached record levels in recent years. Figure 1 shows corporate income tax revenue by fiscal year; these figures include revenue from the franchise tax, which is inseparable from corporate income tax in the state revenue accounts.[16]

Figure 1: Corporate and Franchise Income Tax Revenue, Fiscal Years 2000-2024 ($million)



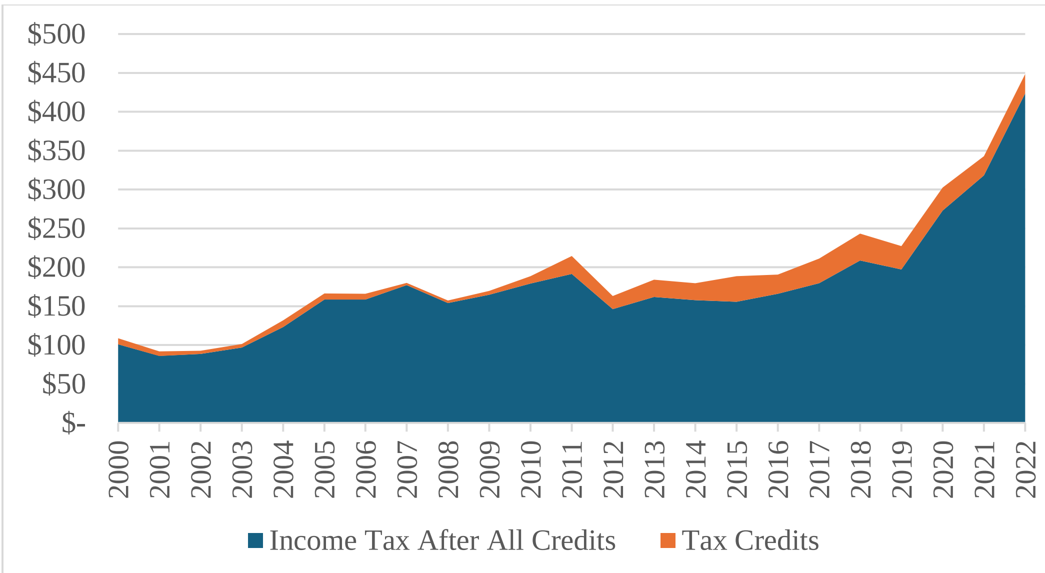
Corporate and franchise tax revenue was $416 million in fiscal year 2022, $451 million in fiscal year 2023, and $459.8 million in fiscal year 2024. In inflation-adjusted terms, revenue in each fiscal year 2022 – 2024 was 44.5% - 47.6% above the prior high dating back to fiscal year 1994; FY 2023 revenue was 87% higher than average inflation-adjusted revenue for the ten-year period fiscal year 2010 to 2019.[17]

Corporate tax revenue is volatile, and revenue changes may be disconnected from the changes in the underlying tax liability in the short run. Large corporations tend to carry large balances with the State, significantly overpay in every tax year, and apply overpayments to the next tax year rather than claim a refund. Furthermore, unusually large audit payments or multi-year refunds

[16] Franchise tax revenue was approximately $16 million in FY 2023 and $13.2 million in FY 2024.
[17] Inflation adjustments are calculated using the CPI-U.

can create large revenue swings. Figure 2 below shows tax liability by tax year for corporate income tax only.[18]

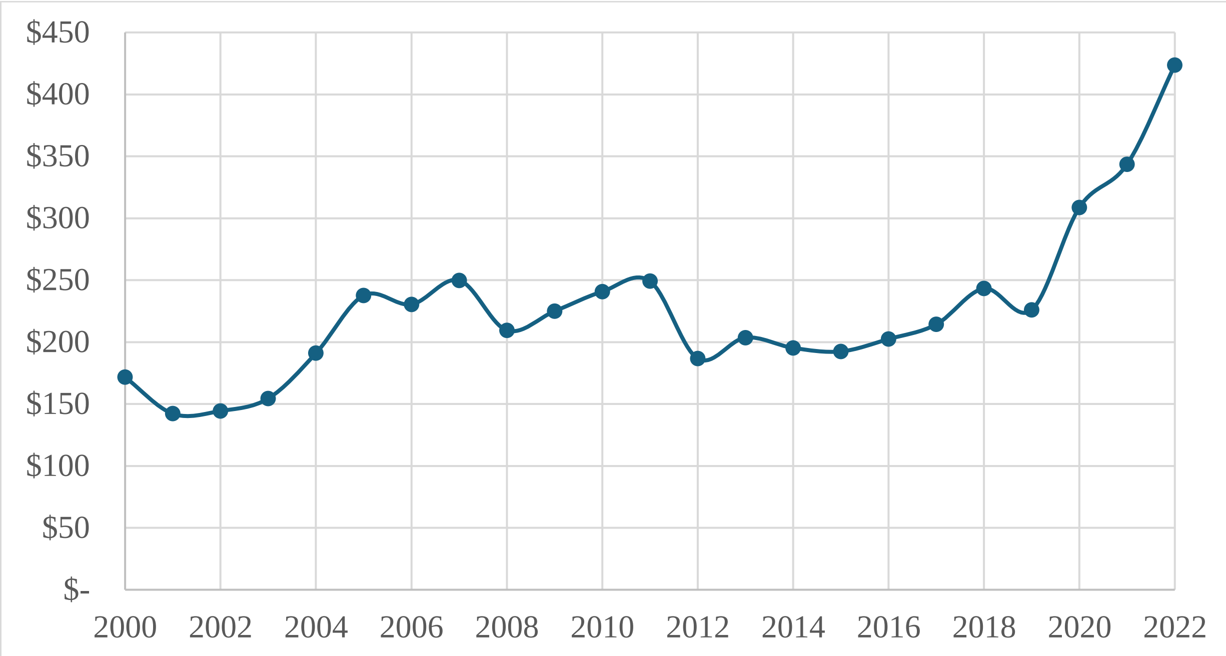
Figure 2: Corporate Income Tax Liability by Tax Year ($million)



The blue area represents net tax liability after refundable and nonrefundable tax credits and the combined area represents tax liability in the absence of tax credits. Net tax liability after credits was $423.6 million for tax years beginning in 2022.[19] Figure 3 shows the history of inflation-adjusted corporate tax liability after credits; the figure demonstrates that the recent growth in corporate tax liability far exceeds inflation.

[18] Tax liability is the tax amount reported on a tax return and revenue equals total payments minus refunds.
[19] A major contributor to the over 33% growth in 2022 tax liability growth is that 2022 is the first year that corporations are required to amortize their research expenses. This change likely increased Maine tax liability in the ballpark of $45 million. The revenue increase is the result of a transition issue and will dissipate over time.

Figure 3: Inflation-Adjusted Corporate Income Tax Liability by Tax Year, 2022 Dollars (millions)



III. Data Satisfying the Reporting Requirements in Public Law 2023, Chapter 627

MRS should have complete tax data for tax years beginning in 2022 and earlier. Many corporations have a tax year that is not a calendar year and, therefore, MRS has not yet received tax returns from some corporations for tax years beginning in 2023. Where MRS has complete tax data for these years, values may change due to the filing of an amended return or audit adjustments.

The data reporting is subject to the confidentiality protections under Title 36, Section 191. The data described in Title 36, section 5202-E can be reported in all cases under the exception for statistics that do not allow the identification of taxpayers or returns. However, the explanation of the circumstances involved in some small cells, such as tax returns with more than $1 billion of federal taxable income and zero Maine tax liability, is intentionally vague to avoid revealing information about one or a very small number of tax returns.

A) Large payroll withholding accounts and corporate income tax liability

<u>Reporting requirement</u>

Of the 50 largest for-profit employers in the State as measured by payroll withholding, for which there is complete data, the number that paid zero state corporate income tax in the 4 most recent tax years or received a refunded portion of a refundable credit.

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37 of the 50 largest for-profit employers in the State, as measured by 2022 payroll withholding returns, file Maine corporate income tax returns. The other employers are not subject to Maine corporate income tax because they are either pass-through entities or subject to the franchise tax. Of these 37 corporate taxpayers, 26 owed Maine corporate income tax in at least one year for tax years beginning in 2019 to 2022.

Tax credits are the main reason why 11 corporations with a top withholding account have zero net corporate income tax liability for all tax years beginning 2019 – 2022.[20] There are also examples where corporations have zero tax liability before tax credits in every year either because federal taxable income is negative in every year or because net income modifications result in negative adjusted federal taxable income.

B) Corporate income tax statistics stratified by federal taxable income

Reporting requirement

The number of corporations that filed corporate income taxes that reported over $50,000,000, over $100,000,000, over $250,000,000 and over $1,000,000,000 in federal taxable income for the 2 previous tax years; and, for each income range:

(1) The total income reported;
(2) The total income apportioned to the State; and
(3) The number of filers that reported zero or less total corporate income tax due for the 4 most recent tax years for which there is complete data

[20] The most important tax credits are the Maine Capital Investment, Research Expense, and Pine Tree Zone credits. The Maine Capital Investment and Pine Tree Zone credits were sunset as part of the enactment of the Dirigo credit. However, taxpayers may continue to claim Maine Capital Investment credit carry forwards and existing businesses within the Pine Tree Zone program may continue to claim the Pine Tree Zone credit.

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Table 1: Returns, Taxable Income, and Tax Liability History by Federal Taxable Income Category, Tax Years Beginning in 2020 or 2021
($millions)

Federal Taxable Income	# Corporations	Positive Federal Taxable Income	Positive Adjusted Federal Taxable Income[21]	Apportioned Positive Adjusted Federal Taxable Income[22]	# Filed in Current and Three Prior Tax Years	# Filed and Owed Zero Tax in Current and Three Prior Tax Years
	Tax years beginning in 2021					
<$50 Million	14,611	$29,213	$54,897	$724	9,305	4,147
$50 < $100	311	$22,412	$24,491	$116	229	19
$100 <=$250	357	$56,945	$62,203	$175	270	20
$250 < $1,000	427	$223,323	$234,749	$785	361	20
>$1,000	260	$1,144,832	$1,229,927	$2,125	235	12
	Tax years beginning in 2022					
<$50 Million	14,629	$33,016	$62,093	$868	9,131	3,835
$50 < $100	394	$28,202	$33,519	$154	287	14
$100 <=$250	391	$64,014	$69,404	$242	301	23
$250 < $1,000	470	$244,992	$257,035	$867	374	17
>$1,000	313	$1,567,844	$1,718,920	$3,000	272	17

Corporations with federal taxable income exceeding a billion dollars and zero tax liability in the current tax year and zero tax liability in the three prior tax years (17 in 2022, 12 in 2021) represent several distinct situations. Most of these corporations report positive adjusted federal taxable income and a zero-apportionment factor; these cases include corporations that claim an exemption from Maine income tax under Public Law 86-272.[23] Other reasons for zero tax liability include subtraction modifications for the income that is not subject to the Maine corporate tax[24] and tax credits that fully offset tax liability. Tax credits for these corporations reduced tax liability by less than $200,000 in 2022; low apportionment combined with tax credits is responsible for the situations where tax credits eliminate tax liability for corporations with large federal taxable income.

[21] Income after Maine modifications.
[22] The reporting requirement is for "total income apportioned to the State" where total income refers to Federal Taxable Income. However, apportionment information is typically unavailable when adjusted federal taxable income is zero or negative; therefore, we report only positive apportioned adjusted federal taxable income.
[23] See explanation of Public Law 86-272 in footnote 6.
[24] Recall that financial institutions are subject to the franchise tax and insurance companies are subject to the insurance premiums tax. A filing group may contain members subject to corporate income tax and other members subject to franchise or insurance premiums tax. The income of members subject to premiums or franchise tax is included in federal taxable income but not adjusted federal taxable income.

The economic and revenue significance of corporations with high federal taxable income and zero Maine tax liability should consider two factors. First, the filing/non-filing margin affects the data being reported. The differences between zero-apportionment filers and non-filers may be minor but only the filers appear in the data. Second, the distinction between exactly zero apportionment and very low apportionment is not economically meaningful. The distribution of tax liability for the 313 corporations with federal taxable income above $1 billion in 2022, shown in Table 2, may provide a better sense of how much these corporations pay and how many have low tax liabilities.

Table 2: Tax Liability Distribution for Corporations with Federal Taxable Income Above $1 Billion for Tax Years Beginning in 2022

Percentile Group	Tax Liability Range[25]	Average Tax Liability
Bottom 10 percent	$0	$0
10th -25th percentile	$1 - $76,000	$29,100
25th -50th percentile	$76,000 - $328,000	$180,400
50th - 75th percentile	$328,000 - $726,000	$473,200
75th - 90th percentile	$726,000 - $2,072,000	$1,003,100
Top 10 percent	Over $2,072,000	$4,076,300
All with FTI >$1 billion		$844,700

The main takeaway is that the apportionment factor is crucial for determining tax liability and some high-income multistate corporations that file a Maine tax return report a zero or extremely low apportionment factor.

C) Share of corporate tax returns with zero tax liability and other attributes

Reporting requirement

The percentage of corporations that filed corporate income taxes doing business in the State that reported total corporate income tax due of zero or less for the 4 most recent tax years for which there is complete data; and

The percentage of corporations that filed corporate income taxes doing business in the State that reported federal taxable income of greater than zero and reported total Maine corporate income tax due of zero or less for the 4 most recent tax years for which there is complete data; and

The percentage of corporations that filed corporate income taxes doing business in the State that reported federal taxable income of greater than zero and reported zero income apportioned to the State of adjusted federal income.

[25] The range endpoints are rounded.

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Table 3: Share of Corporate Tax Returns with Zero Tax Liability and Other Attributes

Tax Year Beginning	Zero or negative tax	Federal Taxable Income>0 and zero Maine tax	Federal Taxable Income>0 and zero apportioned Maine taxable income
2019	61.8%	7.7%	6.6%
2020	62.9%	7.5%	6.7%
2021	60.6%	9.6%	8.7%
2022	57.6%	9.9%	9.0%

The data describes the population of tax returns. The reporting requirement in statute asks for an analysis limited to corporations "doing business in the State" but whether the intended meaning of this phrase corresponds to the population of tax returns is unclear. Many corporations that file a Maine tax return may not satisfy some definitions of "doing business in the State" and, conversely, some who do not file a Maine tax return may satisfy some definitions of "doing business in the State."

The last two columns of Table 3 mix several distinct situations. A more detailed decomposition of zero tax corporate returns in 2022 is shown in Table 4:

Table 4: Breakdown of Corporations with Zero Tax Liability for Tax Years Beginning in 2022

(1)	Zero or Negative Federal Taxable Income	82.8%
(2)	Zero or negative adjusted income	80.5%
(3)	Positive adjusted income, zero apportioned adjusted income	1.8%
(4)	Positive apportioned adjusted income	0.5%
(5)	Positive Federal Taxable Income	17.2%
(6)	Zero or negative adjusted income	4.0%
(7)	Positive adjusted income, zero apportioned adjusted income	11.7%
(8)	Positive apportioned adjusted income	1.5%

Of the 57.6% of corporations that reported zero tax liability, 82.8% reported zero or negative federal taxable income. The vast majority (97.2%) of the corporations with negative federal taxable income and zero tax liability also have negative adjusted income. Of the 17.2% of corporations with zero tax liability that have positive federal taxable income, 23% (Row 6 / Row 5) have net income modifications that result in negative adjusted income, 68.1% (Row 7 / Row

5) have a zero-apportionment factor, and 8.9% (Row 8 / Row 5) have tax credits that eliminate tax liability.

IV. Data Notes

The data contained in this report covers open tax years and will change over time with amended returns and audit adjustments.

Corporations sometimes file a short-year tax return. Dollar amounts for all tax returns filed by a corporation that begin in the same calendar year are collapsed into one composite return for purposes of the analysis presented in this report. On rare occasions the income and tax amounts cover a period of more than 12 months; for example, a corporation may file a return covering January – June 2020 and July 2020 – June 2021 and the return data would be collapsed. How these situations are handled does not affect any qualitative conclusions.

Statistics that cover a four-year filing history are based on Employer Identification Number links over time. When an ownership change occurs, the corporation will not be counted as having a complete filing history even if the corporation has been part of a Maine filing group in each year.