

MAINE STATE LEGISLATURE

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STATE OF MAINE 114th LEGISLATURE

REPORT OF
THE JOINT STANDING COMMITTEE
on
TAXATION

REGARDING
TAX EXPENDITURE REVIEW
of
SALES TAX EXEMPTIONS
December 1989

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Staff: Kevin M. Madigan, Legislative Analyst
Office of Fiscal and Program Review
Room 225, State House--Station #5
Augusta, Maine 04333
(207) 289-1635

Tax Expenditure Review

Title 36 MRSA, §195 et seq. requires the Joint Standing Committee on Taxation to periodically review the Sales Tax exemptions contained in 36 MRSA §1760, as well as certain other sections of the statutes. This year, the review included:

36 MRSA §1752 (Definitions);
36 MRSA §1760, sub-§§1 to 9-C; and
36 MRSA §§2511-2524 (Insurance Company Taxes).

A public hearing was held on Thursday, November 16, 1989 regarding these areas. The Committee made some recommendations and appointed a sub-committee to review certain areas of concern for further consideration by the full Committee during the second regular session of the 114th Legislature. In many areas, no change at all was recommended.

This report lists each section of the statute that was reviewed, followed by the Committee recommendation. Legislation to implement these changes will be introduced in the next session of the Legislature, at which time an additional public hearing will be held. The Committee encourages anyone concerned about these proposed changes to present their ideas at that time.

36 MRSA §1752:

1. **Advertisement.** "Advertisement" means any public announcement of whatever kind or character and includes any notice of announcement in any radio or television broadcast, newspaper, magazine, catalog, circular, handbill, sign, placard or any billboard.

No Change

1-A. **Aircraft.** "Aircraft" means any powered contrivance designed for navigation in the air except a rocket or missile.

No Change

1-B. **Automobile.** "Automobile," for purposes of subsection 17-A, paragraph B, means a self-propelled 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks.

No Change

1-C **Business.** "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

No Change

1-D Casual Sale. "Casual sale" means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. "Casual sales" include transactions by a civic, religious or fraternal organization which is not a registered retailer at a bazaar, fair, rummage sale, picnic or similar event, but, if any such organization makes such transactions during more than 8 days during a calendar year, all such transactions during the calendar year constitute retail sales. The sale by a registered retailer of tangible personal property which that retailer has used in the course of his business is not a "casual sale" if that property is of like character to that sold in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which tangible personal property is sold by a representative for the owner's account when that representative is a registered retailer and the registered retailer shall have the same duties respecting any such transaction as if he had sold on his account.

The Committee received testimony that indicated some organizations may conduct fund raising activities beyond an 8-day period, thereby inadvertently creating a tax liability. This would be especially true of an organization that unintentionally made a casual sale for a ninth time during a year. In this case, the organization would be liable for taxes from all 8 previous sales, even though these taxes had never been collected. Therefore, the Committee recommends striking the 8 day limitation and amending the law to read as follows:

1-D Casual sale. "Casual sale" means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. "Casual sales" include transactions by a civic, religious or fraternal organization which is not a registered retailer at a bazaar, fair, rummage sale, picnic or similar event, ~~but, if any such organization makes such transactions during more than 8 days during a calendar year, all such transactions during the calendar year constitute retail sales.~~ The sale by a registered retailer of tangible personal property which that retailer has used in the course of his business is not a "casual sale" if that property is of like character to that sold in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which tangible personal property is sold by a representative for the owner's account when that representative is a registered retailer and the registered retailer shall have the same duties respecting any such transaction as if he had sold on his own account.

2-A. Directly. "Directly," when used in relation to production of tangible personal property, refers to those activities or operations which constitute an integral and essential part of production, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to production.

No Change

2-B. Extended cable television services. "Extended cable television services" means all cable television service which is in addition to the minimum service which can be purchased from a cable television supplier including the use of associated equipment for which a charge is made. It does not include installation of the associated equipment for which a separate charge is levied.

No Change

2-C. Fabrication services. "Fabrication services" means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. "Fabrication services" does not include the production of tangible personal property if a sale to the consumer of the tangible personal property so produced would be exempt or otherwise not subject to tax under this Part or if the services are purchased by an exempt entity.

The Committee received testimony that indicated two industries in particular were negatively impacted by this definition: taxidermy and custom sawing. However, a solution to the problem was not easily discernible. So, the Committee asked a subcommittee to continue reviewing the issue in an attempt to alleviate the problem.

The subcommittee believes that hobbyists or small, part-time operators of either custom saw mills or taxidermy studios were intended to be included in the definition of provider of fabrication services. Large scale, full time businesses of these types on the other hand, should be treated no differently than any other fabrication business such as aboatyard or machine shop. Recognizing that volume is not the best measure of determining tax liability, the subcommittee was unable to formulate any other means. Therefore, the subcommittee suggests that when the full committee hears the accompanying legislation, it consider adding the following language to the definition of fabrication services:

"Fabrication services does not include services provided by a taxidermist or the sawing of lumber owned by the person requesting sawing to the extent that the person providing these services has gross receipts from these activities of less than \$30,000 annually. The sale or sales of taxidermy services or providing custom sawing of lumber for the person who owns the lumber in excess of \$30,000 in gross annual receipts shall be a taxable service as defined in 36 MRSA §1760 sub-§17-A."

In addition to the above discussion, the subcommittee dealt with a fabrication related issue that arose during the first session of the 114th Legislature. In this case, a sales tax exemption provided for the purchase of certain machinery and equipment used in manufacturing was not allowable for an industry that was providing, in effect, fabrication services. The nature of the industry was such that it was manufacturing items (wood chips) but their ultimate sale was not involved because the "chips" went back to the owner of the logs that were used in the chip making.

This discussion led to one regarding chipping and shredding machines used by private contractors to provide environmentally better options for private and municipal landfills. That is, reducing large waste materials into smaller components will go a long way towards extending the limited life of most landfills. The subcommittee believes that this type of equipment ought to be encouraged and would do so by making its purchase exempt from the sales tax. Therefore, the subcommittee again suggests that when the full Committee hears the accompanying legislation it consider adding the following language:

36 MRSA §1760, sub-§31-A and 31-B are enacted to read:

31-A. Machinery and equipment used in the production of wood chips. Sales of machinery and equipment, or replacement or repair parts thereof, for use by the purchaser directly and primarily in the processing of pulp wood logs into wood chips, which wood chips are intended to be used by their final owner in the production of pulp, paper or paper products.

31-B. Machinery and equipment used to process waste materials. Sales of machinery and equipment, or replacement or repair parts thereof, for use by the purchaser directly and primarily in the commercial processing, chipping, shredding or grinding of waste materials such as wood, metal, tires, etc. into smaller components.

3. Farm tractor. "Farm tractor" means any self-propelled vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

The subcommittee was also instructed to review certain farm related issues and found this definition to be a cause for concern due to its inconsistent application. Apparently some dealers would tax certain sales while others wouldn't or some dealers would provide a trade-in credit in certain instances while others wouldn't. The subcommittee suggests the following language be used to improve consistency.

3. Farm tractor. "Farm tractor" means any self-propelled vehicle of more than 7 horsepower designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry or grounds maintenance. The term shall include any attachments purchased at the same time as the tractor.

3-A. Food products. "Food products" except as otherwise provided, includes cereals and cereal products; milk and milk products, other than candy and confectionery, but including ice cream; oleomargarine; meat and meat products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; including pure fruit juices; spices, condiments and salt; sugar and sugar products other than candy and confectionery; coffee and coffee substitutes; and tea, cocoa and cocoa products, other than candy and confectionery.

"Food products" does not include spirituous, malt or vinous liquors; soft drinks, sodas, or beverages such as are ordinarily dispensed at bars or soda fountains or in connection therewith; medicines, tonics, vitamins and preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form, sold as dietary supplements or adjuncts, except when sold on the prescription of a physician; and water, including mineral bottled and carbonated waters and ice.

No Change

4. Hotel. "Hotel" means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants.

No Change

5. In this State or in the State. "In this State" or "in the State" means within the exterior limits of the State of Maine and includes all territory within these limits owned by or ceded to the United States of America.

No Change

5-A. Internal human consumption. "Products for internal human consumption" mean edible products sold for human nutrition or refreshment and containers or instruments provided simultaneously for the consumption of these products. It does not include spirituous, malt or vinous liquors, medicines, tonics, vitamins, dietary supplements or cigarettes.

No Change

5-B. Liquor. "Liquor" has the same meaning as in Title 28-A, section 2, subsection 16.

No Change

6. Living quarters. "Living quarters" means sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space.

No Change

6-A. Manufacturing facility. "Manufacturing facility" means a site at which is located machinery and equipment used directly and primarily in either the production of tangible personal property intended to be sold or leased ultimately for final use or consumption or the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof. It includes the machinery and equipment and all machinery, equipment, structures and facilities located at the site and used in support of production or associated with the production.

No Change

7. Motor vehicle. "Motor vehicle" means any self-propelled vehicle designed for the conveyance of passengers or property on the public highways.

No Change

7-A. Vehicle. "Vehicle" shall have the same meaning which is ascribed to that term by Title 29, section 1.

No Change

7-B. Machinery and equipment. "Machinery and equipment" means machinery, equipment and parts and attachments for machinery and equipment, but excludes foundations for machinery and equipment and special purpose buildings used to house or support machinery and equipment.

No Change

7-C. Nonprofit. "Nonprofit" means an organization which has been determined to be exempt from taxation under the United States Internal Revenue Code, Section 501(c).²

No Change

8. Repealed earlier (1981)

9. Person. "Person" includes any individual, firm, copartnership, association, society, club, corporation, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, and the plural as well as the singular number, and the State and Federal Governments and all political subdivisions or agencies of either of them.

No Change

9-A. Primarily. "Primarily," when used in relation to production, means more than 50% of the time.

No Change

9-B. Production. "Production" means an operation or integrated series of operations engaged in as a business or segment of a business which transforms or converts personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

Production includes manufacturing, processing, assembling and fabricating operations which meet the definitional requisites.

Production does not include biological processes, wood harvesting operations, the severance of sand, gravel, oil, gas or other natural resources produced or severed from the soil or water, or activities such as cooking or preparing drinks, meals, food or food products by a retailer for retail sale. The foregoing are examples of activities that are not included within the term "production."

No Change

9-C. Repealed earlier (1987).

10. Retailer. "Retailer" means any person who makes retail sales or who is required to register by section 1754 or is registered under section 1756.

No Change

11. Retail Sale. (This section is defined 3 different ways in the statutes due to different effective dates. Due to its length, each version is not reprinted here. The Committee understands that this section is under review by the Bureau of Taxation and suggested legislation may be forthcoming at a later date. The Committee therefore will await the results of that review).

12. Rooming house. "Rooming house" means every house, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.

No Change

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

No Change

13-A. Sale at retail. "Sale at retail" means retail sale.

No Change

14. Sale price. "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

- A. "Sale price" includes:
- (1) Services which are a part of a retail sale; and
 - (2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.
- B. "Sale price" does not include:
- (1) Discounts allowed and taken on sales;
 - (2) Allowances in cash or by credit made upon the return of merchandise or with respect to fabrication services pursuant to warranty;
 - (3) The price of property returned or fabrication services rejected by customers, when the full price is refunded either in cash or by credit;
 - (4) The price received for labor or services used in installing or applying or repairing the property sold or fabricated, if separately charged or stated;
 - (5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages;
 - (6) The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax; or
 - (7) The cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail.

No Change

14-A Repealed earlier (1985).

14-B. Special mobile equipment. "Special mobile equipment" means any self-propelled vehicle not designed or used primarily for the transportation of persons or property which may be only incidentally operated or moved over the highways, including, but not limited to, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well drillers and wood sawing equipment.

No Change

15. Storage. "Storage" includes any keeping or retention in this State for any purpose, except subsequent use outside of this State, of tangible personal property purchased at retail sale.

No Change

16. Storage or use. "Storage" or "use" does not include keeping or retention or the exercise of power over tangible personal property brought into this State for the purpose of subsequently transporting it outside the State for use by the purchaser thereafter solely outside the State, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser solely outside the State.

No Change

17. Tangible personal property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but shall not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership.

No Change

17-A. Taxable service. "Taxable service" means:

- A. Rental of living quarters in any hotel, rooming house, tourist or trailer camp;
- B. Rental, for a period of less than one year, of an automobile;
- C. Telephone or telegraph service;
- D. Extended cable television service;
- E. Fabrication services;
- F. Custom computer programming, including, but not limited to, modification of a standard program; and
- G. Rental of video tapes and video equipment.

The Committee received testimony that indicated Maine was one of only two states that did not tax short term rentals in general. Given the nature of the items generally rented, the continued exemption doesn't make much sense. While these items are taxed when purchased by the rental agent, the agent must then spread the cost of the tax over all future rents. It appears to make more sense to relieve the purchaser of the tax liability (as is done for purchasers of items for resale) and pass it on to the specific user. This method is consistent with nearly every other state that has a sales tax and would improve the efficiency of our tax policy on an intra state basis. Since many rental companies are national in scope, the Committee believes this section should be changed. Therefore, the Committee recommend that 36 MRSA §1752, sub-§17-A be amended to read as follows:

"B. Rentals for a period of less than one year."

18. Repealed earlier (1979)

18-A. Telephone or telegraph service. "Telephone or telegraph service" means all telecommunications or telegraph service, including installation or use of telecommunication or telegraphic equipment, but not including telecommunications or telegraph service originating or terminating outside this State. "Telecommunications and telegraphic equipment" means 2-way interactive communications device, system or process for transmitting or receiving electromagnetic signals and capable of exchanging audio, data base or textual information. Until January 1, 1988, telecommunications service includes access services provided by a local exchange carrier to an interstate or intrastate interexchange carrier. Notwithstanding subsection 11, a sale of access services shall be considered a retail sale. Beginning January 1, 1988, unless extended by the Legislature, telecommunications service shall not include those access services. "Telephone or telegraph service" does not include directory advertising service.

No Change

19. Tourist camp. "Tourist camp" means a place where tents or tent houses, or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation.

No Change

20. Trailer camp. "Trailer camp" means a place where space is offered with or without service facilities to the public for tenting or for the parking and accommodation of automobile trailers which are used for living quarters and the rental price shall include all service charges paid to the lessor.

No Change

21. Use. "Use" includes the exercise in this State of any right or power over tangible personal property incident to its ownership when purchased by the user at retail sale, including the derivation of income, whether received in money or in the form of other benefits, by a lessor from the rental of tangible personal property located in this State.

No Change

22. Camper trailer. "Camper trailer" has the same meaning as in section 1481, but without any restriction on length.

No Change

23. Video tapes and video equipment. "Video tapes" means prerecorded magnetic tapes used for noncommercial playback of images and sound on video equipment. "Video equipment" means equipment used to play back video tapes and equipment used for recording images and sound for subsequent noncommercial playback.

No Change

23. Watercraft. "Watercraft" means a watercraft which is subject to excise tax under chapter 112,³ excluding commercial vessels as defined in that chapter.

The Committee found that this section was inadvertently enacted with the same sub-section number as video tapes. Therefore the Committee recommend that the sub-section be renumbered accordingly to "24".

36 MRSA §1760:

1. **Exemptions by constitutional provisions.** Sales which this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

Estimated loss of Revenue:

<u>FY 90</u>	<u>FY 91</u>
(Less than \$3,000,000)	(Less than \$3,000,000)

No Change

2. **State and political subdivisions.** Sales to the State or any political subdivision, or to the Federal Government, or to any unincorporated agency or instrumentality of either of them or to any incorporated agency or instrumentality of them wholly owned by them. This exemption shall not apply where title is held or taken as security for any financing arrangement.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$58,000	\$62,000

No Change

3. **Food products.** Sales of food products except:

- A. Meals served on or off the premises of the retailer;
- B. Drinks or food furnished, prepared or served for consumption at tables, chairs or counters, or from trays, glasses, dishes or other tableware provided by the retailer;
- C. Those products which ordinarily are sold by the retailer for immediate consumption on or near the location of the retailer, even though the products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the premises;
- D. Those made from a retail location from which food ordinarily is sold for consumption without further preparation or storage, even though the products are packaged or wrapped in bulk quantities; and
- E. Sales of heated food or drinks; sandwiches; ice cream or ice milk in a cone or cup, including sundaes, sodas, frappes and the like, ice cream or ice milk novelties and popsicles.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$107,000,000	\$115,000,000

The Committee received testimony that indicated a problem existed in this area. Prior to 1986 certain meals were being taxed in some locations and not in others. To overcome this problem, the Legislature made the sales tax applicable to meals served on or off the premises. Making tax policy consistent in this area created another inconsistency, however. Now, certain single serve items such as chips or pre-packaged pastry are taxed in a location that sells "meals" but not in a grocery store or other retail outlet not considered a preparer of meals. Thus the "Mom and Pop" store that sells sandwiches must tax these items if bought with a sandwich as part of a meal.

The Committee directed the Department to review this section and suggest any changes. As a result of this review, the Department found that the perceived problem was not as great as was first thought and that the law is consistent with Legislative intent regarding taxing meals. However, they did find that sub-section 3-D and Bureau of Taxation Rule 322 were in conflict. It appears that the best way to overcome the inconsistency and make the laws conform to actual practice would be to amend 3-D as follows:

D. Those made from a retail location from which food ordinarily is sold for consumption without further preparation or storage; ~~even--though--the--products--are packaged-or-wrapped-in-bulk-quantities;~~ and

4. Ships' stores. Sale of cabin, deck, engine supplies and bunkering oil to ships engaged in transporting cargo or passengers for hire in interstate or foreign commerce.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$240,000	\$255,000

No Change.

5. Medicines. Sales of medicines for human beings sold on doctor's prescription.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$6,300,000	\$6,500,000

No Change.

5-A. Prosthetic devices. Sale of prosthetic aids, hearing aids or eyeglasses and artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity; and sale of crutches and wheelchairs for the use of invalids and crippled persons and not for rental.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$2,000,000	\$2,120,000

No Change.

6. Certain meals. Sales of meals:

A. Served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school;

B. To patients and inmates of hospitals licensed by the State for the care of human beings and other institutions licensed by the State for the hospitalization or nursing care of human beings, or institutions, agencies, hospitals, boarding homes and boarding houses licensed by the Department of Human Services under Title 22, Subtitle 6, and Title 34, section 2211; and

C. By hospitals, schools, long-term care facilities, food contractors and restaurants to incorporated nonprofit area agencies on aging for the purpose of providing meals to the elderly.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$5,769,000	\$6,279,350

No Change.

7. Products used in agricultural and aquacultural productions, and bait. Sales of seed, feed, hormones, fertilizer, pesticides, insecticides, fungicides, antibiotics, weed killers, defoliant, litter and medicines used in agricultural and aquacultural production and sales of bait to commercial fishermen.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$5,475,000	\$5,475,000

This was another area reviewed by the sub-committee. Testimony was heard that indicated a great deal of potential confusion surrounded this exemption. The Committee believes that rather than exempt certain items from the sales tax in this category, an easier system would exempt the purchaser of any item if the purchaser held an exemption certificate and the item was used specifically in agricultural or aquacultural production. This is the system in place in Vermont and is also used in Maine currently for certain purchases of machinery or equipment. Therefore, the Committee recommends that this section be amended as follows:

~~7. Products used in agricultural production~~ Sales of seed, feed and bait. Sales of seed, and feed, hormones, fertilizer, pesticides, insecticides, fungicides, weed killers, defoliant, litter and medicines used in agricultural production and sales of bait to commercial fishermen.

7-A. Products used in agricultural production. Sales of products used in agricultural production when sold to the holder of an exemption certificate card issued by the State Tax Assessor.

Further amend §2013, sub-§3 to read:

3. Exemption for large purchase after certification. No sales tax may be paid on the purchase of a single certain items ~~of machinery or equipment with a sales price in excess of \$1,000,~~ if the purchaser has the certification of the State Tax Assessor that he is engaged in commercial agricultural production or commercial fishing, and that he may purchase certain products ~~depreciable machinery and equipment~~ without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the State Tax Assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the ~~depreciable machinery or equipment~~ item must be ~~suited only for~~ used directly in commercial agricultural production or commercial fishing.

The net result of this recommendation should be a gain in revenue to the State, the amount of which shall be determined at a later date.

8. Certain motor fuels. Sales of:

A. Motor fuels upon which a tax at the maximum rate for highway use has been paid pursuant to Part 5¹ or a comparable tax of any other state or province;

B. Internal combustion engine fuel, as defined in section 2902, bought and used for the purpose of propelling jet or turbojet engine aircraft; and

C. Internal combustion engine fuel containing at least 10% ethanol and taxed at the rate provided in section 2903, subsection 2.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$450,000	\$495,000

No Change.

9. Coal, oil and wood. Coal, oil, wood and all other fuels, except gas and electricity, when bought for cooking and heating in homes, mobile homes, hotels and apartment houses, and other buildings designed both for human habitation and sleeping.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$18,600,000	\$18,600,000

The Committee received testimony that indicated there was inconsistency in the exemption for commercial use of certain fuels. Specifically, exempting sales of fuel oil to a hotel but not sales of gas and electricity does not make sense. Therefore, the Committee recommends that sub-section 9 be amended as follows:

9. Coal, oil and wood. Coal, oil, wood and other fuels except gas and electricity, when bought for cooking and heating in homes, mobile homes, ~~hotels--and~~ apartment houses, and other buildings designed both for human habitation and sleeping, with the exception of hotels and motels.

The net result of this recommendation should be a gain in revenue to the State, the amount of which shall be determined at a later date.

9-A. Fuels for burning blueberry lands. Sales of all fuels used in burning blueberry fields.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$16,000	\$17,700

No change.

9-B. Residential electricity. Sale of the first 750 kilowatt hours of residential electricity per month. For the purpose of this subsection, "residential electricity" shall mean electricity furnished to homes, mobile homes, boarding homes and apartment houses, with the exception of hotels and motels. Where residential electricity is furnished through one meter to more than one residential unit and where the electric utility applies its tariff on a per unit basis, the furnishing of electricity shall be deemed a separate sale for each unit to which the tariff applies;

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$11,500,000	\$12,150,000

No change.

9-C. Residential gas. Sales of gas when bought for cooking and heating in residences. For the purpose of this subsection, "residences" shall mean homes, mobile homes, boarding homes and apartment houses, with the exception of hotels and motels.

Estimated loss of Revenue:	<u>FY 90</u>	<u>FY 91</u>
	\$ 1,020,000	\$1,020,000

No change.

36 MRSA, chapter 357 (§§2512-2524)

The Committee has recommended no changes in any of the sections of Chapter 357. Therefore, due to the length of this Chapter, these sections are not reprinted here.

APPENDIX A

Implementing Legislation

**An Act to Amend Certain
Sales Tax Exemptions**

Be it enacted by the People of the State of Maine:

Sec. 1. 36 MRSA §1752, Sub-§1D as enacted by PL 1987, c. 497 is amended to read as follows:

1-D. Casual sale. "Casual sale" means isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. "Casual sales" include transactions by a civic, religious or fraternal organization which is not a registered retailer at a bazaar, fair, rummage sale, picnic or similar event, ~~but, if any such organization makes such transactions during more than 8 days during a calendar year, all such transactions during the calendar year constitute retail sales.~~ The sale by a registered retailer of tangible personal property which that retailer has used in the course of his business is not a "casual sale" if that property is of like character to that sold in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which tangible personal property is sold by a representative for the owner's account when that representative is a registered retailer and the registered retailer shall have the same duties respecting any such transaction as if he had sold on his own account.

Sect. 2. 36 MRSA §1752, sub-§17-A, sub-§B is amended to read as follows:

B. Rentals for a period of less than one year. ~~of an automobile,~~

Sec. 3. 36 MRSA §1752, sub-§23 as enacted by PL 1989, c. 588, §c. 2 is amended to read as follows:

24. 23. Watercraft. "Watercraft" means a watercraft which is subject to excise tax under chapter 112,³ excluding commercial vessels as defined in that chapter.

Sec. 4. 36 MRSA §1760, sub-§3,D as repealed and replaced by PL 1985, c. 783 is amended to read as follows:

D. Those made from a retail location from which food ordinarily is sold for consumption without further preparation or storage; ~~even though the products are packaged or wrapped in bulk quantities,~~ and

Sec. 5. 36 MRSA §1760, sub-§7 as amended by PL 1985, c. 460 is further amended to read as follows:

7. Products used in agricultural production, Sales of seed, feed and bait. Sales of seed and feed, ~~hormones, fertilizer, pesticides, insecticides, fungicides, weed killers, defoliant, litter and medicines used in agricultural production~~ and sales of bait to commercial fishermen.

Sec. 6. 36 MRS §1760, sub-§7-A is enacted to read:

7-A. Products used in agricultural production. Sales of products used in agricultural production when sold to the holder of an exemption certificate card issued by the State Tax Assessor.

Sec. 7. 36 MRS §1760, sub-§9 as enacted, is amended to read:

9. Coal, oil and wood. Coal, oil, wood and all other fuels, except gas and electricity, when bought for cooking and heating in homes, mobile homes, ~~hotels--and~~ apartment houses, and other buildings designed both for human habitation and sleeping, with the exception of hotels and motels.

Sec. 8. 36 MRS §2013, sub-§3 as amended by PL 1985, c. 411 is further amended to read:

3. Exemption for ~~large~~ purchase after certification. No sales tax may be paid on the purchase of ~~a--single~~ certain items of ~~machinery--or--equipment--with--a--sales--price--in--excess--of--\$1,000,~~ if the purchaser has the certification of the State Tax Assessor that he is engaged in commercial agricultural production or commercial fishing, and that he may purchase ~~depreciable machinery--and--equipment~~ certain products without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the State Tax Assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the ~~depreciable--machinery--or--equipment~~ item must be ~~suited--only--for~~ used directly in commercial agricultural production or commercial fishing.

Statement of Fact

This bill implements the recommendations of the Taxation Committee regarding the review of sales tax exemptions pursuant to 36 MRS §195 et seq.