

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1937

H. P. 1883

Office of the Clerk of the House

The Committee on Taxation suggested. Approved for introduction by the Legislative Council pursuant to Joint Rule 24.

EDWIN H. PERT, Clerk

Presented by Mr. Carter of Bangor

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Require Certain Out-of-State Sellers to Register under the Maine Sales and Use Tax Law.

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

Sec. 1. 36 MRSA § 1754, sub-§§ 8 and 9, are enacted to read:

8. **Solicitation by advertising.** Every seller of tangible personal property who solicits orders for retail sales for use, storage or other consumption within the State by means of advertising, whether or not published or transmitted within the State, which contains a direct or indirect appeal to potential purchasers in this State as opposed to the general market for the advertised product.

9. **Other presence in State.** Every seller of tangible personal property who maintains a continuing presence of a nonsoliciting employee within the State or who makes regular or frequent deliveries in this State of that property by means of its own employees or agents.

Sec. 2. **Appropriation.** The following funds shall be appropriated from the General Fund to carry out the purposes of this Act:

	1978-79
FINANCE AND ADMINISTRATION, DEPARTMENT OF	
Bureau of Taxation	
Personal Services (1)	\$14,000
All Other	2,000
Capital Expenditures	1,000
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	\$17,000

STATEMENT OF FACT

This bill is designed to require out-of-state sellers who engage in certain activities which either take place in Maine or adversely affect Maine to register under the Maine Sales and Use Tax and collect use tax on their sales to Maine residents. The continuing presence of an employee in the taxing state was recently held by the United States Supreme Court to constitute sufficient nexus or connection between the out-of-state seller/employer and the taxing state to require the seller to collect the taxing state's use tax on sales to residents of the taxing state, even when the employee was present in the taxing state for purposes other than solicitation of the sales on which the tax was levied. Extension of the registration requirement to out-of-state sellers who make regular deliveries into the taxing state by other than common carrier or the postal service or who make a special advertising appeal: For example, advertising potential sales tax avoidance to residents of the taxing state also appears to meet constitutional requirements.