

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 (After Deadline)

3 SECOND REGULAR SESSION  
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE  
6

7 Legislative Document

No. 2416

8  
9 H.P. 1823

House of Representatives, April 3, 1984

10 Approved for introduction by a majority of the Legislative Council  
11 pursuant to Joint Rule 27.

12 Reference to the Committee on Taxation is suggested and ordered  
printed.

EDWIN H. PERT, Clerk

Presented by Speaker Martin of Eagle Lake.

13 Cosponsors: Representative Salsbury of Bar Harbor, Representative Kane  
of So. Portland and Senator Perkins of Hancock.

14 STATE OF MAINE  
15

16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-FOUR  
18

19 AN ACT to Equalize Taxation of Leased  
20 Aircraft used in Interstate Commerce.  
21

22 Emergency preamble. Whereas, Acts of the Legis-  
23 lature do not become effective until 90 days after  
24 adjournment unless enacted as emergencies; and

25 Whereas, there is currently a disparity in taxa-  
26 tion treatment between leased and purchased aircraft;  
27 and

28 Whereas, the repair and maintenance of aircraft  
29 in Maine is at an economic disadvantage because of  
30 Maine's sales and use tax laws; and

31 Whereas, the failure to amend these taxation pro-  
32 visions will result in the loss of a substantial num-  
33 ber of jobs to Maine citizens; and

1           Whereas, this disparity in taxation treatment  
2 places the airline industry in Maine at a severe com-  
3 petitive disadvantage with other states; and

4           Whereas, in the judgment of the Legislature,  
5 these facts create an emergency within the meaning of  
6 the Constitution of Maine and require the following  
7 legislation as immediately necessary for the preser-  
8 vation of the public peace, health and safety; now,  
9 therefore,

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

12           Sec. 1. 36 MRSA §1752, sub-§21, as amended by PL  
13 1965, c. 361, is further amended to read:

14           21. Use. "Use" includes the exercise in this  
15 State of any right or power over tangible personal  
16 property incident to its ownership when purchased by  
17 the user at retail sale, including the derivation of  
18 income, whether received in money or in the form of  
19 other benefits, by a lessor from the rental of tangi-  
20 ble personal property located in this State; except  
21 for money or other benefits derived by a lessor from  
22 the rental of aircraft used as instrumentalities of  
23 interstate commerce, as defined in section 1760, sub-  
24 section 41.

25           Sec. 2. 36 MRSA §1760, sub-§41, as amended by PL  
26 1981, c. 705, Pt. K, is further amended to read:

27           41. Certain instrumentalities of interstate or  
28 foreign commerce. The sale or lease of a vehicle,  
29 railroad rolling stock, aircraft or replacement or  
30 repair parts thereof or watercraft which is placed in  
31 use by the purchaser as an instrumentality of inter-  
32 state or foreign commerce within 30 days after that  
33 sale and which is used by the purchaser not less than  
34 80% of the time for the next 2 years as an instrumen-  
35 tality of interstate or foreign commerce. The State  
36 Tax Assessor may for good cause extend for not more  
37 than 30 days the time for placing the instrumentality  
38 in use in interstate or foreign commerce. For pur-  
39 poses of this subsection, property is "placed in use  
40 as an instrumentality of interstate or foreign com-

1 merce" by its carrying of, or providing the motive  
2 power for the carrying of, a bona fide payload in in-  
3 terstate or foreign commerce, or by being dispatched  
4 to a specific location at which it will be loaded  
5 upon arrival with, or will be used as motive power  
6 for the carrying of, a payload in interstate or for-  
7 eign commerce. For purposes of this subsection, "bona  
8 fide payload" means a cargo of persons or property  
9 transported by a contract or common carrier for com-  
10 pensation which exceeds the direct cost of carrying  
11 that cargo or pursuant to a legal obligation to pro-  
12 vide service as a public utility or a cargo of prop-  
13 erty transported in the reasonable conduct of the  
14 purchaser's own nontransportation business in inter-  
15 state commerce.

1 STATEMENT OF FACT

2 This bill is intended to resolve the existing  
3 disparity in taxation treatment between leased and  
4 purchased aircraft, and to encourage repairs and  
5 maintenance to be performed within Maine. Aircraft  
6 purchased for use in interstate commerce are exempt  
7 from sales and use tax. In recent years, economic  
8 conditions affecting Maine air carriers have required  
9 them to lease equipment rather than purchase it. Fi-  
10 nancing terms may be at unfavorably high interest  
11 rates, or the would-be buyer may be financially un-  
12 able to make any down payment, with the result that  
13 acquisitions of capital equipment are increasingly  
14 being made through use of lease arrangements. This  
15 frequently results in the lessee-user becoming re-  
16 sponsible for a use tax on property which would be  
17 exempt if purchased under terms substantially similar  
18 to those involved in a lease arrangement. The use  
19 tax previously has been assessed against the lessor,  
20 but the tax is ultimately passed along to the Maine  
21 user under standard aircraft lease terms which pro-  
22 vide that the user must reimburse the lessor for  
23 taxes. This Act provides that a taxpayer who would  
24 be exempt from sales tax on aircraft used in inter-  
25 state commerce on certain classes of property if pur-  
26 chased and conventionally financed will also be ex-  
27 empt from tax where the property is acquired through  
28 the use of a lease instead.

29 Also, air carriers have been discouraged from  
30 having repairs and maintenance work performed in  
31 Maine, since work done elsewhere is exempt from tax  
32 on return to Maine in interstate service. This bill  
33 exempts such work if performed in Maine, in order to  
34 avoid the competitive disadvantage which Maine ven-  
35 dors of repair and maintenance goods and services now  
36 face.

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