

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 699

6
7 H.P. 496

House of Representatives, February 26, 1985

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

10 EDWIN H. PERT, Clerk

Presented by Representative Higgins of Portland.

11 Cosponsored by Senator Twitchell of Oxford and Representative Daggett
of Manchester.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Realign the Tax Laws of the State
18 as they Relate to Telecommunications.
19

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

22 Sec. 1. 36 MRSA §1752, sub-§11, ¶A is enacted to
23 read:

24 A. "Retail sale" or "sale at retail" does not
25 include transactions involving tangible personal
26 property if the person acquiring the property ac-
27 quires it for rental, license or leasing in the
28 ordinary course of his business.

29 Sec. 2. 36 MRSA §1752, sub-§13, as amended by PL
30 1981, c. 706, §20, is further amended to read:

31 13. Sale. "Sale" means any transfer, exchange or
32 barter, in any manner or by any means whatsoever, for
33 a consideration and includes ~~leases and contracts~~
34 ~~payable by rental or license fees for the right of~~

1 possession and use, but only when such leases and
2 contracts are deemed by the State Tax Assessor to be
3 in lieu of purchase any lease, rental or license of
4 tangible personal property in any manner or by any
5 means whatsoever.

6 Sec. 3. 36 MRSA §1752, sub-§18-B is enacted to
7 read:

8 18-B. Telecommunications or telegraph ser-
9 vice. "Telecommunications or telegraph service"
10 means the sale to the public of interactive 2 way
11 electromagnetic communications including light trans-
12 mission of voice, data or other information which
13 originates from or terminates in this State. This
14 definition does not include directory advertising
15 service and value added nonvoice services in which
16 computer processing applications are used to act on
17 the form, content, code and protocol of the informa-
18 tion to be transmitted.

19 Telegraph service means all telegraph service for
20 which a charge is made.

21 Telecommunications and telegraph service does not in-
22 clude sales of telecommunications or telegraph ser-
23 vice used in the subsequent provision of telecommuni-
24 cations or telegraph service.

25 Sec. 4. 36 MRSA §1754, as amended by PL 1983, c.
26 859, Pt. M, §3, is further amended to read:

27 §1754. Registration of sellers

28 In order to facilitate the enforcement of chap-
29 ters 211 to 225, the following persons, other than
30 casual sellers, shall register with the Tax Assessor:

31 1. Maintains place of business. Every seller of
32 tangible personal property, whether or not at retail,
33 maintaining within this State any office, place of
34 manufacture, place of distribution, sales or sample
35 room or place, warehouse or storage place or other
36 place of business-;

37 2. Makes sales or solicits orders. Every seller
38 of tangible personal property not maintaining such a

1 place who makes retail sales within this State or who
2 solicits orders by means of salesmen within the State
3 for retail sales for use, storage or other consump-
4 tion within the State-;

5 3. Consignee or agent. Every consignee or agent
6 who makes retail sales in the State of tangible per-
7 sonal property on behalf of a principal who is with-
8 out the State if the principal is not the holder of a
9 valid registration certificate-;

10 4. Sales for use within State. Every agent, rep-
11 resentative, salesman, entrepreneur, solicitor, dis-
12 tributor or independent selling agent, when such per-
13 son receives compensation by reason of sales of tan-
14 gible personal property made outside the State by his
15 principal for use, storage or other consumption in
16 the State, and every salesman within the State of any
17 seller subject to subsection 2, if said principal is
18 not the holder of a valid registration certificate-;

19 5. Hotels, rooming houses and camps. Every per-
20 son managing or operating a hotel, rooming house,
21 tourist or trailer camp or collecting or receiving
22 rents therefrom on behalf of the owner or operator-;

23 6. Telecommunications and telegraph service. Ev-
24 ery person furnishing ~~telephone~~ telecommunications or
25 telegraph service-;

26 7. Short-term rentals of automobiles. Every per-
27 son engaged in the business of renting automobiles on
28 a short-term basis-;

29 8. Other presence in State. Every seller of tan-
30 gible personal property who maintains a continuing
31 presence of a nonsoliciting employee within the State
32 or who makes regular or frequent delivery in this
33 State of that property by means of its own employees
34 or agents-; and

35 9. Extended cable television service. Every
36 person furnishing extended cable television service.

37 Forms for application for registration certifi-
38 cates and registration certificates shall be pre-
39 scribed and furnished free by the Tax Assessor. For

1 each place of business the Tax Assessor shall issue a
2 registration certificate which shall be conspicuously
3 displayed at such place. No certificate shall be as-
4 signable, but it may be used by the legal representa-
5 tive of a registrant deceased, incompetent, bankrupt
6 or insolvent. A registration certificate shall not be
7 deemed to be a "license" within the meaning of that
8 term in the Maine Administrative Procedure Act.

9 In the case of a vendor who has no fixed place of
10 business and sells from one or more vehicles, each
11 such vehicle shall constitute a "place of business"
12 for the purpose of this section. In the case of a
13 vendor who has no fixed place of business and does
14 not sell from a vehicle, the application for seller's
15 certificate shall nevertheless set forth a place to
16 which any notice or other communication authorized by
17 chapters 211 to 225 may be sent.

18 Sec. 5. 36 MRSA §1811, as amended by PL 1983, c.
19 859, Pt. M, §7, is further amended to read:

20 §1811. Sales tax

21 A tax is imposed at the rate of 5% on the value
22 of all tangible personal property, on ~~telephone~~
23 telecommunications and telegraph service and on ex-
24 tended cable television service sold at retail in
25 this State, and upon the rental charged for living
26 quarters in hotels, rooming houses, tourist or trail-
27 er camps and the rental charged for automobiles
28 rented on a short-term basis, other than a rental
29 charged to a person engaged in the business of
30 renting automobiles, measured by the sale price, ex-
31 cept as in chapters 211 to 225 provided. Retailers
32 shall pay such tax at the time and in the manner pro-
33 vided, and it shall be in addition to all other
34 taxes.

35 The tax imposed upon the sale and distribution of
36 gas, water or electricity, or ~~telephone~~
37 telecommunications or telegraph service, by any pub-
38 lic utility, the rates for which sale and distribu-
39 tion are established by the Public Utilities Commis-
40 sion, shall be added to the rates so established. No
41 tax shall may be imposed upon the sale or use of
42 electrical energy, or water stored for the purpose of

1 generating electricity, when the sale is to or by a
2 wholly owned subsidiary by or to its parent corporation,
3 except for electrical energy or water purchased
4 for resale to or by such wholly owned subsidiary.

5 Sec. 6. 36 MRSA §2683, as amended by PL 1973, c.
6 717, §2, is further amended to read:

7 §2683. Companies taxable

8 Every corporation, association or person ~~operat-~~
9 ~~ing in whole or in part a telephone or telegraph line~~
10 ~~within the State for tolls or other compensation pro-~~
11 ~~viding local exchange telephone service~~ shall pay to
12 the State Tax Assessor, for the use of the State, an
13 annual excise tax for the privilege of conducting
14 such business within the State.

15 Sec. 7. 36 MRSA §2684 is amended to read:

16 §2684. Computation; telephone companies

17 The amount of the annual excise tax on ~~telephone~~
18 ~~companies providers of local exchange telephone~~
19 ~~service~~ shall be ascertained as follows: When the total gross operating revenues of such corporation, association or person from its or his operations within this State during the calendar year preceding the year for which the tax is assessed on such corporation, association or person exceed \$1,000 and do not exceed \$5,000, the tax shall be 1 1/4% of such total gross operating revenues; when such total gross operating revenues exceed \$5,000 and do not exceed \$10,000, the tax shall be 1 1/2% of such total gross operating revenues; when such total gross operating revenues exceed \$10,000 and do not exceed \$20,000, the tax shall be 1 3/4% of such total gross operating revenues; when such total gross operating revenues exceed \$20,000 and do not exceed \$40,000, the tax shall be 2% of such total gross operating revenues; and so on, increasing the rate of tax 1/4 of 1% for each additional \$20,000 or fractional part thereof, of such total gross operating revenues, provided that the rate shall in no event exceed 7% of such total gross operating revenues.

40 Sec. 8. 36 MRSA §2686, as amended by PL 1981, c.
41 364, §32, is further amended to read:

1 §2686. Returns of operators

2 Every corporation, association or person ~~operat-~~
3 ~~ing in whole or in part a telephone or telegraph line~~
4 ~~for toll or other compensation within the State pro-~~
5 ~~viding local exchange telephone service~~ shall annual-
6 ly, on or before the last day of January, return to
7 the State Tax Assessor, signed by its treasurer or
8 its chief accounting officer if a corporation, or by
9 the owner or owners, or by the members of an associa-
10 tion or one of them, if a person or association, a
11 statement of the total gross operating revenues of
12 such corporation, association or person from its or
13 his operations within this State during the preceding
14 year ending December 31st, together with payment of
15 tax in accordance with sections 2684 and 2685. A fi-
16 nal reconciliation return shall be filed on or before
17 March 31st covering the prior calendar year. Such
18 tax shall be a lien on the property of such corpora-
19 tion, and on its franchise, and upon the property
20 used in ~~operating a telephone or telegraph business~~
21 ~~providing local exchange telephone service~~ by any
22 such association or person, and takes precedence over
23 all other liens.

24 Sec. 9. 36 MRSA §2687-B is enacted to read:

25 §2687-B. Definitions

26 As used in this chapter, unless the context indi-
27 icates otherwise, the following terms have the follow-
28 ing meanings.

29 1. Local exchange telephone service. "Local ex-
30 change telephone service" means a 2-way switched com-
31 munication service between points within an exchange
32 or between exchanges which are within an area in
33 which customers may call at rates and charges speci-
34 fied in local exchange tariffs filed with the Maine
35 Public Utilities Commission and includes local ex-
36 change service customer access line charges or simi-
37 lar charges.

38 Not included within the definition of "local exchange
39 telephone service" are the following:

1 A. Hotels, motels or other lodging-type entities
2 which resell telephone service to their lodging
3 patrons and not to the general public; and

4 B. Real property owners, landlords, realty oper-
5 ators and superintendents, who merely resell
6 telephone service to their tenants and any others
7 who may occupy their real property.

8 Sec. 10. 36 MRSA §2688, as amended by PL 1977,
9 c. 696, §279, is further amended to read:

10 §2688. Books open to assessors

11 The State Tax Assessor or his duly authorized
12 agent shall have access to the books of any corpora-
13 tion, association or person operating telephone or
14 telegraph lines providing local exchange telephone
15 service in this State, to ascertain if the required
16 returns are correctly made. Any corporation, associ-
17 ation or person refusing or neglecting to make the
18 returns required by law or to exhibit to the State
19 Tax Assessor, or to his duly authorized agent, its or
20 his books for the purpose aforesaid, or making re-
21 turns which the president, clerk, treasurer or other
22 person certifying those returns knows to be false
23 shall be subject to a civil penalty of not less than
24 \$1,000 nor more than \$10,000 payable to the State to
25 be recovered in a civil action in any county into
26 which the telegraph or telephone lines extend.

27 Sec. 11. 36 MRSA §2689, as repealed and replaced
28 by PL 1977, c. 595, is amended to read:

29 §2689. Limited property tax

30 The land, buildings and microwave towers or simi-
31 lar towers, owned by a telephone or telegraph company
32 providers of local exchange telephone service, shall
33 be taxed as real property in the municipality or un-
34 organized territory in which they are situated.

35 The excise tax imposed by this chapter shall be
36 in lieu of property taxes upon all other property of
37 a telephone and telegraph company, providers of local
38 exchange telephone service, including the poles,
39 wires, conduits, cables, booths, central office

1 equipment, and other machinery and equipment involved
2 in the business of a telegraph or telephone company
3 providing local exchange telephone service.

4 STATEMENT OF FACT

5 The objective of the proposed changes in Maine's
6 gross receipts tax and sales and use tax laws is to
7 put all long distance telephone companies and equip-
8 ment suppliers on an equal competitive footing and to
9 update the sales and use tax law to take into account
10 the technological changes that have already occurred
11 and are occurring in the communications industry.

12 This bill will accomplish these objectives by re-
13 stricting the coverage of the gross receipts tax law
14 to local exchange telephone service. In the sales
15 and use tax area, the definition of taxable telephone
16 service is amended to add long distance telephone
17 service, to exclude any type of equipment use charges
18 and, in addition, the leasing of all tangible person-
19 al property is made a taxable activity with an exemp-
20 tion provided for tangible personal property pur-
21 chased for the purpose of leasing.

22 The increase in the sales tax on telephone ser-
23 vice will more than offset the gross receipts tax re-
24 duction. This change will also create new personal
25 property tax revenues since any gross receipts taxes
26 previously paid by some long distance companies were
27 in lieu of personal property taxes. The expansion of
28 the sales and use tax law to encompass leasing of
29 tangible personal property is expected to generate
30 additional tax revenue on a long-term basis.

31 In the short term, some tax revenues are deferred
32 because of the initial exemption from sales tax ac-
33 corded to equipment purchased for the purpose of
34 leasing. Not only will this deferral of revenue be
35 more than made up by sales taxation of lease or rent-
36 al overtime, but the expansion of the sales tax on
37 telephone service to include interstate service will
38 produce monthly tax revenues that will more than make
39 up for this deferral even on a short-term basis. In
40 addition, the changes to the sales taxation accorded

1 leases will align Maine's tax treatment of lease or
2 finance activities with that of most other states.

3 The sales and use tax changes are necessary to
4 bring the sales and use tax laws in line with today's
5 technological realities in the communications equip-
6 ment industry. The rapid race of technological de-
7 velopment in the communications equipment industry
8 has created an increasing "blur" between communica-
9 tions and data processing equipment. Existing law
10 defines charges made for the use of "telephone equip-
11 ment" as taxable telephone service. Today it is vir-
12 tually impossible in many cases to determine whether
13 equipment connected to a telephone line constitutes
14 "telephonic equipment" or data processing equipment.
15 Revising the law to subject equipment use charges to
16 sales taxes as leases rather than telephone service
17 will eliminate the present uncertainty in the law;
18 will put all equipment suppliers on an equal competi-
19 tive footing; and will result in increased tax reve-
20 nues since all leases of tangible personal property
21 will be taxed equally.

22 Additionally, it is the intent of the Legislature
23 to remove the gross receipts tax on long distance
24 telephone companies by imposing a sales tax on their
25 service to create a true competitive environment.

26 In summary, the restructuring of the gross re-
27 cepts and sales and use tax laws will place long
28 distance companies and communication equipment sup-
29 pliers respectively on an equal competitive footing
30 in today's marketplace and at the same time preserve
31 the state's tax revenues which are necessary to pro-
32 vide for the general welfare. Local tax revenues
33 will also increase as a by-product of these changes.

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