

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 884

7
8 H.P. 614 House of Representatives, February 28, 1985

9 On Motion of Representative Higgins of Portland, referred to the
10 Committee on Taxation. Sent up for concurrence and ordered printed.

11 EDWIN H. PERT, Clerk

Presented by Representative McGowan of Canaan.

12 Cosponsored by Representative Higgins of Portland and Representative
Weymouth of West Gardiner.

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT Relating to the Sales of Extended
19 Cable Television Services.
20

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

24 Whereas, the sales tax imposed on the sale of ex-
25 tended cable television service is a violation of the
26 First Amendment right of free speech guaranteed by
27 the United States Constitution; and

28 Whereas, the sales tax imposed on the sale of ex-
29 tended cable television service is an inequitable
30 tax, imposed on only one segment of the mass media
31 industry; and

32 Whereas, in the judgment of the Legislature,
33 these facts create an emergency within the meaning of
34 the Constitution of Maine and require the following
35 legislation as immediately necessary for the preser-

1 vation of the public peace, health and safety; now,
2 therefore,

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

5 Sec. 1. 36 MRSA §1752, sub-§2-B, as enacted by
6 PL 1983, c. 859, Pt. M, §§1 and 13, is repealed.

7 Sec. 2. 36 MRSA §1752, sub-§11, as amended by PL
8 1983, c. 859, Pt. M, §§2 and 13, is further amended
9 to read:

10 11. Retail sale or sale at retail. "Retail sale"
11 or "sale at retail" means any sale of tangible per-
12 sonal property, in the ordinary course of business,
13 for consumption or use, or for any purpose other than
14 for resale, except resale as a casual sale, in the
15 form of tangible personal property, any rental of
16 living quarters in any hotel, rooming house, tourist
17 or trailer camp, any rental of automobiles on a
18 short-term basis, other than rental to a person en-
19 gaged in the business of renting automobiles, and the
20 sale of telephone or telegraph service ~~and the sale~~
21 ~~of extended cable television service.~~ The term "re-
22 tail sale" or "sale at retail" includes conditional
23 sales, installment lease sales, and any other trans-
24 fer of tangible personal property when the title is
25 retained as security for the payment of the purchase
26 price and is intended to be transferred later. The
27 term "retail sale" or "sale at retail" also means
28 sale of products for internal human consumption to a
29 person for resale through coin-operated vending ma-
30 chine when sold to a retailer whose gross receipts
31 from the retail sale of tangible personal property
32 derived through sales from vending machines are more
33 than 50% of his gross receipts, which tax shall be
34 paid by the retailer to the State. The term "retail
35 sale" or "sale at retail" does not include any sale
36 by an executor or administrator in the settlement of
37 an estate, unless such sale is made through a retail-
38 er, or unless such sale is made in the continuation
39 or operation of a business; nor does the term include
40 any other isolated transaction in which any tangible
41 personal property is sold, transferred, offered for
42 sale or delivered by the owner thereof, such sale,
43 transfer, offer for sale, or delivery not being made

1 in the ordinary course of repeated and successive
2 transactions of a like character by such owner, such
3 transactions being elsewhere sometimes referred to as
4 "casual sales." "Casual sales" includes transactions
5 by a civic, religious or fraternal organization,
6 which is not a registered retailer, at bazaars,
7 fairs, rummage sales, picnics or similar events but
8 not exceeding 8 days in a calendar year. The sale by
9 a registered retailer of tangible personal property,
10 which that retailer has used in the course of his or
11 its business, is not a casual sale and is a retail
12 sale subject to taxation under this Part, if that
13 property is of a like character to that sold in the
14 ordinary course of repeated and successive transac-
15 tions. "Casual sale" shall not include any transac-
16 tion in which tangible personal property is sold,
17 transferred or offered for sale by a representative
18 for the owner's account when such representative is a
19 registered retailer, in which event such registered
20 retailer shall have the same duties respecting such
21 sale as if he had sold on his own account. "Retail
22 sale" and "sale at retail" do not include the sale of
23 tangible personal property which becomes an ingredi-
24 ent or component part of, or which is consumed or de-
25 stroyed or loses its identity in the manufacture of,
26 tangible personal property for later sale or lease,
27 other than lease for use in this State, but shall in-
28 clude fuel and electricity but shall not include
29 electricity separately metered and consumed in any
30 electrolytic process for the manufacture of tangible
31 personal property for later sale, nor any fuel oil or
32 coal, the by-products from the burning of which be-
33 come an ingredient or component part of tangible per-
34 sonal property for later sale. "Retail sale" and
35 "sale at retail" do not include the sale, to a person
36 engaged in the business of renting automobiles, of
37 automobiles, or integral parts thereof or accessories
38 thereto, for rental or for use in an automobile
39 rented, on a short-term basis. It shall be consid-
40 ered that tangible personal property is "consumed or
41 destroyed" or "loses its identity" in such manufac-
42 ture, if it has a normal physical life expectancy of
43 less than one year as a usable item in the use to
44 which it is applied. "Retail sale" or "sale at re-
45 tail" do not include the sale of containers, boxes,
46 crates, bags, cores, twines, tapes, bindings,
47 wrappings, labels and other packing, packaging and

