

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 298

H.P. 230 House of Representatives, February 6, 1987
Reference to the Committee on Taxation suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative VOSE of Eastport.

Cosponsored by Senators PERKINS of Hancock, BALDACCI of
Penobscot and Representative ZIRNKILTON of Mt. Desert.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Realign the Tax Laws of the State
2 as They Relate to
3 Telecommunications.
4

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

7 Sec. 1. 36 MRSA §1752, sub-§11, as amended by PL
8 1985, c. 691, §8, is further amended to read:

9 11. Retail sale or sale at retail. "Retail
10 sale" or "sale at retail" means any sale of tangible
11 personal property, in the ordinary course of busi-
12 ness, for consumption or use, or for any purpose oth-
13 er than for resale, except resale as a casual sale,
14 in the form of tangible personal property, any rental
15 of living quarters in any hotel, rooming house, tour-
16 ist or trailer camp, any rental of automobiles on a

1 short-term basis, other than rental to a person en-
2 gaged in the business of renting automobiles, the
3 sale of telephone or telegraph service and the sale
4 of extended cable television service. The term "re-
5 tail sale" or "sale at retail" includes conditional
6 sales, installment lease sales, and any other trans-
7 fer of tangible personal property when the title is
8 retained as security for the payment of the purchase
9 price and is intended to be transferred later. The
10 term "retail sale" or "sale at retail" also means
11 sale of products for internal human consumption to a
12 person for resale through coin-operated vending ma-
13 chines when sold to a retailer whose gross receipts
14 from the retail sale of tangible personal property
15 derived through sales from vending machines are more
16 than 50% of his gross receipts, which tax shall be
17 paid by the retailer to the State. The term "retail
18 sale" or "sale at retail" does not include any sale
19 by an executor or administrator in the settlement of
20 an estate, unless such sale is made through a retail-
21 er, or unless such sale is made in the continuation
22 or operation of a business; nor does the term include
23 any other isolated transaction in which any tangible
24 personal property is sold, transferred, offered for
25 sale or delivered by the owner of the property, such
26 sale, transfer, offer for sale, or delivery not being
27 made in the ordinary course of repeated and succes-
28 sive transactions of a like character by such owner,
29 such transactions being elsewhere sometimes referred
30 to as "casual sales." "Casual sales" includes trans-
31 actions by a civic, religious or fraternal organiza-
32 tion, which is not a registered retailer, at bazaars,
33 fairs, rummage sales, picnics or similar events but
34 not exceeding 8 days in a calendar year. The sale by
35 a registered retailer of tangible personal property,
36 which that retailer has used in the course of his or
37 its business, is not a casual sale and is a retail
38 sale subject to taxation under this Part, if that
39 property is of a like character to that sold in the
40 ordinary course of repeated and successive transac-
41 tions. "Casual sale" shall not include any transac-
42 tion in which tangible personal property is sold,
43 transferred or offered for sale by a representative
44 for the owner's account when such representative is a
45 registered retailer, in which event such registered
46 retailer shall have the same duties respecting such
47 sale as if he had sold on his own account. "Retail

1 sale" and "sale at retail" do not include the sale of
2 tangible personal property which becomes an ingredi-
3 ent or component part of, or which is consumed or de-
4 stroyed or loses its identity directly and primarily
5 in the production of, tangible personal property for
6 later sale or lease, other than lease for use in this
7 State, but shall include fuel and electricity but
8 shall not include electricity separately metered and
9 consumed in any electrolytic process for the manufac-
10 ture of tangible personal property for later sale,
11 nor any fuel oil or coal, the by-products from the
12 burning of which become an ingredient or component
13 part of tangible personal property for later sale.
14 Tangible personal property is "consumed or destroyed"
15 or "loses its identity" in that production, if it has
16 a normal physical life expectancy of less than one
17 year as a usable item in the use to which it is ap-
18 plied. "Retail sale" and "sale at retail" do not in-
19 clude the sale, to a person engaged in the business
20 of renting automobiles, of automobiles, or integral
21 parts of automobiles or accessories to automobiles,
22 for rental or for use in an automobile rented, on a
23 short-term basis. "Retail sale" or "sale at retail"
24 do not include the sale of containers, boxes, crates,
25 bags, cores, twines, tapes, bindings, wrappings, la-
26 bels and other packing, packaging and shipping mate-
27 rials when sold to persons for use in packing, pack-
28 aging or shipping tangible personal property sold by
29 them or upon which they have performed the service of
30 cleaning, pressing, dyeing, washing, repairing or re-
31 conditioning in their regular course of business and
32 which are transferred to the possession of the pur-
33 chaser of such tangible personal property.

34 "Retail sale" or "sale at retail" does not include
35 transactions involving tangible personal property if
36 the person acquiring the property acquires it for
37 rental, license or leasing in the ordinary course of
38 business.

39 Sec. 2. 36 MRSA §1752, sub-§13, as amended by PL
40 1981, c. 706, §20, is further amended to read:

1 13. Sale. "Sale" means any transfer, exchange or
2 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

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-A, as amended by
7 PL 1985, c. 819, Pt. C, §§6 and 7, is repealed and
8 the following enacted in its place:

9 18-A. Telecommunications or telegraph ser-
10 vice. "Telecommunications" or "telegraph service"
11 means the transmission of any interactive 2-way elec-
12 tromagnetic communications, including voice, image,
13 data and information. Transmission of electromag-
14 netic communications includes the use of any media,
15 such as wires, cables, television cables, microwaves,
16 radio waves, light waves or any combination of those
17 or similar media. "Telecommunications service" does
18 not include value-added nonvoice services in which
19 computer processing applications are used to act on
20 the form, content, code and protocol of the informa-
21 tion to be transmitted, unless those services are
22 provided under tariff approved by the Public Utili-
23 ties Commission.

24 A. "Telecommunications service" includes service
25 which originates or terminates in this State and
26 is charged to a telephone number, account or cus-
27 tomer in this State or which originates and ter-
28 minates in this State. Interstate private line
29 service shall be taxed as follows:

30 (1) One hundred percent of the channel ter-
31 mination charge imposed at each channel ter-
32 mination point within this State;

33 (2) One hundred percent of the total chan-
34 nel mileage charge imposed between each
35 channel termination point within this State;
36 and

37 (3) An apportioned amount of the interstate
38 interoffice channel mileage charge deter-
39 mined by a ratio, the numerator of which is
40 the average number of land miles within this
41 State over which the private communication

1 can be routed to another state and the de-
2 ominator of which is the total actual num-
3 ber of miles charged to the nearest channel
4 termination point outside this State.

5 B. Until January 1, 1988, "telecommunications
6 service" includes access services provided by a
7 local exchange carrier to an interstate or intra-
8 state interexchange carrier. Notwithstanding
9 subsection 11, a sale of access services shall be
10 considered a retail sale. Beginning January 1,
11 1988, unless extended by the Legislature, "tele-
12 communications service" does not include those
13 access services. "Telecommunications" or "tele-
14 graph service" does not include directory adver-
15 tising service.

16 Sec. 4. 36 MRSA §1754, sub-§6, as enacted by PL
17 1965, c. 362, §5, is amended to read:

18 6. Telecommunications and telegraph service. Ev-
19 ery person furnishing ~~telephone~~ telecommunications or
20 telegraph service;

21 Sec. 5. 36 MRSA §1811, as amended by PL 1985, c.
22 783, §5, is further amended to read:

23 §1811. Sales tax

24 A tax is imposed on retail sales at the rate of
25 5% on the value of all tangible personal property, on
26 telephone telecommunications and telegraph service,
27 on extended cable television service, and on fabrica-
28 tion services, and at the rate of 7% on the value of
29 the rental charged for living quarters in hotels,
30 rooming houses, tourist or trailer camps, and the
31 rental charged for automobiles rented on a short-term
32 basis, other than a rental charged to a person en-
33 gaged in the business of renting automobiles measured
34 by the sale price, except as in chapters 211 to 225
35 provided. Retailers shall pay such tax at the time
36 and in the manner provided, and it shall be in addi-
37 tion to all other taxes.

38 The tax imposed upon the sale and distribution of
39 gas, water or electricity, or telephone
40 telecommunications or telegraph service, by any pub-

1 lic utility, the rates for which sale and distribu-
2 tion are established by the Public Utilities Commis-
3 sion, shall be added to the rates so established. No
4 tax shall be imposed upon the sale or use of electri-
5 cal energy, or water stored for the purpose of gener-
6 ating electricity, when the sale is to or by a wholly
7 owned subsidiary by or to its parent corporation, ex-
8 cept for electrical energy or water purchased for re-
9 sale to or by such wholly owned subsidiary.

10 Sec. 6. 36 MRSA c. 362-A is enacted to read:

11 CHAPTER 362-A

12 TELECOMMUNICATIONS

13 §2651. Persons taxable

14 Every person providing local exchange telephone
15 service or telegraph service, including toll service
16 originating and terminating within this State, shall
17 pay to the State Tax Assessor an annual excise tax
18 for the privilege of conducting this business in the
19 State.

20 §2652. Amount of tax

21 The amount of the annual excise tax on persons
22 providing local exchange telephone or telegraph ser-
23 vice and toll service originating and terminating
24 within this State is as follows: When the total
25 gross operating revenues of a person from its opera-
26 tions within the State during the calendar year pre-
27 ceding the year for which the tax is assessed on that
28 person exceed \$1,000 and do not exceed \$5,000, the
29 tax shall be 1 1/4% of the total gross operating rev-
30 enues; when the total gross operating revenues exceed
31 \$5,000 and do not exceed \$10,000, the tax shall be 1
32 1/2% of the total gross operating revenues; when the
33 total gross operating revenues exceed \$10,000 and do
34 not exceed \$20,000, the tax shall be 1 3/4% of the
35 total gross operating revenues; when the total gross
36 operating revenues exceed \$20,000 and do not exceed
37 \$40,000, the tax shall be 2% of the total gross oper-
38 ating revenues; and so on, increasing the rate of tax
39 1/4% of 1% for each additional \$20,000, or fractional
40 part, of the total gross operating revenues, provided

1 that the rate shall in no event exceed 7% of the to-
2 tal gross operating revenues.

3 §2653. Returns

4 Every person providing local exchange telephone
5 service or telegraph service and toll service origi-
6 inating and terminating within this State shall annu-
7 ally, by January 31st, return to the State Tax Asses-
8 sor, signed by the person responsible for the fiscal
9 affairs of the provider, a statement of its total
10 gross operating revenues from the provision of local
11 exchange telephone service or telegraph service and
12 toll service originating and terminating within the
13 State during the preceding year ending December 31st,
14 together with payment of tax in accordance with sec-
15 tion 2652. A final reconciliation return shall be
16 filed by March 31st covering the prior calendar year.
17 The tax shall be a lien on the property of the
18 provider and on its franchise, and upon the property
19 used by it in providing local exchange telephone ser-
20 vice or telegraph service, including toll service
21 originating and terminating in this State. This lien
22 takes precedence over all other liens.

23 §2654. Definitions

24 As used in this chapter, unless the context oth-
25 erwise indicates, the following terms have the fol-
26 lowing meanings.

27 1. Gross operating revenues. "Gross operating
28 revenues" means the total revenues derived from the
29 provision of local exchange telephone service or tel-
30 egraph services, including toll service originating
31 and terminating within this State. "Gross operating
32 revenues" do not include any amounts received by a
33 person for the provision of facilities, services or
34 network access utilized by another person in its pro-
35 vision of telecommunication services.

36 2. Local exchange telephone service. "Local ex-
37 change telephone service" means a 2-way switched com-
38 munication service between points within an exchange
39 or between exchanges which are within an area in
40 which customers may call at rates and charges speci-
41 fied in local exchange tariffs filed with the Public
42 Utilities Commission.

1 3. Telecommunications service. "Telecommunica-
2 tions service" means the transmission of any inter-
3 active 2-way electromagnetic communications, includ-
4 ing voice, image, data and information. Transmission
5 of electromagnetic communications includes the use of
6 any media, such as wires; cables, including 5 optical
7 cables and television cables; microwaves; radio
8 waves; light waves; or any combination of those or
9 similar media. "Telecommunications service" includes
10 telegraph service. "Telecommunications service" does
11 not include value added nonvoice services in which
12 computer processing applications are used to act on
13 the form, content, code and protocol of the informa-
14 tion to be transmitted, unless those services are
15 provided under tariff approved by the Public Utili-
16 ties Commission

17 §2655. Books open to assessors

18 The State Tax Assessor or his duly authorized
19 agent has access to the books of any person providing
20 local exchange telephone service or telegraph service
21 in this State and toll service originating and termi-
22 inating within this State, to ascertain if the re-
23 quired returns are correctly made. Any person refus-
24 ing or neglecting to make the returns required by law
25 or to exhibit to the State Tax Assessor, or to his
26 duly authorized agent, books for the purpose set out
27 in this section, or making returns which the presi-
28 dent, clerk, treasurer or other person certifying
29 those returns knows to be false shall be subject to a
30 civil penalty of not less than \$1,000 nor more than
31 \$10,000 payable to the State to be recovered in a
32 civil action in any county into which the telegraph
33 or telephone service extends.

34 §2656. Limited property tax

35 The land, buildings and microwave towers or simi-
36 lar towers, owned by persons providing local exchange
37 telephone service or telegraph service and toll ser-
38 vice originating and terminating in this State, shall
39 be taxed as real property in the municipality or un-
40 organized territory in which they are situated.

41 The excise tax imposed by this chapter is in lieu
42 of property taxes upon all other property used in the

1 provision of local exchange telephone service or tel-
2 egraph service and toll service originating and ter-
3 minating within this State which is subject to the
4 tax imposed by this chapter, including the poles,
5 wires, conduits, cable, booths, central office equip-
6 ment and other machinery and equipment involved in
7 providing telecommunications service.

8 Sec. 7. 36, c. 364, as amended, is repealed.

9 Sec. 8. Effective date. This Act shall take ef-
10 fect the first day of the month following 90 days af-
11 ter the adjournment of the Legislature.

12 STATEMENT OF FACT

13 The purpose of the bill is to place all long dis-
14 tance telecommunication companies, as well as equip-
15 ment suppliers, on an equal competitive footing.

16 This bill accomplishes these objectives by amend-
17 ing the definition of "telecommunications service" to
18 reflect technological capabilities and to exclude
19 from taxation purchases of equipment which will be
20 subsequently leased. In addition, it places all
21 equipment lessors on an equal competitive footing by
22 imposing the sales tax on all equipment leases.

23 This bill recognizes the new realities of the
24 competitive telecommunications marketplace. It elim-
25 inates the gross receipts tax on interstate telecom-
26 munication providers and continues the tax upon tra-
27 ditional monopolistic telephone utilities. As a re-
28 sult of this, interstate telecommunication providers
29 are subject to a sales tax on interstate service and
30 the personal property of these entities are locally
31 taxed as other general commercial enterprises.

1 In summary, the restructuring of the sales and
2 use tax laws and the telecommunications laws places
3 long distance companies and all equipment suppliers
4 respectively on an equal competitive footing within
5 their industries and at the same time preserves tax
6 revenues which are necessary to provide for the gen-
7 eral welfare.

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