

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2019

H.P. 1450

House of Representatives, December 21, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Received by the Clerk of the House on December 21, 1989. Referred to the Committee on Taxation and 1600 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

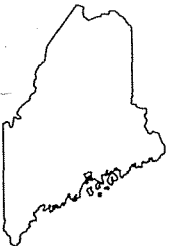
Presented by Representative CASHMAN of Old Town.

Cosponsored by Senator ANDREWS of Cumberland and Senator CLARK of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Amend the Maine State Sales and Use Tax Law.



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

2
4 Sec. 1. 36 MRSA §1752, sub-§11, as amended by PL 1989, c. 501,
Pt. V, §§2, 5 and 6 and c. 533, §§1 and 14, is repealed and the
6 following enacted in its place:

8 11. Retail sale. "Retail sale" means any sale of tangible
10 personal property, in the ordinary course of business, for
12 consumption or use, or for any purpose other than for resale,
14 except resale as a casual sale, in the form of tangible personal
16 property. "Resale" also means the purchase of tangible personal
18 property for the purpose of renting or leasing it to others by
20 persons engaged wholly or in part in the trade or business of
22 renting or leasing tangible personal property. "Retail sale"
24 also means any sale of a taxable service in the ordinary course
26 of business for any purpose other than for resale, except resale
28 as a casual sale. "Retail sale" includes conditional sales,
30 installment lease sales and any other transfer of tangible
32 personal property when the title is retained as security for the
34 payment of the purchase price and is intended to be transferred
36 later. "Retail sale" includes sale of products for internal
38 human consumption to a person for resale through coin-operated
40 vending machines when sold to a retailer whose gross receipts
42 from the retail sale of tangible personal property derived
44 through sales from vending machines are more than 50% of the
46 retailer's gross receipts, which tax shall be paid by the
48 retailer to the State. "Retail sale" does not include any sale
50 by a personal representative in the settlement of an estate,
unless the sale is made through a retailer, or unless the sale is
made in the continuation or operation of a business; nor does the
term include any other casual sale. "Retail sale" does not
include the sale of tangible personal property which becomes an
ingredient or component part of, or which is consumed or
destroyed or loses its identity directly and primarily in either
the production of tangible personal property for later sale or
lease or the production of tangible personal property pursuant to
a contract with the United States Government or any agency
thereof, but shall include fuel and electricity, but shall not
include electricity separately metered and consumed in any
electrolytic process for the manufacture of tangible personal
property for later sale, nor any fuel oil or coal, the
by-products from the burning of which become an ingredient or
component part of tangible personal property for later sale.
Tangible personal property is "consumed or destroyed" or "loses
its identity" in that production, if it has a normal physical
life expectancy of less than one year as a usable item in the use
to which it is applied. "Retail sale" does not include the sale
of containers, boxes, crates, bags, cores, twines, tapes,
bindings, wrappings, labels and other packing, packaging and
shipping materials when sold to persons for use in packing,
packaging or shipping tangible personal property sold by them or

2 upon which they have performed the service of cleaning, pressing,
4 dyeing, washing, repairing or reconditioning in their regular
6 course of business and which are transferred to the possession of
8 the purchaser of that tangible personal property. "Retail sale"
does not include the provision of meals or lodging to employees
at their place of employment when the value of those meals or
that lodging is allowed as a credit toward the wages of those
employees.

10 **Sec. 2. 36 MRSA §1752, sub-§11**, as amended by PL 1989, c. 501,
12 Pt. V, §§3 and 6, is further amended to read:

14 **11. Retail sale or sale at retail.** "Retail sale" or "sale
16 at retail" means any sale of tangible personal property, in the
18 ordinary course of business, for consumption or use, or for any
20 purpose other than for resale, except resale as a casual sale in
22 the form of tangible personal property, any rental of living
24 quarters in any hotel, rooming house, tourist or trailer camp,
26 any rental of automobiles on a short-term basis, other than
28 rental to a person engaged in the business of renting
30 automobiles, the sale of telephone or telegraph service and the
32 sale of extended cable television service. "Resale" also means
34 the purchase of tangible personal property for the purpose of
36 renting or leasing it to others by persons engaged wholly or in
38 part in the trade or business of renting or leasing tangible
40 personal property. The term "retail sale" or "sale at retail"
42 includes conditional sales, installment lease sales and any other
44 transfer of tangible personal property when the title is retained
46 as security for the payment of the purchase price and is intended
48 to be transferred later. The term "retail sale" or "sale at
50 retail" also means sale of products for internal human
consumption to a person for resale through coin-operated vending
machines when sold to a retailer whose gross receipts from the
retail sale of tangible personal property derived through sales
from vending machines are more than 50% of the retailer's gross
receipts, which tax shall be paid by the retailer to the State.
The term "retail sale" or "sale at retail" does not include any
sale by an executor or administrator in the settlement of an
estate, unless that sale is made through a retailer, or unless
that sale is made in the continuation or operation of a business;
nor does the term include any other isolated transaction in which
any tangible personal property is sold, transferred, offered for
sale or delivered by the owner of the property, that sale,
transfer, offer for sale, or delivery not being made in the
ordinary course of repeated and successive transactions of a like
character by that owner, those transactions being elsewhere
sometimes referred to as "casual sales." "Casual sales" includes
transactions by a civic, religious or fraternal organization,
which is not a registered retailer, at bazaars, fairs, rummage
sales, picnics or similar events but not exceeding 8 days in a
calendar year. The sale by a registered retailer of tangible

2 personal property, which that retailer has used in the course of
3 business, is not a casual sale and is a retail sale subject to
4 taxation under this Part, if that property is of a like character
5 to that sold in the ordinary course of repeated and successive
6 transactions. "Casual sale" shall not include any transaction in
7 which tangible personal property is sold, transferred or offered
8 for sale by a representative for the owner's account when that
9 representative is a registered retailer, in which event that
10 registered retailer shall have the same duties respecting that
11 sale as if the retailer had sold on the retailer's own account.
12 "Retail sale" and "sale at retail" do not include the sale of
13 tangible personal property which becomes an ingredient or
14 component part of, or which is consumed or destroyed or loses its
15 identity directly and primarily in either the production of,
16 tangible personal property for later sale or lease, ~~other than~~
17 ~~lease for use in this State,~~ or the production of tangible
18 personal property pursuant to a contract with the United States
19 Government or any agency thereof, but shall include fuel and
20 electricity. ~~"Retail sale" and "sale at retail" do not include~~
21 ~~the sale, to a person engaged in the business of renting~~
22 ~~automobiles, of automobiles, or integral parts of automobiles or~~
23 ~~accessories to automobiles, for rental or for use in an~~
24 ~~automobile rented, on a short term basis.~~ It shall be considered
25 that tangible personal property is "consumed or destroyed" or
26 "loses its identity" in that manufacture, if it has a normal
27 physical life expectancy of less than one year as a usable item
28 in the use to which it is applied. "Retail sale" or "sale at
29 retail" do not include the sale of containers, boxes, crates,
30 bags, cores, twines, tapes, bindings, wrappings, labels and other
31 packing, packaging and shipping materials when sold to persons
32 for use in packing, packaging or shipping tangible personal
33 property sold by them or upon which they have performed the
34 service of cleaning, pressing, dyeing, washing, repairing or
35 reconditioning in their regular course of business and which are
36 transferred to the possession of the purchaser of that tangible
37 personal property.

38 **Sec. 3. 36 MRSA §1811, first ¶**, as amended by PL 1989, c. 533,
39 §§10 and 14, and c. 588, Pt. B, §2, is repealed and the following
40 enacted in its place:

42 A tax is imposed at the rate of 5% on the value of all
43 tangible personal property, on telephone and telegraph service,
44 on extended cable television service, on fabrication services, on
45 the rental of tangible personal property and on custom computer
46 programming sold at retail in this State; at the rate of 7% on
47 the value of all other taxable services sold at retail in this
48 State; and at the rate of 10% on the value of liquor sold in
49 licensed establishments as defined in Title 28-A, section 2, in
50 accordance with Title 28-A, chapter 43. Value shall be measured
by the sale price, except as otherwise provided.

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Sec. 4. Effective date; repeal. Section 1 of this Act is repealed on July 1, 1991. Section 2 of this Act shall take effect on July 1, 1991.

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STATEMENT OF FACT

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The purpose of this bill is to provide an equitable sales and use tax structure for the lease of tangible personal property.

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This bill replaces the current system for the sales and use taxation of leased tangible personal property with a system that assesses such taxes upon the lease payments as they are paid by the lessee to the lessor. This change embodies sound sales and use tax policy because the tax is levied upon the amounts which represent the actual consumer spending on the goods. In addition, this bill brings the State's sales and use tax law into conformity with those methods most commonly employed by other states which collect sales and use tax.

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