

MAINE STATE LEGISLATURE

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108

L.D. 1713

DATE: 3/20/96

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M A J O R I T Y
T A X A T I O N

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1251, L.D. 1713, Bill, "An Act to Amend the Tax Laws Regarding Retail Business Registration and Penalty Relief to Taxpayers with Extensions"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 36 MRSA §1752, sub-§10, as repealed and replaced by PL 1987, c. 497, §21, is amended to read:

10. Retailer. "Retailer" means any person who makes retail sales or who is required to register by section 1754 1754-B or is registered under section 1756.

Sec. 2. 36 MRSA §1754, as amended by PL 1989, c. 880, Pt. H, is repealed.

Sec. 3. 36 MRSA §1754-B is enacted to read:

§1754-B. Registration of sellers

1. Persons required to register. The following persons, other than casual sellers, shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part:

A. Every seller of tangible personal property or taxable services, whether or not at retail, that maintains in this State any office, manufacturing facility, distribution facility, warehouse or storage facility, sales or sample room or other place of business;

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2 B. Every seller of tangible personal property or taxable
3 services that does not maintain a place of business in this
4 State but makes retail sales in this State or solicits
5 orders, by means of one or more salespeople within this
6 State, for retail sales within this State;

7 C. Every lessor engaged in the leasing of tangible personal
8 property located in this State that does not maintain a
9 place of business in this State but makes retail sales to
10 purchasers from this State;

11 D. Every consignee, agent or salesperson that makes retail
12 sales in this State of tangible personal property or taxable
13 services on behalf of a principal that is outside of this
14 State if the principal is not the holder of a valid
15 registration certificate;

16 E. Every agent, representative, salesperson, solicitor or
17 distributor that receives compensation by reason of sales of
18 tangible personal property or taxable services made outside
19 this State by a principal for use, storage or other
20 consumption in this State;

21 F. Every person that manages or operates a hotel, rooming
22 house or tourist or trailer camp in this State or collects
23 or receives rents from a hotel, rooming house or tourist or
24 trailer camp; and

25 G. Every seller of tangible personal property or taxable
26 services that has a substantial physical presence in this
27 State sufficient to satisfy the requirements of the due
28 process and commerce clauses of the United States
29 Constitution. The following activities do not constitute a
30 substantial physical presence for purpose of this paragraph:

31 (1) Solicitation of business in this State through
32 catalogs, flyers, telephone or electronic media when
33 delivery of ordered goods is affected by the United
34 States mail or by an interstate 3rd-party carrier;

35 (2) Attending trade shows, seminars or conventions in
36 this State;

37 (3) Holding a meeting of a corporate board of
38 directors or shareholders or holding a company retreat
39 or recreational event in this State;

40 (4) Maintaining a bank account or banking relationship
41 in this State; or

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(5) Using a vendor in this State for printing, drop shipping or telemarketing services.

2. Registration certificates. Application forms for sales tax registration certificates must be prescribed and furnished free of charge by the assessor. The assessor shall issue a registration certificate to each applicant that properly completes and submits an application form. A separate application must be completed and a separate registration certificate issued for each place of business. A registration certificate issued pursuant to this section is nontransferable and is not a license within the meaning of that term in the Maine Administrative Procedure Act.

When a retailer maintains a place of business in this State, the registration certificate must be conspicuously displayed at that place of business. In the case of a retailer that does not have a fixed place of business and makes sales from one or more motor vehicles, each motor vehicle constitutes a place of business.

3. Penalties. A person that is required by this section to register as a retailer with the assessor and that makes retail sales in this State without being so registered commits a Class E crime. When a person's sales tax registration certificate has been revoked by the assessor pursuant to section 1757, that person commits a Class D crime by continuing to make retail sales in this State.

Sec. 4. 36 MRSA §1756, as amended by PL 1987, c. 497, §35, is repealed and the following enacted in its place:

§1756. Voluntary registration

Every seller of tangible personal property or taxable services that is not required by section 1754-B to register may register upon those terms that the assessor prescribes. Upon registration, the seller has the rights and duties of a person required to be registered and is subject to the same penalties, except that the seller's liability may be limited to tax actually collected. The seller so registered may at any time surrender the seller's registration certificate and request that the registration certificate be canceled. Upon receipt of the certificate and request, the assessor shall grant the cancellation, if it appears to the assessor that the seller has satisfied all liability to the State and that the seller is not required by law to register. Upon surrender of the certificate, the seller must cease to collect sales or use taxes upon sales that occur on and after the date of the surrender.

Sec. 5. 36 MRSA §1760, sub-§21 is amended to read:

2 **21. Automobiles used in driver education program.** Sales to
4 automobile dealers, registered under section ~~1754~~ 1754-B, of
6 automobiles for the purpose of equipping the same with dual
8 controls and loaning or leasing the same to public or private
secondary schools without consideration or for a consideration of
not more than \$1 a year, and used exclusively by such schools in
driver education programs.

10 **Sec. 6. 36 MRSA §1861**, as amended by PL 1991, c. 846, §25, is
12 further amended to read:

14 **§1861. Imposition**

16 A tax is imposed, at the respective rate provided in section
18 1811, on the storage, use or other consumption in this State of
tangible personal property or a service, the sale of which would
20 be subject to tax under section 1764 or 1811. Every person so
storing, using or otherwise consuming is liable for the tax until
22 the person has paid the tax or has taken a receipt from the
seller, as duly authorized by the ~~State-Tax-Assessor~~ assessor,
24 showing that the seller has collected the sales or use tax, in
which case the seller is liable for it. Retailers registered
26 under section ~~1754~~ 1754-B or 1756 shall collect the tax and make
remittance to the ~~State-Tax-Assessor~~ assessor. The amount of the
28 tax payable by the purchaser is that provided in the case of
sales taxes by section 1812. When tangible personal property
30 purchased for resale is withdrawn from inventory by the retailer
for the retailer's own use, use tax liability accrues at the date
of withdrawal.

32 **Sec. 7. 36 MRSA §2113, first ¶**, as amended by PL 1977, c. 696,
34 §277, is further amended to read:

36 Any A violation of any provision of chapters 211 to 225 for
which a penalty or forfeiture is not provided by any other Title
38 ~~of the Revised Statutes shall be~~ is a Class E crime. For the
purpose of this section, every person required to register under
40 section ~~1754~~ 1754-B who ~~shall engage~~ engages in any business for
which registration is required under section ~~1754~~ 1754-B, without
42 being the holder of a currently valid registration certificate,
~~shall commit~~ commits a separate offense for each calendar week or
44 part thereof during which he ~~shall be so engaged~~ that person
engages in that business.

46 **Sec. 8. 36 MRSA §5231, sub-§3** is enacted to read:

48 3. Penalty. A taxpayer that files an income tax or
franchise tax return after the due date with a valid extension
50 and that remits the amount of the balance due with that return

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2 will not incur a failure-to-pay penalty imposed by section 187-B,
3 subsection 2 unless the amount remitted with the return is more
4 than 10% of the total tax liability shown on the return.

6 **Sec. 9. Appropriation.** The following funds are appropriated
7 from the General Fund to carry out the purposes of this Act.

8 1996-97

10 **ADMINISTRATIVE AND FINANCIAL**
11 **SERVICES, DEPARTMENT OF**

12 **Bureau of Taxation**

14		
16	Positions - Legislative Count	(5.0)
17	Personal Services	\$161,802
18	All Other	128,355
19	Capital Expenditures	44,081
20		
21	TOTAL	<u>\$334,238</u>

22 Provides funds for one Principle Revenue
23 Agent position, 2 Revenue Agent positions, 2
24 Tax Examiner positions and 3 Office Review
25 contract positions and associated
26 administrative costs to enforce the expanded
27 sales and use tax registration requirements.'

30 Further amend the bill by inserting at the end before the
31 statement of fact the following:

34 **FISCAL NOTE**

36 1996-97

38 **APPROPRIATIONS/ALLOCATIONS**

40	General Fund	\$334,238
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42 **REVENUES**

44	General Fund	\$2,467,400
46	Other Funds	132,600

48 The Bureau of Taxation will require additional General Fund
appropriations of \$334,238 in fiscal year 1996-97 for one

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2 Principle Revenue Agent position, 2 Revenue Agent positions, 2
3 Tax Examiner positions and 3 office review contract positions and
4 associated administrative costs to enforce the expanded sales and
5 use tax registration requirements. The estimated annual costs
6 associated with these positions beginning in fiscal year 1997-98
7 are approximately \$277,000.

8 The changes in this bill and the addition of 8
9 revenue-generating positions will increase General Fund revenue
10 by \$2,467,400 annually beginning in fiscal year 1996-97. The
11 corresponding increase in dedicated revenue to the Local
12 Government Fund for state-municipal revenue sharing will be
13 \$132,600 annually.

14 The reduction in penalties for certain taxpayers will
15 decrease General Fund revenue by \$91,104 annually beginning in
16 fiscal year 1997-98. The corresponding decrease in dedicated
17 revenue to the Local Government Fund for state-municipal revenue
18 sharing will be \$4,896 annually.

19 This bill may also increase prosecutions for Class D and
20 Class E crimes. If a jail sentence is imposed, the additional
21 costs to the counties are estimated to be \$83.70 per day per
22 prisoner. These costs are not reimbursed by the State. The
23 number of prosecutions that may result in a jail sentence and the
24 resulting costs to the county jail system are expected to be
25 insignificant.

26 The additional workload, administrative costs and indigent
27 defense costs associated with the minimal number of new cases
28 filed in the court system can be absorbed within the budgeted
29 resources of the Judicial Department. The collection of
30 additional fines may also increase General Fund revenue by minor
31 amounts.'

32 STATEMENT OF FACT

33 This amendment rewrites the section of current law that
34 defines those persons that are required to register with the
35 State Tax Assessor and remit taxes. The amendment also
36 eliminates those sections of the bill dealing with other
37 registration requirements and makes changes to internal
38 cross-references necessitated by other changes made by the
39 amendment.

40 It also adds an appropriation section and a fiscal note to
41 the bill.