

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1713

H.P. 1251

House of Representatives, January 16, 1996

**An Act to Amend the Tax Laws Regarding Retail Business Registration
and Penalty Relief to Taxpayers with Extensions.**

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 24.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink, reading "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative DORE of Auburn.
Cosponsored by Representative TUTTLE of Sanford and
Representatives: GREEN of Monmouth, KERR of Old Orchard Beach, REED of Falmouth,
SPEAR of Nobleboro, TRIPP of Topsham, Senator: FERGUSON of Oxford.

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

Sec. 1. 36 MRSA §1754, as amended by PL 1989, c. 880, Pt. H, is repealed and the following enacted in its place:

§1754. Registration of sellers

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

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

B. A seller of tangible personal property or taxable services that does not maintain a place of business in this State but makes retail sales in this State or solicits orders by means of one or more salespeople in this State for retail sales in this State;

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

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

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

F. A person that manages or operates a hotel, rooming house, tourist or trailer camp in this State or collects or receives rents from a hotel, rooming house, tourist or trailer camp on behalf of the owner or operator; and

G. A seller of tangible personal property or taxable services that has substantial connection with this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. The

2 State Tax Assessor shall by rule describe business
3 activities that constitute a substantial connection within
4 the meaning of this paragraph.

6 **2. Registration certificates.** Application forms for sales
7 tax registration certificates must be prescribed and furnished
8 free of charge by the State Tax Assessor. The assessor shall
9 issue a registration certificate to each applicant who properly
10 completes and submits an application form. A separate
11 application must be completed and a separate registration
12 certificate issued for each place of business. A registration
13 certificate issued pursuant to this section is nontransferable
14 and is not deemed to be a "license" within the meaning of that
15 term in the Maine Administrative Procedure Act.

16 When a retailer maintains a place of business in this State, the
17 registration certificate must be conspicuously displayed at that
18 place of business. In the case of a retailer who has no fixed
19 place of business and makes sales from one or more motor
20 vehicles, each motor vehicle constitutes a place of business.

22 **3. Penalties.** A person that is required by this section to
23 register as a retailer with the State Tax Assessor and makes
24 retail sales in this State without being registered commits a
25 Class E crime, except that a person with a prior conviction under
26 this section commits a Class D crime. If a person whose sales
27 tax registration certificate has been revoked by the assessor
28 pursuant to section 1757 continues to make retail sales in this
29 State, that person commits a Class D crime, except that a person
30 with a prior conviction under this section commits a Class C
31 crime.

32 **Sec. 2. 36 MRSA §1754-A,** as enacted by PL 1991, c. 780, Pt.
33 CCC, §2, is repealed and the following enacted in its place:

36 **§1754-A. Registration of owners of space temporarily rented**
37 **as retail space**

38 **1. Persons required to register.** A person that rents or
39 leases property to others and has more than 4 persons renting or
40 leasing space at one location for less than a 12-month period for
41 the purpose of making retail sales shall register with the State
42 Tax Assessor.

44 **2. Registration certificates.** The form for application for
45 registration and the registration certificate must be prescribed
46 and furnished free by the State Tax Assessor. For each location
47 where more than 4 persons rent or lease space for less than 12
48 months from the same person, the assessor shall issue a

2 registration certificate, which must be conspicuously displayed
3 at that location.

4 3. Information returns. A person holding a registration
5 certificate issued by the State Tax Assessor under this section
6 shall provide to the assessor, by the 15th of each month
7 following a month in which rental on lease activity has occurred,
8 the names, addresses and tax registration certificate numbers of
9 those persons that have rented space during the previous month.
10 Information returns must be prescribed and furnished free by the
11 assessor. Information returns required under this subsection are
12 subject to the provisions of section 187-B.

13 4. Penalties. A person that is required by this section to
14 register with the State Tax Assessor but fails to register
15 commits a Class E crime, except that a person with a prior
16 conviction under this section commits a Class D crime.

17 **Sec. 3. 36 MRSA §1755,** as amended by PL 1969, c. 18, is
18 further amended to read:

19 **§1755. No registration unless tax paid**

20 Whenever any tangible personal property whose sale or use is
21 subject to tax under ~~chapters 211 to 225~~ this Part is required by
22 law to be registered for use within in this State by any law
23 other than this, the applicant for registration, whether or not
24 the owner, ~~shall himself be~~ is liable for the sales tax or use
25 tax or shall ~~prove that said tax is not owing~~ provide evidence
26 that no tax is due. The registering agency may not register the
27 property unless all applicable sales and use taxes have been
28 paid. Such ~~The~~ applicant shall file with the registering agency a
29 certificate in ~~such form as may be~~ a form prescribed by the State
30 Tax Assessor containing the name of ~~the~~ vendor, date of purchase,
31 sale price and ~~such any~~ other information ~~as may be~~ the assessor
32 considers pertinent to determination of tax liability, ~~and the~~
33 liability. The registering agency shall forward ~~such~~ the
34 certificate promptly to the Bureau of Taxation ~~assessor.~~

35 **Sec. 4. 36 MRSA §1756,** as amended by PL 1987, c. 497, §35, is
36 further amended to read:

37 **§1756. Voluntary registration**

38 Every A seller of tangible personal property or taxable
39 services, that is not required by section 1754 to register, with
40 the State Tax Assessor may register upon such terms as the State
41 Tax Assessor ~~assessor~~ may prescribe. Upon registration, ~~he shall~~
42 have the registrant has the rights and duties of a person
43 required to be registered and ~~shall be~~ is subject to the same

penalties, except that his the registrant's liability may be limited to tax actually collected. The ~~person--se--registered~~ registrant may at any time surrender his the registration certificate and request that ~~the--same~~ it be canceled. Upon ~~receipt of such certificate and request, the State Tax Assessor shall grant the same,~~ The assessor shall grant the request if it appears ~~to--the--State--Tax--Assessor~~ that the registrant has satisfied all liability to the State and ~~that he~~ is not required by law to register. Upon surrender of his the certificate, the registered person shall may cease to collect sales or use taxes ~~upon sales taking place on and after the date of such surrender.~~

Sec. 5. 36 MRSA §5231, sub-§3 is enacted to read:

3. Penalty. A taxpayer that files an income tax or franchise tax return after the due date with a valid extension and that remits the amount of the balance due with that return does not incur the penalty imposed by section 187-B, subsection 2 for failure to pay unless the amount remitted with the return is more than 10% of the total tax liability shown on the return.

STATEMENT OF FACT

This bill revises the provisions of the Maine Revised Statutes, Title 36 relating to the registration of retail businesses with the State Tax Assessor. Title 36, section 1754 is repealed and replaced primarily in order to provide that out-of-state retailers must register to collect Maine sales tax if they have a connection with this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. The State Tax Assessor is directed to adopt a rule in order to explain what types of business activities meet the constitutional threshold. The criminal penalties applicable with respect to violations of Title 36, sections 1754 and 1754-A are also revised.

The bill provides penalty relief to taxpayers with valid extensions who underpay their income tax due by 10% or less.