

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

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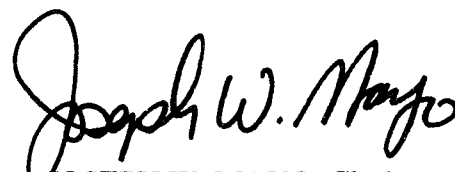
H.P. 807

House of Representatives, February 9, 1999

An Act to Implement the Recommendations of the Task Force to Study Telecommunications Taxation.

Reported by Representative BERRY for the Task Force to Study Telecommunications pursuant to Resolve 1997, chapter 121, section 7.

Reference to the Joint Standing Committee on Taxation suggested and printing ordered under Joint Rule 218.


JOSEPH W. MAYO, Clerk

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

2
4 **Sec. 1. 30-A MRSA §5252, sub-§2,** as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

6 **2. Captured assessed value.** "Captured assessed value" means the valuation amount by which the current assessed value of a tax increment financing district exceeds the original assessed value of the district. If the current assessed value is equal to or less than the original there is no captured assessed value. "Captured assessed value" does not include the value of telecommunications personal property that becomes subject to local property taxation as a result of the repeal of Title 36, section 458.

16 **Sec. 2. 36 MRSA §112, sub-§9-A** is enacted to read:

18 **9-A. Review of telecommunications taxation.** By January 1, 2001 and January 1, 2004, the assessor shall review the provisions of this Title relating to the taxation of telecommunications services including the taxation of electronic commerce. The review must include an analysis of the impact of structural and technological changes in the telecommunications industry and a review of federal and other national activities relating to the taxation of telecommunications services and electronic commerce. Before issuing a final report, the assessor shall solicit comments from the Public Utilities Commission, the Public Advocate, the Maine Science and Technology Foundation, the Department of Economic and Community Development, businesses providing and using telecommunications services and electronic commerce, organizations representing municipal officials and members of the public. The assessor shall submit a report by January 1, 2001 and January 1, 2004 to the joint standing committee of the Legislature having jurisdiction over taxation matters containing the results of the review required by this subsection, the assessor's recommendations regarding changes to the laws relating to the taxation of telecommunications services and electronic commerce and a summary of significant comments received by the assessor during the review.

40 This subsection is repealed January 2, 2004.

42 **Sec. 3. 36 MRSA §457, sub-§§9 and 10** are enacted to read:

44 **9. Transition.** The tax imposed under this section is repealed for tax years based on the status of property after April 1, 2000. Pursuant to subsection 5-A, the payment of taxes due on June 1, 2000 is equal to the total of the amount by which the 1999 gross tax assessment exceeds the estimated tax paid for that year and the payment of taxes due on June 1, 2001 is equal

2 to the amount by which the 2000 gross tax assessment exceeds the
3 estimated tax paid for that year

4 10. Repeal. This section is repealed July 1, 2001.

6 Sec. 4. 36 MRSA §458, as enacted by PL 1987, c. 507, §1, is
7 amended to read:

8 **§458. Continuation of exemption**

10 Telecommunications personal property subject to taxation
12 under this chapter shall ~~continue~~ continues to be exempt from
14 ordinary local property taxation as formerly provided under
16 section 2696. It is the intent of the Legislature that this
18 section not be considered a new property tax exemption requiring
state reimbursement under the Constitution of Maine, Article IV,
Part Third, Section 23. This section is repealed July 1, 2000.

20 Sec. 5. 36 MRSA §1752, sub-§1-H is enacted to read:

22 1-H. Communications service. "Communications service"
means:

24 A. The provision of 2-way interactive communications
through the use of telecommunications equipment; or

26 B. The installation, maintenance or repair of
28 telecommunications equipment.

30 Sec. 6. 36 MRSA §1752, sub-§2-A, as enacted by PL 1977, c.
32 455, §5, is amended to read:

34 2-A. Directly. "Directly," when used in relation to
production of tangible personal property or the communications
service, refers to those activities or operations which that
36 constitute an integral and essential part of production, as
38 contrasted with and distinguished from those activities or
operations which that are simply incidental, convenient or remote
to production.

40 Sec. 7. 36 MRSA §1752, sub-§7-D and 8-B are enacted to read:

42 7-D. Network elements. "Network elements" means a facility
44 or equipment used in the provision of a telecommunications
service and includes features, functions and capabilities that
46 are provided by means of that facility or equipment including
subscriber numbers, databases, signaling systems and information
48 sufficient for billing and collection or used in the
50 transmission, routing or other provision of a telecommunications
service.

2 **8-B. Prepaid calling arrangement.** "Prepaid calling
3 arrangement" means the right to purchase exclusively
4 telecommunications services, which must be paid for in advance,
5 that enables the origination of calls using an access number or
6 authorization code. The sale or recharge of the service is
7 considered a sale within the State if the transfer for
8 consideration takes place at the vendor's place of business in
9 the State. If the sale or recharge of a prepaid calling
10 arrangement does not take place at the vendor's place of
11 business, the sale or recharge is deemed to take place at the
12 customer's shipping address, or if there is no item shipped, at
13 the customer's billing address or the location associated with
14 the customer's mobile telephone number. The sale of the service
15 is deemed to occur on the date of the transfer for consideration
16 of the service.

17 **Sec. 8. 36 MRSA §1752, sub-§9-B,** as amended by PL 1997, c.
18 557, Pt. D, §1 and affected by §4 and Pt. G, §1, is further
19 amended to read:
20

21 **9-B. Production.** "Production" means an operation or
22 integrated series of operations engaged in as a business or
23 segment of a business that provides communications service or
24 that transforms or converts personal property by physical,
25 chemical or other means into a different form, composition or
26 character from that in which it originally existed.

27
28 "Production" includes manufacturing, processing, assembling and
29 fabricating operations that meet the definitional requisites,
30 including biological processes that are part of an integrated
31 process of manufacturing organisms or microorganic materials
32 through the application of biotechnology.

33
34 "Production" does not include biological processes except as
35 otherwise provided by this subsection, wood harvesting
36 operations, the severance of sand, gravel, oil, gas or other
37 natural resources produced or severed from the soil or water, or
38 activities such as cooking or preparing drinks, meals, food or
39 food products by a retailer for retail sale. The foregoing are
40 examples of activities that are not included within the term
41 "production."
42

43 **Sec. 9. 36 MRSA §1752, sub-§11, ¶B,** as repealed and replaced
44 by PL 1995, c. 281, §12 and affected by §42, is amended to read:
45

46 B. "Retail sale" does not include:
47

48 (1) Any casual sale;

2 (2) Any sale by a personal representative in the
4 settlement of an estate, unless the sale is made
6 through a retailer, or unless the sale is made in the
continuation or operation of a business;

8 (3) The sale, to a person engaged in the business of
10 renting automobiles, of automobiles, integral parts of
12 automobiles or accessories to automobiles, for rental
basis;

14 (4) The sale, to a person engaged in the business of
renting video tapes and video equipment, of video tapes
16 or video equipment for rental; ~~or~~

18 (5) The sale, to a person engaged in the business of
renting or leasing automobiles, of automobiles for
20 rental or lease for one year or more; or

22 (6) The sale, to a person engaged in the business of
providing cable television services, of cable converter
24 boxes for rental or lease.

26 **Sec. 10. 36 MRSA §1752, sub-§17-A, ¶C**, as enacted by PL 1987,
c. 497, §25, is amended to read:

28 C. ~~Telephone---or---telegraph---service~~ Telecommunications
30 services;

32 **Sec. 11. 36 MRSA §1752, sub-§17-A, ¶G**, as amended by PL 1993,
c. 701, §4, is further amended to read:

34 G. Rental of video tapes and video equipment; and

36 **Sec. 12. 36 MRSA §1752, sub-§17-A, ¶H**, as amended by PL 1995,
c. 281, §14 and affected by §42, is further amended to read:

38 H. Rental or lease of an automobile; and

40 **Sec. 13. 36 MRSA §1752, sub-§17-A, ¶I** is enacted to read:

42 I. Prepaid calling arrangements.

44 **Sec. 14. 36 MRSA §1752, sub-§18-A**, as amended by PL 1997, c.
46 668, §22, is repealed.

48 **Sec. 15. 36 MRSA §1752, sub-§18-B**, as amended by PL 1997, c.
50 668, §23, is repealed.

2 Sec. 16. 36 MRSA §1752, sub-§§18-C and 18-D are enacted to
read:

4 18-C. Telecommunications equipment. "Telecommunications
6 equipment" means any 2-way interactive communications device,
7 system or process for transmitting or receiving signals and
8 capable of exchanging audio, video, data or textual information.
9 "Telecommunications equipment" does not include computers, except
10 those components of a computer used primarily and directly as a
11 2-way interactive communications device capable of exchanging
12 audio, video, data or textual information.

13 18-D. Telecommunications services. "Telecommunications
14 services" means all telecommunications services as described in
15 this subsection.

16 A. "Telecommunications services" includes:

17 (1) The provision of 2-way interactive communications
18 through the use of telecommunications equipment; or

19 (2) The installation, maintenance or repair of
20 telecommunications equipment.

21 B. "Telecommunications services" does not include:

22 (1) Service originating or terminating outside this
23 State;

24 (2) Access services;

25 (3) Directory advertising services;

26 (4) The sale of unbundled network elements for use in
27 the provision of telecommunications services;

28 (5) For leases entered into on or after October 1,
29 1996, "telecommunications services" does not include
30 the lease of telecommunications equipment; or

31 (6) A prepaid calling arrangement.

32 Sec. 17. 36 MRSA §1760, sub-§9-H is enacted to read:

33 9-H. Residential telecommunications services. Sales of up
34 to the first \$16 per month per residential telecommunications
35 account for local exchange service.

36 Sec. 18. 36 MRSA §1760, sub-§32-A is enacted to read:

2 32-A. Machinery and equipment used to provide
3 communications service. Sales of machinery and equipment for use
4 by the purchaser directly and primarily in the provision of
5 communications service that is intended to be sold or leased
6 ultimately for final use or consumption.

8 Sec. 19. 36 MRS §1811, 2nd ¶, as amended by PL 1977, c. 198,
§6, is further amended to read:

10 The tax imposed upon the sale and distribution of gas, water
11 or electricity, or ~~telephone---or---telegraph---service~~
12 telecommunications services, by any public utility, the rates for
13 which sale and distribution are established by the Public
14 Utilities Commission, shall must be added to the rates so
15 established. No tax shall may be imposed upon the sale or use of
16 electrical energy, or water stored for the purpose of generating
17 electricity, when the sale is to or by a wholly owned subsidiary
18 by or to its parent corporation, except for electrical energy or
19 water purchased for resale to or by such wholly owned subsidiary.

22 SUMMARY

24 This bill contains the recommendations of the Task Force to
25 Study Telecommunications Taxation established by Resolve 1997,
26 chapter 121. The bill makes the following changes.

28 The bill replaces the definition of taxable "telephone and
29 telegraph service" in the sales tax law with a definition of
30 "telecommunications services." The new definition clarifies the
31 meaning of the old definition, ensures that unbundled network
32 elements sold to another provider of telecommunications services
33 are not taxable and excludes prepaid calling arrangements from
34 the definition of "telecommunications services."

36 The bill excludes from sales tax the sale of cable
37 television converter boxes to a provider of cable television
38 services.

40 The bill provides that a prepaid calling arrangement is a
41 taxable service under the sales tax law.

42 The bill requires the Bureau of Revenue Services to monitor
43 legal and technological developments in the field of
44 telecommunications and report to the Legislature any need for
45 change to the State's tax laws.

48 The bill provides sales tax exemptions for machinery and
equipment used directly and primarily to provide communications

2 service and for the first \$16 monthly for each residential
telephone account.

4 The bill repeals the state telecommunications personal
property tax effective April 1, 2001 and returns that personal
6 property to standard municipal property taxation