

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 1871

S.P. 667

In Senate, December 14, 2001

**An Act to Conform Maine Tax Law to the Federal Mobile
Telecommunications Sourcing Act.**

(EMERGENCY)

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 14, 2001. Referred to the Committee on Taxation and ordered printed pursuant to Joint Rule 308.2

A handwritten signature in black ink that reads "Pamela L. Cahill".

PAMELA L. CAHILL
Secretary of the Senate

Presented by Senator GAGNON of Kennebec.
Cosponsored by Representative: GREEN of Monmouth.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 **Whereas,** the federal Mobile Telecommunications Sourcing Act
6 requires states to make certain changes in the way they tax
mobile telecommunications services, and that Act applies to
8 customer bills issued after August 1, 2002; and

10 **Whereas,** legislative action is immediately necessary in
order to ensure continued, efficient and lawful administration of
12 Maine's sales and use tax law as it applies to mobile
telecommunications services; and

14 **Whereas,** in the judgment of the Legislature, these facts
16 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
18 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

22 **Sec. 1. 36 MRSA §1752, sub-§3-E** is enacted to read:

24 3-E. Home service provider. "Home service provider" means
26 the facilities-based carrier or reseller with which a customer
contracts for the provision of mobile telecommunications services.

28 **Sec. 2. 36 MRSA §1752, sub-§6-B** is enacted to read:

30 6-B. Mobile telecommunications services. "Mobile
32 telecommunications services" means commercial mobile radio
service as defined in 47 Code of Federal Regulations, Section
34 20.3 as in effect on July 1, 1999. For purposes of sourcing,
"mobile telecommunications services" does not include air-ground
36 radiotelephone service as defined in 47 Code of Federal
Regulations, Section 22.99 as in effect in June 1, 1999.

38 **Sec. 3. 36 MRSA §1752, sub-§7-E** is enacted to read:

40 7-E. Place of primary use. "Place of primary use" means
42 the street address representative of where a customer's use of
mobile telecommunications services primarily occurs, which must
44 be either the residential street address or the primary business
street address of the customer and must also be located within
46 the licensed service area of the home service provider. For
purposes of determining the place of primary use, "customer"
48 means the person or entity that contracts with the home service
provider for mobile telecommunications services, or, if the end
50 user of such services is not the contracting party, the person

2 that is the end user of such services. The term "customer" does
3 not include a reseller of mobile telecommunications services, or
4 a serving carrier under an agreement to serve the customer
5 outside the home service provider's licensed service area.

6 **Sec. 4. 36 MRSA §1752, sub-§9-D** is enacted to read:

8 **9-D. Reseller.** "Reseller," when used in relation to mobile
9 telecommunications services, means a provider that purchases
10 telecommunications services from another telecommunications
11 service provider and then resells, uses as a component part of or
12 integrates the purchased services into mobile telecommunications
13 services. "Reseller" does not include a serving carrier with
14 which a home service provider arranges for services to its
15 customers outside the home service provider's licensed service
16 area.

18 **Sec. 5. 36 MRSA §1752, sub-§14-D** is enacted to read:

20 **14-D. Serving carrier.** "Serving carrier," when used in
21 relation to mobile telecommunications services, means a
22 facilities-based carrier providing mobile telecommunications
23 services to a customer outside a home service provider's licensed
24 service area.

26 **Sec. 6. 36 MRSA §1752, sub-§18-D,** as enacted by PL 1999, c.
27 488, §10, is amended to read:

28 **18-D. Telecommunications services.** "Telecommunications
29 services" means all telecommunications services as described in
30 this subsection.

32 A. "Telecommunications services" includes:

34 (1) The provision of 2-way interactive communications
35 through the use of telecommunications equipment; ~~or~~

38 (2) The installation, maintenance or repair of
39 telecommunications equipment; and

40 (3) Mobile telecommunications services provided by a
41 home service provider to a customer whose place of
42 primary use is within this State, to the extent those
43 services are associated with transmissions that
44 originate and terminate within this State or within any
45 other state. Except as otherwise provided by this
46 subparagraph and notwithstanding any other provision of
47 this Part, "telecommunications services" includes all
48 charges associated with the provision of the mobile
49 telecommunications services described in this
50 subparagraph.

2 subparagraph and all charges for, or associated with,
3 another service provided as an adjunct to such
4 services, regardless of whether individual
5 transmissions included in a customer's bill originate
6 or terminate within the licensed service area of the
7 home service provider. Notwithstanding any other
8 provision of this Part, "telecommunications services"
9 also includes any otherwise nontaxable charge that is
10 aggregated with and not separately stated from the
11 mobile telecommunications services described in this
12 subparagraph unless the home service provider can, to
13 the satisfaction of the State Tax Assessor, reasonably
14 identify the charge from books and records kept in the
15 regular course of its business.

16 B. "Telecommunications services" does not include:

17 (1) Service Except as otherwise provided by this
18 subsection, service originating or terminating outside
19 this State;

20 (2) Access services;

21 (3) Directory advertising services;

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

24 (5) For leases entered into on or after October 1,
25 1996, ~~"telecommunications services" does not include~~
26 the lease of telecommunications equipment; or

27 (6) A prepaid calling arrangement; or

28 (7) Mobile telecommunications services provided by a
29 home service provider to a customer whose place of
30 primary use is not within this State.

31 **Sec. 7. 36 MRS §1816** is enacted to read:

32 **§1816. Special rules for mobile telecommunications services**

33 **1. Identifying place of primary use.** A home service
34 provider is responsible for obtaining and maintaining a record of
35 a customer's place of primary use. Subject to subsection 3 and
36 if the home service provider's reliance on the information
37 provided by its customer is in good faith, the home service
38 provider:

39 A. May rely on the applicable residential or business

2 street address supplied by the home service provider's
3 customer; and

4 B. May not be held liable for any additional taxes under
5 this Part based on a different determination of the place of
6 primary use.

8 **2. Correction of place of primary use; determination by**
9 **State Tax Assessor.** If the State Tax Assessor determines that
10 the address used by a home service provider as a customer's place
11 of primary use does not meet the definition provided by section
12 1752, subsection 7-E, the assessor shall notify the customer in
13 writing of that determination and provide the customer an
14 opportunity to demonstrate that that address is the customer's
15 place of primary use. If the customer fails to demonstrate to
16 the assessor's satisfaction within 30 days from the time it
17 receives notice from the assessor, or within another time period
18 as the assessor may allow, that the address in question is the
19 customer's place of primary use, the assessor shall provide the
20 home service provider with the proper address to be used as the
21 customer's place of primary use. The home service provider shall
22 begin using the address provided by the assessor as the
23 customer's place of primary use within 30 days from the date it
24 receives notice of the assessor's determination.

26 **3. Hold harmless provision; faulty database.** A home
27 service provider that uses the data contained in an electronic
28 database described in the federal Mobile Telecommunications
29 Sourcing Act, PL 106-252, Section 1, 114 Stat. 2, 2000, is not
30 liable for a tax that would otherwise be due under this Part
31 solely as a result of any error or omission in the database.

32 **4. Hold harmless provision; use of enhanced zip codes.**
33 Subject to subsection 3, a home service provider that does not
34 use the data contained in an electronic database described in the
35 federal Mobile Telecommunications Sourcing Act, PL 106-252,
36 Section 1, 114 Stat. 2, 2000, is not liable for a tax that would
37 otherwise be due under this Part solely as a result of an
38 assignment of a street address to an incorrect taxing
39 jurisdiction if the home service provider employs an enhanced zip
40 code to assign each street address to a specific taxing
41 jurisdiction and exercises due diligence to ensure that each
42 street address is assigned to the correct taxing jurisdiction.
43 For purposes of this subsection, there is a rebuttable
44 presumption that a home service provider has exercised due
45 diligence if it demonstrates that it has:

46 A. Expended reasonable resources to implement and maintain
47 an appropriately detailed electronic database of street
48 address assignments to taxing jurisdictions; and
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50

