

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

---

Legislative Document

No. 2073

H.P. 1467

House of Representatives, March 16, 2006

### **An Act To Bring Maine's Sales and Use Tax Law into Conformity with the Streamlined Sales and Use Tax Agreement**

---

Reported by Representative WOODBURY of Yarmouth for the Department of  
Administrative and Financial Services pursuant to Resolve 2005, chapter 110, section 1.

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

**Sec. 1. 5 MRSA §13090-K, sub-§2,** as enacted by PL 2001, c. 439, Pt. UUUU, §1, is amended to read:

**2. Source of fund.** Beginning July 1, 2003 and every July 1st thereafter, the State Controller shall transfer to the Tourism Marketing Promotion Fund an amount, as certified by the State Tax Assessor, that is equivalent to the sum of 5% of the 7% tax imposed on tangible personal property and taxable services pursuant to Title 36, section 1811, and 5% of the 7% tax imposed on meals and rentals pursuant to Title 36, chapter 723, for the first 6 months of the prior fiscal year after the reduction for the transfer to the Local Government Fund as described by Title 30-A, section 5681, subsection 5. Beginning on October 1, 2003 and every October 1st thereafter, the State Controller shall transfer to the Tourism Marketing Promotion Fund an amount, as certified by the State Tax Assessor, that is equivalent to the sum of 5% of the 7% tax imposed on tangible personal property and taxable services pursuant to Title 36, section 1811, and 5% of the 7% tax imposed on meals and rentals pursuant to Title 36, chapter 723, for the last 6 months of the prior fiscal year after the reduction for the transfer to the Local Government Fund. The tax amount must be based on actual sales for that fiscal year and may not consider any accruals that may be required by law. The amount transferred from General Fund ~~sales-and-use-tax~~ revenues pursuant to this section does not affect the calculation for the transfer to the Local Government Fund.

**Sec. 2. 10 MRSA §1305,** as amended by PL 1997, c. 668, §1, is further amended to read:

**§1305. Terminal rental adjustment clauses; vehicle leases that are not sales or security interests**

Notwithstanding any other provision of law, in the case of motor vehicles or trailers, a transaction does not create a sale or security interest merely because the agreement provides that the rental price is permitted or required to be adjusted upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer. ~~A transaction may be considered a sale for purposes of Title 36.~~

**Sec. 3. 21-A MRSA §1124, sub-§2, ¶B,** as amended by PL 2003, c. 673, Pt. EE, §1, is further amended to read:

B. Two million dollars of the revenues from the taxes imposed under Title 36, Parts 3 and 8 and chapter 723 and credited to the General Fund, transferred to the fund by the

2 State Controller on or before January 1st of each year,  
beginning January 1, 1999. These revenues must be offset in  
4 an equitable manner by an equivalent reduction within the  
administrative divisions of the legislative branch and  
6 executive branch agencies. This section may not affect the  
funds distributed to the Local Government Fund under Title  
30-A, section 5681.

8  
10 If the commission determines that the fund will not have  
sufficient revenues to cover the likely demand for funds  
12 from the Maine Clean Election Fund in an upcoming calendar  
year, by January 1st the commission shall provide a report  
14 of its projections of the balances in the Maine Clean  
Election Fund to the Legislature and the Governor and may  
16 request that the State Controller make the following  
transfers to the Maine Clean Election Fund from the General  
Fund:

18 (1) Up to \$2,000,000 no later than February 28, 2006,  
20 reflecting an advance of the transfer of the amounts  
that would be received on or before January 1, 2007  
22 pursuant to this paragraph;

24 (2) Up to \$2,000,000 no later than July 31, 2006,  
reflecting an advance of the transfer of the amounts  
26 that would be received on or before January 1, 2008  
pursuant to this paragraph; and

28 (3) Up to \$1,500,000 no later than September 1, 2004,  
30 reflecting a partial advance of the transfer of the  
amounts that would be received on or before January 1,  
32 2005 pursuant to this paragraph;

34 **Sec. 4. 30-A MRSA §5681, sub-§2, ¶C**, as amended by PL 2005, c.  
2, Pt. G, §1 and affected by §2, is further amended to read:

36 C. "Annual growth ceiling" for fiscal year 2005-06 means  
38 \$100,000,000. For subsequent fiscal years, "annual growth  
ceiling" must be determined by the State Tax Assessor by  
40 September 1st annually and means the annual growth ceiling  
adjusted by the lower of the increase for the previous  
42 fiscal year in the Consumer Price Index or the increase in  
receipts from the taxes imposed under Title 36, Parts 3 and  
44 8 and Title 36, chapter 723. The annual growth ceiling may  
not be less than the annual growth ceiling for the previous  
46 year.

48 **Sec. 5. 30-A MRSA §5681, sub-§5**, as amended by PL 2005, c. 12,  
Pt. E, §1, is further amended to read:

50

2           **5. Transfers to funds.** On the last day of each month, the  
3 Treasurer of State shall transfer to the Local Government Fund a  
4 percentage, as provided in this subsection, of the receipts from  
5 the taxes imposed under Title 36, Parts 3 and 8, Title 36,  
6 chapter 723 and Title 36, section 2552, subsection 1, paragraphs  
7 A to F, and credited to the General Fund without any reduction,  
8 except that the postage, state cost allocation program and  
9 programming costs of administering state-municipal revenue  
10 sharing may be paid by the Local Government Fund. Any amounts  
11 transferred to the Local Government Fund in excess of the annual  
12 growth ceiling must be transferred to the Disproportionate Tax  
13 Burden Fund. The percentage transferred to the Local Government  
14 Fund on the last day of each month is:

- 15           A. For months beginning before July 1, 2007, 5.1%; and  
16           B. For months beginning on or after July 1, 2007, 5.2%.

17           **Sec. 6. 36 MRSA §113, sub-§4** is enacted to read:

18           **4. Allowances for new technological models.** The State  
19 Controller may transfer from the General Fund amounts authorized  
20 by the State Tax Assessor equal to monetary allowances paid to  
21 retailers and certified service providers as defined in section  
22 1752 for new technological models pursuant to a contract between  
23 the governing board of the Streamlined Sales and Use Tax  
24 Agreement, authorized pursuant to chapter 921, and the retailer  
25 or certified service provider under that agreement, or subject to  
26 performance standards established by the governing board. For a  
27 period not to exceed 24 months following the voluntary  
28 registration through the Streamlined Sales and Use Tax  
29 Agreement's central registration process of a retailer that is  
30 not required to register by section 1754-B, the monetary  
31 allowance may include a percentage of tax revenue generated by  
32 the retailer. These amounts transferred must be deposited into a  
33 dedicated, nonlapsing account to be used solely for the purpose  
34 of paying these expenses. Interest earned on balances in the  
35 account accrues to the account. The assessor shall notify the  
36 State Controller of the amounts to be transferred pursuant to  
37 this section.

38           **Sec. 7. 36 MRSA §177, sub-§1,** as amended by PL 1999, c. 708,  
39 §9, is further amended to read:

40           **1. Generally.** All sales and use taxes collected by a  
41 person pursuant to Part 3, all taxes collected by a person under  
42 color of Part 3 that have not been properly returned or credited  
43 to the persons from whom they were collected, all taxes collected  
44 by or imposed on a person pursuant to chapter 451 or 459, all  
45 fees collected pursuant to chapter 719 and all taxes collected by  
46

2 a person pursuant to chapter 723 or 827 constitute a special fund  
in trust for the State Tax Assessor. The liability for the taxes  
4 or fees and the interest or penalty on taxes or fees is  
enforceable by assessment and collection, in the manner  
6 prescribed in this Part, against the person and against any  
officer, director, member, agent or employee of that person who,  
8 in that capacity, is responsible for the control or management of  
the funds or finances of that person or is responsible for the  
10 payment of that person's taxes. An assessment against a  
responsible individual pursuant to this section must be made  
12 within 6 years from the date on which the return on which the  
taxes were required to be reported was filed. An assessment  
14 pursuant to this section may be made at any time with respect to  
a time period for which a return has become due but has not been  
filed.

16

18 **Sec. 8. 36 MRSA §177, sub-§3**, as amended by PL 1999, c. 414,  
§8, is further amended to read:

20 **3. Notice to segregate.** Whenever If the State-Tax-Assessor  
finds assessor determines that the payment of the trust funds  
22 established under subsection 1 will be jeopardized by delay,  
neglect or misappropriation or ~~whenever-any~~ if a person fails to  
24 make payment of taxes or file reports as required by Part 3, or  
by chapter 451, 459, 723 or 827, the assessor may direct that  
26 person to segregate the trust funds from and not to commingle  
them with any other funds or assets of that person. All taxes  
28 that are collected after receipt of the notice of the segregation  
requirement must be paid on account to the assessor until the  
30 taxes are due. The assessor shall establish in the segregation  
notice the manner in which the taxes are to be paid. The  
32 segregation requirement remains in effect until a notice of  
cancellation is given by the assessor.

34

36 **Sec. 9. 36 MRSA §177, sub-§4**, as amended by PL 2003, c. 705,  
§2, is further amended to read:

38 **4. Revocation for nonsegregation.** If any a person who is a  
retailer under Part 3 ~~or,~~ a fuel supplier, retailer, distributor  
40 or importer subject to Part 5 or an operator under chapter 723  
fails to make the required payments on account to the ~~State-Tax~~  
42 ~~Assessor~~ assessor, the assessor may revoke any registration  
certificate that has been issued to that person. The revocation  
44 is reviewable in accordance with section 151.

46 **Sec. 10. 36 MRSA §182, sub-§1**, as enacted by PL 2001, c. 583,  
§8, is amended to read:

48

1. **Generally.** The State Tax Assessor may, through the Attorney General, file an action in Superior Court applying for an order to enjoin from doing business any person who has:

A. Failed to register with the bureau assessor when the person is required to register by any provision of Part 3 or Part 5 or chapter 723 or by any rule adopted pursuant to this Title, provided that the assessor has provided written notice and the person continues to fail to register 15 days after receiving notice from the assessor of such failure;

B. Failed to file with the assessor any overdue return required by Part 3 or Part 5 or chapter 723 within 15 days after receiving notice from the assessor of such failure;

C. Failed to pay any tax required by Part 3 or Part 5 or chapter 723 when the tax is shown to be due on a return filed by that person, or that is otherwise conceded by that person to be due, or has been determined by the assessor to be due and that determination has become final;

D. Knowingly filed a false return required by Part 3 or Part 5 or chapter 723; or

E. Failed to deduct and withhold, or truthfully account for or pay over or make returns of, income taxes in violation of the provisions of chapter 827.

**Sec. 11. 36 MRSA §184, sub-§3**, as enacted by PL 2003, c. 452, Pt. U, §1 and affected by Pt. X, §2, is amended to read:

**3. "Person" defined.** For purposes of this section, the word "person" includes, in addition to its defined meaning in section 111, subsection 3, an officer, director, member, agent or employee of another person who, in that capacity, is responsible for the control or management of the funds and finances of that person or is responsible for either the collection or the payment of that ~~retailer's~~ person's trust fund taxes.

**Sec. 12. 36 MRSA §191, sub-§3-B** is enacted to read:

**3-B. Streamlined Sales and Use Tax Agreement.** The State Tax Assessor and any certified service provider as defined by section 1752 shall comply with the confidentiality and privacy requirements set forth in the Streamlined Sales and Use Tax Agreement as adopted pursuant to chapter 921.

**Sec. 13. 36 MRSA §1482, sub-§5, ¶D**, as amended by PL 1997, c. 175, §1, is further amended to read:

2 D. No Except as provided in subsection 7 and section  
3 1485-A, no portion of any excise tax once paid may be repaid  
4 to any person by reason of the transfer of vehicles or  
5 discontinuance of the use of a vehicle.

6 **Sec. 14. 36 MRSA §1485-A is enacted to read:**

8 **§1485-A. Excise tax reimbursement allowed in certain cases**

10 **1. Reimbursement.** A person engaged in the business of  
11 renting automobiles for a period of less than one year is  
12 entitled to reimbursement of excise tax paid as provided by this  
13 section. The State Tax Assessor shall determine the reimbursement  
14 to be paid to a person filing a return pursuant to subsection 2.  
15 The reimbursement is determined by computing the total excise tax  
16 reimbursement entitlement during the most recently completed  
17 period from July 1st to June 30th for which the person has filed  
18 a return pursuant to subsection 2. An excise tax reimbursement  
19 entitlement accrues for each vehicle excise tax paid in the  
20 completed period for which the associated Maine registration was  
21 surrendered prior to the expiration of the associated 12-month  
22 excise tax period, unless the excise tax was credited to another  
23 registration, in which case the 12-month period continues to run  
24 in association with the replacement registration. The amount of  
25 the reimbursement is equal to the amount of the excise tax paid  
26 in order to register the original vehicle multiplied by a  
27 fraction, the numerator of which is the number of complete months  
28 short of 12 months during which the registration was surrendered  
29 and the denominator of which is 12.

30 **2. Return required.** A person entitled to a reimbursement  
31 pursuant to subsection 1 must file a return with the State Tax  
32 Assessor on or before September 1st annually. The return must  
33 include the information required by the State Tax Assessor to  
34 determine the person's excise tax reimbursement entitlement. For  
35 good cause, the State Tax Assessor may extend the September 1st  
36 filing deadline for a period not to exceed one year.

37 **3. Treasurer of State; notification.** Upon the determination  
38 of the reimbursement amount to be paid to a person, the State Tax  
39 Assessor shall inform the Treasurer of State of the determination  
40 and the Treasurer of State shall make the reimbursement. Unless  
41 the reimbursement is paid before November 1st of the year in  
42 which the return required in subsection 2 is filed or within 60  
43 days of the filing of that report, whichever is later, interest  
44 at the rate provided in section 186 must be paid for the period  
45 between the expiration of the deadline and the time of payment.

46 **Sec. 15. 36 MRSA §1752, as amended by PL 2005, c. 12, Pt. O,**  
47 **§1 and Pt. TTT, §1 and affected by Pt. O, §5 and Pt. TTT, §4**



and amended by c. 218, §§11 to 17 and c. 332, §13, is further amended to read:

#### §1752. Definitions

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

**1. Advertisement.** "Advertisement" means any public announcement of whatever kind or character and includes any notice or announcement in any radio or television broadcast, newspaper, magazine, catalog, circular, handbill, sign, placard or any billboard.

**1-A. Aircraft.** "Aircraft" means any powered contrivance designed for navigation in the air except a rocket or missile.

**1-B. Automobile.** "Automobile," for purposes of section 1760, subsection 17-B 89, means a self-propelled, 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks.

**1-C. Business.** "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

**1-D. Casual sale.** "Casual sale" means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. "Casual sale" includes transactions at a bazaar, fair, rummage sale, picnic or similar event by a civic, religious or fraternal organization that is not a registered retailer. The sale by a registered retailer of tangible personal property that that retailer has used in the course of the retailer's business is not a casual sale if that property is of like character to that sold by the retailer in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which a retailer sells tangible personal property or a taxable service on behalf of the owner of that property or the provider of that service. "Casual sale" includes any sale 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.

~~**1-E. Custom computer software program.** "Custom computer software program" means any computer software that is written or prepared exclusively for a particular customer. "Custom computer software program" does not include a "canned" or prewritten~~

2 program that is held or exists for a general or repeated sale,  
lease or license, even if the program was initially developed on  
4 a custom basis or for in-house use. An existing prewritten  
program that has been modified to meet a particular customer's  
6 needs is a "custom computer software program" to the extent of  
the modification, and to the extent that the amount charged for  
the modification is separately stated.

8  
10 **1-F. Clean fuel.** "Clean fuel" means all products or energy  
sources used to propel motor vehicles, as defined in Title 29-A,  
12 section 101, other than conventional gasoline, diesel or  
reformulated gasoline, that, when compared to conventional  
14 gasoline, diesel or reformulated gasoline, ~~results~~ result in  
lower emissions of oxides of nitrogen, volatile organic  
16 compounds, carbon monoxide or particulates or any combination of  
these. "Clean fuel" includes, but is not limited to, compressed  
18 natural gas; liquefied natural gas; liquefied petroleum gas;  
hydrogen; hythane, which is a combination of compressed natural  
20 gas and hydrogen; dynamic flywheels; solar energy; alcohol fuels  
containing not less than 85% alcohol by volume; and electricity.

22 **1-G. Clean fuel vehicle.** "Clean fuel vehicle" means a  
vehicle that may be propelled by a clean fuel or a fuel-cell  
24 electric vehicle that uses any fuel.

26 **1-H. Agreement.** "Agreement" means the Streamlined Sales and  
Use Tax Agreement entered into by the State Tax Assessor on  
28 behalf of this State pursuant to section 7124.

30 **1-I. Alcoholic beverages.** "Alcoholic beverages" means  
beverages that are suitable for human consumption and contain .5%  
32 or more of alcohol by volume.

34 **1-J. Bundled transaction.** "Bundled transaction" means the  
retail sale of 2 or more distinct and identifiable products for  
36 one nonitemized price. "Bundled transaction" does not include:

38 A. Sales of real property and services to real property;

40 B. A sale in which the sale price varies or is negotiable  
42 based on the selection by the purchaser of the products  
included in the transaction;

44 C. A sale of tangible personal property and a service in  
46 which the tangible personal property is essential to the use  
of the service and is provided exclusively in connection  
48 with the service, and the service is the true object of the  
transaction;

2 D. A sale of services in which one service is provided that  
3 is essential to the use or receipt of a 2nd service and the  
4 first service is provided exclusively in connection with the  
5 2nd service and the 2nd service is the true object of the  
6 transaction;

7 E. A transaction that includes taxable products and  
8 nontaxable products in which the seller's purchase price of  
9 the taxable products is 10% or less of the total purchase  
10 price of the bundled products or the seller's sale price of  
11 the taxable products is 10% or less of the total sale price  
12 of the bundled products; or

13 F. A transaction that includes exempt tangible personal  
14 property and taxable tangible personal property in which the  
15 transaction includes food and food ingredients, drugs,  
16 durable medical equipment, mobility enhancing equipment,  
17 over-the-counter drugs, prosthetic devices or medical  
18 supplies and where the seller's purchase price of the  
19 taxable products is 50% or less of the total purchase price  
20 of the bundled products or the seller's sale price of the  
21 taxable products is 50% or less of the total sale price of  
22 the bundled products.

23 For purposes of this subsection, "distinct and identifiable  
24 products" does not include items such as packaging, wrapping  
25 materials, labels, tags and instruction guides that accompany the  
26 retail sale of a product and are incidental or immaterial to the  
27 sale; any product provided free of charge with the required  
28 purchase of another product, if the sale price of the product  
29 purchased does not vary depending on the inclusion of the product  
30 provided free of charge; or any item that is part of the sale  
31 price of the product.

32 For purposes of this subsection, the term "one nonitemized price"  
33 does not include a price that is separately identified by product  
34 on binding sales or other supporting sales-related documentation  
35 made available to the customer in paper or electronic form,  
36 including, but not limited to, an invoice, bill of sale, receipt,  
37 contract, service agreement, lease agreement, periodic notice of  
38 rates and services, rate card or price list.

39 **1-K. Certified service provider.** "Certified service  
40 provider" means an agent certified under the agreement to perform  
41 all of a seller's sales and use tax functions, other than the  
42 seller's obligation to remit tax on its own purchases.

43 **1-L. Computer.** "Computer" means an electronic device that  
44 accepts information in digital or similar form and manipulates it  
45 for a result based on a sequence of instructions.

2           1-M. Computer software. "Computer software" means a set of  
3 coded instructions designed to cause a computer or automatic data  
4 processing equipment to perform a task.

6           2-A. Directly. "Directly," when used in relation to  
7 production of tangible personal property, refers to those  
8 activities or operations which constitute an integral and  
9 essential part of production, as contrasted with and  
10 distinguished from those activities or operations which are  
11 simply incidental, convenient or remote to production.

12           2-D. Delivered electronically. "Delivered electronically"  
13 means delivered to the purchaser by means other than tangible  
14 storage media.

15           2-E. Delivery charges. "Delivery charges" means charges by  
16 the seller of tangible personal property or taxable services for  
17 preparation and delivery to a location designated by the  
18 purchaser of the property or services. "Delivery charges"  
19 includes, but is not limited to, charges for transportation,  
20 shipping, postage, handling, crating and packing.

21           2-F. Dietary supplement. "Dietary supplement" means any  
22 product, other than tobacco, intended to supplement the diet that:

23           A. Contains one or more of the following dietary  
24 ingredients:

25                   (1) A vitamin;

26                   (2) A mineral;

27                   (3) An herb or other botanical;

28                   (4) An amino acid;

29                   (5) A dietary substance for use by humans to supplement  
30 the diet by increasing the total dietary intake; or

31                   (6) A concentrate, metabolite, constituent, extract or  
32 combination of any ingredient described in this  
33 paragraph;

34           B. Is intended for ingestion in tablet, capsule, powder,  
35 softgel, gelcap or liquid form or, if not intended for  
36 ingestion in such a form, is not represented as being a  
37 conventional food and is not represented as being for use as  
38 a sole item of a meal or of the diet; and

2 C. Is required to be labeled as a dietary supplement,  
3 identifiable by the "Supplemental Facts" box found on the  
4 label as required pursuant to 21 Code of Federal  
5 Regulations, Section 101.36.

6 2-G. Direct mail. "Direct mail" means printed material  
7 delivered or distributed by United States mail or other delivery  
8 service to a mass audience or to addressees on a mailing list  
9 provided by the purchaser or at the direction of the purchaser  
10 when the cost of the items is not billed directly to the  
11 recipients. "Direct mail" includes tangible personal property  
12 supplied directly or indirectly by the purchaser to the direct  
13 mail seller for inclusion in the package containing the printed  
14 material. "Direct mail" does not include multiple items of  
15 printed material delivered to a single address.

16 2-H. Drug. "Drug" means a compound, substance or  
17 preparation, and any component of a compound, substance or  
18 preparation, other than food and food ingredients, dietary  
19 supplements or alcoholic beverages, that is:

20 A. Recognized in the official United States Pharmacopoeia,  
21 official Homeopathic Pharmacopoeia of the United States or  
22 official United States Pharmacopoeia and National Formulary,  
23 or a supplement to any of them;

24 B. Intended for use in the diagnosis, cure, mitigation,  
25 treatment or prevention of disease; or

26 C. Intended to affect the structure or any function of the  
27 body.

28 2-I. Electronic. "Electronic" means relating to technology  
29 with electrical, digital, magnetic, wireless, optical,  
30 electromagnetic or similar capabilities.

31 3. Farm tractor. "Farm tractor" means any self-propelled  
32 vehicle designed and used primarily as a farm implement for  
33 drawing plows, mowing machines and other implements of husbandry.

34 3-B.---Grocery---staples.---"Grocery---staples"---means---feed  
35 products-ordinarily-consumed-for-human-nourishment.

36 "Grocery-staples"---does---not---include---spirituous,---malt---or---vineous  
37 liquors,---soft-drinks,---iced-tea,---sodas---or---beverages---such---as---are  
38 ordinarily-dispensed-at-bars-or-soda-fountains-or-in-connection  
39 with-bars-or-soda-fountains,---medicines,---tonics,---vitamins---and  
40 preparations---in---liquid,---powdered,---granular,---tablet,---capsule,  
41 lozenge-or-pill-form,---sold-as-dietary-supplements-or-adjuncts,  
42 except---when---sold---on---the---prescription---of---a---physician,---water,  
43 and---other---beverages---ordinarily---consumed---for---human---nourishment.

including mineral bottled and carbonated waters and ice, dietary substitutes, candy and confections, and prepared feed.

**3-F. Food and food ingredients.** "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include dietary supplements, alcoholic beverages or tobacco.

**4. Hotel.** "Hotel" means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants.

**4-A. Governing board.** "Governing board" means the governing board of the agreement.

**5. In this State or in the State.** "In this State" or "in the State" means within the exterior limits of the State of Maine and includes all territory within these limits owned by or ceded to the United States of America.

**5-A. Internal human consumption.** "Products for internal human consumption" mean means edible products sold for human nutrition or refreshment and containers or instruments utensils provided simultaneously for the consumption of these products. It does not include spirituous, malt or vineous liquors, medicines, tonics, vitamins, alcoholic beverages, drugs, chewing gum, dietary supplements or cigarettes tobacco.

**5-B. Liquor.** "Liquor" has the same meaning as in Title 28-A, section 2, subsection 16.

**5-C. Lease or rental.** "Lease" or "rental" includes sublease or subrental and means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

A. "Lease" or "rental" includes agreements covering motor vehicles and trailers in which the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in Section 7701(h)(1) of the Code.

B. "Lease" or "rental" does not include:

(1) Any transfer of possession or control of property under a security agreement or deferred payment plan

2                   that requires the transfer of title upon completion of  
3                   the required payments;

4                   (2) Any transfer of possession or control of property  
5                   under an agreement that requires the transfer of title  
6                   upon completion of required payments and payment of an  
7                   option price that does not exceed the greater of \$100  
8                   and 1% of the total required payments; or

9                   (3) Providing tangible personal property along with an  
10                   operator for a fixed or indeterminate period of time. A  
11                   condition of this exclusion is that the operator is  
12                   necessary for the equipment to perform as designed. For  
13                   the purpose of this paragraph, an operator must do more  
14                   than maintain, inspect or set up the tangible personal  
15                   property.

16                   **5-D. Load and leave.** "Load and leave" means delivery to the  
17                   purchaser by use of a tangible storage medium when the tangible  
18                   storage medium is not physically transferred to the purchaser.

19                   ~~6.--Living-quarters.--"Living-quarters"--means--sleeping--rooms,~~  
20                   ~~sleeping--or--housekeeping--accommodations,--and--tent--or--trailer~~  
21                   ~~space.~~

22                   **6-A. Manufacturing facility.** "Manufacturing facility"  
23                   means a site at which are located machinery and equipment used  
24                   directly and primarily in either the production of tangible  
25                   personal property intended to be sold or leased ultimately for  
26                   final use or consumption or the production of tangible personal  
27                   property pursuant to a contract with the United States Government  
28                   or any agency thereof. It includes the machinery and equipment  
29                   and all machinery, equipment, structures and facilities located  
30                   at the site and used in support of production or associated with  
31                   the production. "Manufacturing facility" does not include a site  
32                   at which a retailer is primarily engaged in making retail sales  
33                   of tangible personal property not produced by the retailer.

34                   **6-C. Mobility enhancing equipment.** "Mobility enhancing  
35                   equipment" means equipment that is primarily and customarily used  
36                   to provide or increase an individual's ability to move from one  
37                   place to another, that is appropriate for use either in a home or  
38                   a motor vehicle and that is not generally used by persons with  
39                   normal mobility. "Mobility enhancing equipment" includes repair  
40                   and replacement parts. "Mobility enhancing equipment" does not  
41                   include any motor vehicle or equipment on a motor vehicle  
42                   normally provided by a motor vehicle manufacturer.

43                   **7. Motor vehicle.** "Motor vehicle" means any self-propelled  
44                   vehicle designed for the conveyance of passengers or property on

2 the public highways. "Motor vehicle" includes an all-terrain  
vehicle and a snowmobile as defined in Title 12, section 13001.

4 **7-A. Vehicle.** "Vehicle" has the same meaning ascribed to  
that term by Title 29-A, section 101, subsection 91.

6 **7-B. Machinery and equipment.** "Machinery and equipment"  
8 means machinery, equipment and parts and attachments for  
10 machinery and equipment, but excludes foundations for machinery  
and equipment and special purpose buildings used to house or  
12 support machinery and equipment.

14 **7-C. Nonprofit.** "Nonprofit" refers to an organization  
16 which ~~that~~ has been determined by the United States Internal  
Revenue Service to be exempt from taxation under Section 501(c)  
of the Code.

18 ~~**8-A. Prepared food.** "Prepared food" means:~~

20 ~~A. Meals served on or off the premises of the retailer;~~

22 ~~B. Food and drinks that are prepared by the retailer and  
ready for consumption without further preparation; and~~

24 ~~C. All food and drinks sold from an establishment whose  
26 sales of food and drinks that are prepared by the retailer  
account for more than 75% of the establishment's gross  
28 receipts.~~

30 ~~"Prepared food" does not include bulk sales of grocery staples.~~

32 **8-B. Prepaid calling service.** "Prepaid calling service"  
34 means the right to access exclusively telecommunications services  
that must be paid for in advance that enables the origination of  
36 calls using an access number or authorization code or both,  
whether manually or electronically dialed, and that is sold in  
38 predetermined units or dollars, the number of which declines with  
use in a known amount. ~~The sale or recharge of the service is  
40 considered a sale within the State if the transfer for  
consideration takes place at the vendor's place of business in  
the State. If the sale or recharge of prepaid calling service  
42 does not take place at the vendor's place of business, the sale  
or recharge is deemed to take place at the customer's shipping  
44 address, or if there is no item shipped, at the customer's  
billing address or the location associated with the customer's  
46 mobile telephone number. The sale of the service is deemed to  
occur on the date of the transfer for consideration of the  
48 service.~~



2 8-C. Prepaid wireless calling service. "Prepaid wireless  
3 calling service" means a telecommunications service that provides  
4 the right to use mobile wireless service as well as other  
5 nontelecommunications services, including the download of digital  
6 products delivered electronically, content and ancillary  
7 services, that must be paid for in advance and that is sold in  
8 predetermined units of dollars of which the number declines with  
9 use in a known amount. The sale of the service is deemed to occur  
10 on the date of the transfer for consideration of the service.

11 8-D. Prepared food. "Prepared food" is defined as follows.

12 A. "Prepared food" means:

13 (1) Food sold in a heated state or heated by the seller;

14 (2) Two or more food ingredients mixed or combined by  
15 the seller for sale as a single item; or

16 (3) Food sold with eating utensils provided by the  
17 seller, including plates, knives, forks, spoons,  
18 glasses, cups, napkins or straws. "Eating utensils"  
19 does not include a container or packaging used to  
20 transport the food.

21 B. "Prepared food" includes food and food ingredients and  
22 dietary supplements, but only when one or more of the  
23 requirements set forth in paragraph A are met. "Prepared  
24 food" includes all alcoholic beverages sold to be consumed  
25 on the premises where sold.

26 C. "Prepared food" does not include:

27 (1) Food that is only cut, repackaged or pasteurized by  
28 the seller;

29 (2) Eggs, fish, meat, poultry and foods containing  
30 these raw animal foods that require cooking by the  
31 consumer as recommended by the United States Food and  
32 Drug Administration in chapter 3, part 401.11 of its  
33 Food Code in order to prevent food-borne illnesses;

34 (3) Food sold by a seller whose proper primary  
35 classification under the North American Industry  
36 Classification System, or a successor system, is food  
37 manufacturing, except for bakeries;

38 (4) Food sold in an unheated state by weight or volume  
39 as a single item; or

2           (5) Bakery items, including bread, rolls, buns,  
3           biscuits, bagels, croissants, pastries, doughnuts,  
4           Danish pastries, cakes, tortes, pies, tarts, muffins,  
5           bars, cookies and tortillas, if sold without eating  
6           utensils provided by the seller.

8           **8-E. Prescription.** "Prescription" means an order, formula or  
9           recipe issued in any form of oral, written, electronic or other  
10           means of transmission by a duly licensed practitioner authorized  
11           by the laws of the State.

12           **8-F. Prewritten computer software.** "Prewritten computer  
13           software" means computer software, including prewritten upgrades,  
14           that is not designed and developed by the author or other creator  
15           to the specifications of a specific purchaser. Computer software  
16           created by combining 2 or more prewritten computer software  
17           programs or portions thereof is prewritten computer software.  
18           "Prewritten computer software" includes software designed and  
19           developed by the author or other creator to the specifications of  
20           a specific purchaser when it is sold to a person other than the  
21           specific purchaser. When a person modifies or enhances computer  
22           software of which the person is not the author or creator, the  
23           person is deemed to be the author or creator only of the person's  
24           modifications or enhancements. Prewritten computer software or a  
25           prewritten portion thereof that is modified or enhanced to any  
26           degree, when the modification or enhancement is designed and  
27           developed to the specifications of a specific purchaser, remains  
28           prewritten computer software; except that when a reasonable,  
29           separately stated charge for the modification or enhancement is  
30           shown on an invoice or other statement of the price given to the  
31           purchaser, the modification or enhancement does not constitute  
32           prewritten computer software.

34           **9-A. Primarily.** "Primarily," when used in relation to  
35           machinery or equipment used in production, means more than 50% of  
36           the time during the period that begins on the date on which the  
37           machinery or equipment is first placed in service by the  
38           purchaser and ends 2 years from that date or at the time that the  
39           machinery or equipment is sold, scrapped, destroyed or otherwise  
40           permanently removed from service by the taxpayer, whichever  
41           occurs first.

42           **9-B. Production.** "Production" means an operation or  
43           integrated series of operations engaged in as a business or  
44           segment of a business that transforms or converts personal  
45           property by physical, chemical or other means into a different  
46           form, composition or character from that in which it originally  
47           existed. "Production" includes film production.  
48

2 "Production" includes manufacturing, processing, assembling and  
4 fabricating operations that meet the definitional requisites,  
6 including biological processes that are part of an integrated  
8 process of manufacturing organisms or microorganic materials  
10 through the application of biotechnology.

12 "Production" does not include biological processes except as  
14 otherwise provided by this subsection, wood harvesting  
16 operations, the severance of sand, gravel, oil, gas or other  
18 natural resources produced or severed from the soil or water, or  
20 activities such as cooking or preparing drinks, meals, food or  
22 food products by a retailer for retail sale.

24 9-E. Prosthetic device. "Prosthetic device" means a  
26 replacement, corrective or supportive device worn on or in the  
28 human body in order to artificially replace a missing portion of  
30 the body, prevent or correct physical deformity or malfunction or  
32 support a weak or deformed portion of the body. "Prosthetic  
34 device" includes repair and replacement parts.

36 9-F. Purchase price. "Purchase price" applies to the measure  
38 subject to use tax and has the same meaning as "sale price."

40 9-G. Receive. "Receive," as used in section 1817, means:

42 A. To take possession of tangible personal property;

44 B. To make first use of services; or

46 C. To take possession or make first use of digital goods,  
48 whichever happens first.

50 "Receive" does not include possession by a shipping company on  
behalf of the purchaser.

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

10-A. Retail sale. "Retail sale" means any sale, lease or  
rental in the ordinary course of business. "Retail sale" includes  
the sale of products for internal human consumption for resale  
through vending machines when sold to a person, more than 50% of  
whose gross receipts from the retail sale of tangible personal  
property are derived from sales through vending machines, in  
which case the tax must be paid by the retailer to the State.  
"Retail sale" does not include:

A. Any casual sale;

2 B. The sale to a retailer that has been issued a resale  
4 certificate pursuant to section 1754-B, subsection 2-B or  
6 2-C of tangible personal property for resale, lease or  
8 rental in the form of tangible personal property, except  
10 resale, lease or rental as a casual sale;

12 C. The sale to a retailer that has been issued a resale  
14 certificate pursuant to section 1754-B, subsection 2-B or  
16 2-C of a taxable service for resale, except resale as a  
18 casual sale;

20 D. The sale to a retailer that is not required to register  
22 by section 1754-B of tangible personal property for resale,  
24 lease or rental outside the State in the form of tangible  
26 personal property, except resale, lease or rental as a  
28 casual sale; or

30 E. The sale to a retailer that is not required to register  
32 by section 1754-B of a taxable service for resale outside  
34 the State, except resale as a casual sale.

36 ~~11. --Retail sale. -- "Retail sale" means any sale of tangible~~  
38 ~~personal property in the ordinary course of business for any~~  
40 ~~purpose other than for resale, except resale as a casual sale, in~~  
42 ~~the form of tangible personal property. -- "Retail sale" also means~~  
44 ~~any sale of a taxable service in the ordinary course of business~~  
46 ~~for any purpose other than for resale, except resale as a casual~~  
48 ~~sale.~~

50 ~~A. -- "Retail sale" includes:~~

52 ~~(1) Conditional sales, installment lease sales and any~~  
54 ~~other transfer of tangible personal property when the~~  
56 ~~title is retained as security for the payment of the~~  
58 ~~purchase price and is intended to be transferred later;~~  
60 ~~and~~

62 ~~(2) Sale of products for internal human consumption to~~  
64 ~~a person for resale through vending machines when sold~~  
66 ~~to a person more than 50% of whose gross receipts from~~  
68 ~~the retail sale of tangible personal property are~~  
70 ~~derived from sales through vending machines. -- The tax~~  
72 ~~must be paid by the retailer to the State. --~~

74 ~~B. -- "Retail sale" does not include:~~

76 ~~(1) Any casual sale;~~

78 ~~(2) Any sale by a personal representative in the~~  
80 ~~settlement of an estate, unless the sale is made~~

2 through a retailer, or unless the sale is made in the  
continuation or operation of a business;

4 (3) -- The sale, to a person engaged in the business of  
renting automobiles, of automobiles, integral parts of  
6 automobiles or accessories to automobiles, for rental  
or for use in an automobile rented on a short-term  
8 basis;

10 (4) -- The sale, to a person engaged in the business of  
renting video media and video equipment, of video media  
12 or video equipment for rental;

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

18 (6) -- The sale, to a person engaged in the business of  
providing cable or satellite television services, of  
20 associated equipment for rental or lease to subscribers  
in conjunction with a sale of extended cable or  
22 extended satellite television services; or

24 (7) -- The sale, to a person engaged in the business of  
renting furniture, or audio media and audio equipment,  
26 of furniture, audio media or audio equipment for rental  
pursuant to a rental purchase agreement as defined in  
28 Title 9-A, section 11-105.

30 **12. Rooming house.** "Rooming house" means every house,  
cottage, condominium unit, vacation home, boat, vehicle, motor  
32 court, trailer court or other structure or any place or location  
kept, used, maintained, advertised or held out to the public to  
34 be a place where living quarters are supplied for pay to  
transient or permanent guests or tenants, whether in one or  
36 adjoining buildings.

38 **12-A. Rural community health center.** "Rural community  
health center" means a person that delivers, or provides  
40 facilities for the delivery of, comprehensive primary health care  
in a place or territory that is classified as rural according to  
42 the most recent federal decennial census.

44 **13. Sale.** "Sale" means any transfer, exchange or barter, in  
any manner or by any means whatsoever, for a consideration and  
46 includes leases and contracts payable by rental or license fees  
for the right of possession and use, but only when such leases  
48 and contracts are deemed by the State Tax Assessor to be in lieu  
of purchase lease or rental of tangible personal property.

50

2           13-A. **Sale at retail.** "Sale at retail" means retail sale.

4           13-B. Sale price. "Sale price" means the total amount of  
6           consideration, valued in money, whether received in money or  
8           otherwise.

10          A. "Sale price" includes cash, credit, property and services  
12          for which tangible personal property or taxable services are  
14          sold, leased, or rented without any deduction for:

16                 (1) The seller's cost of the property sold;

18                 (2) The cost of materials used, labor or service cost,  
20                 interest, losses, all costs of transportation to the  
22                 seller, all taxes imposed on the seller and any other  
24                 expense of the seller;

26                 (3) Charges by the seller for any services necessary to  
28                 complete the sale, other than delivery or installation  
30                 charges that are separately stated on the invoice,  
32                 billing or similar document given to the purchaser;

34                 (4) The value of any property or service that is  
36                 transferred to the purchaser along with tangible  
38                 personal property or a taxable service subject to tax  
40                 under this Part in a bundled transaction; or

42                 (5) Credit for any trade-in, except as provided in  
44                 section 1765.

46          B. "Sale price" includes consideration received by the  
48          seller from 3rd parties if:

50                 (1) The seller actually receives consideration from a  
                  party other than the purchaser and the consideration is  
                  directly related to a price reduction or discount on  
                  the sale;

                  (2) The seller has an obligation to pass the price  
                  reduction or discount through to the purchaser;

                  (3) The amount of the consideration attributable to the  
                  sale is fixed and determinable by the seller at the  
                  time of the sale of the item to the purchaser; and

                  (4) One of the following criteria is met:

                          (a) The purchaser presents a coupon, certificate  
                          or other documentation to the seller to claim a  
                          price reduction or discount when the coupon,

2 certificate or documentation is authorized,  
3 distributed or granted by a 3rd party with the  
4 understanding that the 3rd party will reimburse  
5 any seller to whom the coupon, certificate or  
6 documentation is presented;

7 (b) The purchaser identifies himself or herself to  
8 the seller as a member of a group or organization  
9 entitled to a price reduction or discount. A  
10 "preferred customer" card that is available to any  
11 customer does not constitute membership in such a  
12 group; and

13 (c) The price reduction or discount is identified  
14 as a 3rd-party price reduction or discount on the  
15 invoice received by the purchaser or on a coupon,  
16 certificate or other documentation presented by  
17 the purchaser.

18 C. "Sale price" does not include:

19 (1) Discounts that are allowed by a seller and taken by  
20 a purchaser on a sale, including cash discounts, term  
21 discounts and coupons that are not reimbursed by a 3rd  
22 party;

23 (2) Interest, finance charges and carrying charges from  
24 credit extended on the sale if the amount is separately  
25 stated on the invoice, bill of sale or similar document  
26 given to the purchaser;

27 (3) Any taxes legally imposed directly on the consumer  
28 that are separately stated on the invoice, bill of sale  
29 or similar document given to the purchaser;

30 (4) Installation charges that are separately stated on  
31 the invoice, billing or similar document given to the  
32 purchaser; or

33 (5) Delivery charges that are separately stated on the  
34 invoice, billing or similar document given to the  
35 purchaser.

36 ~~14. -- Sale price. -- "Sale price" means the total amount of a~~  
37 ~~retail sale valued in money, whether received in money or~~  
38 ~~otherwise.~~

39 A. -- "Sale price" includes:

40 (1) -- Services which are a part of a retail sale; and

2 (2) -- All receipts, cash, credits and property of any  
kind or nature and any amount for which credit is  
4 allowed by the seller to the purchaser, without any  
deduction on account of the cost of the property sold,  
6 the cost of the materials used, labor or service cost,  
interest paid, losses or any other expenses, ---

8

B. -- "Sale price" does not include:

10

(1) -- Discounts allowed and taken on sales;

12

(2) -- Allowances in cash or by credit made upon the  
14 return of merchandise pursuant to warranty;

16

(3) -- The price of property returned by customers, when  
the full price is refunded either in cash or by credit;

18

(4) -- The price received for labor or services used in  
installing or applying or repairing the property sold,  
if separately charged or stated;

22

(5) -- Any amount charged or collected, in lieu of a  
gratuity or tip, as a specifically stated service  
charge, when that amount is to be disbursed by a hotel,  
24 motel, restaurant or other eating establishment to its  
26 employees as wages;

28

(6) -- The amount of any tax imposed by the United States  
on or with respect to retail sales, whether imposed  
upon the retailer or the consumer, except any  
32 manufacturers', importers', alcohol or tobacco excise  
tax;

34

(7) -- The cost of transportation from the retailer's  
place of business or other point from which shipment is  
made directly to the purchaser, provided that those  
charges are separately stated and the transportation  
occurs by means of common carrier, contract carrier or  
40 the United States mail;

42

(8) -- The fee imposed by Title 10, section 1169,  
subsection 11;

44

(9) -- The fee imposed by section 4832, subsection 1, or

46

(10) -- The lead-acid battery deposit imposed by Title  
38, section 1604, subsection 2-B.

48



2           **14-B. Special mobile equipment.** "Special mobile equipment"  
3 means any self-propelled vehicle not designed or used primarily  
4 for the transportation of persons or property that may be  
5 operated or moved only incidentally over the highways, including,  
6 but not limited to, road construction or maintenance machinery,  
7 farm tractors, lumber harvesting vehicles or loaders,  
8 ditch-digging apparatus, stone crushers, air compressors, power  
9 shovels, cranes, graders, rollers, well drillers and wood sawing  
10 equipment.

11           **14-E. School.** "School" means a public or incorporated  
12 nonprofit primary, secondary or postsecondary educational  
13 institution that has a regular faculty, curriculum and organized  
14 body of pupils or students in attendance throughout the usual  
15 school year and that keeps and furnishes to students and others  
16 records required and accepted for entrance to schools of  
17 secondary, collegiate or graduate rank.

18           **15. Storage.** "Storage" includes any keeping or retention in  
19 this State of tangible personal property.

20           **16. Storage or use.** "Storage" or "use" does not include  
21 keeping or retention or the exercise of power over tangible  
22 personal property brought into this State for the purpose of  
23 subsequently transporting it outside the State for use by the  
24 purchaser thereafter solely outside the State, or for the purpose  
25 of being processed, fabricated or manufactured into, attached to  
26 or incorporated into, other tangible personal property to be  
27 transported outside the State and thereafter used by the  
28 purchaser solely outside the State.  
29

30           **17. Tangible personal property.** "Tangible personal  
31 property" means personal property that may can be seen, weighed,  
32 measured, felt, or touched or that is in any other manner  
33 ~~perceived-by perceptible to the senses,--but--does--not--include~~  
34 ~~rights-and-credits,--insurance-policies,--bills-of-exchange,--stocks~~  
35 ~~and-bonds-and-similar-evidences-of--indebtedness-or-ownership.~~  
36 "Tangible personal property" includes electricity,---"Tangible  
37 personal property"-~~includes-any-computer-software-that-is-not-a~~  
38 ~~custom,~~ water, gas, steam and prewritten computer software  
39 program.  
40

41           **17-B. Taxable service.** "Taxable service" means ~~the-rental~~  
42 ~~of-living-quarters-in-a-hotel,--rooming-house,--tourist-or-trailer~~  
43 ~~camp,~~ the transmission and distribution of electricity, the  
44 rental or lease of an-automobile, tangible personal property, the  
45 sale of prepaid wireless calling service and the sale of prepaid  
46 calling service.  
47  
48

2 ~~19.--Tourist camp. "Tourist camp" means a place where tents~~  
3 ~~or tent houses, or camp cottages or other structures are located~~  
4 ~~and offered to the public or any segment thereof for human~~  
5 ~~habitation.~~

6 19-A. Tobacco. "Tobacco" means cigarettes, cigars, chewing  
7 or pipe tobacco or any other item that contains tobacco.

8  
9 19-B. Transportation equipment. "Transportation equipment"  
10 means:

11 A. Locomotives and railcars that are used for the carriage  
12 of persons or property in interstate commerce;

13 B. Trucks and truck tractors with a gross vehicle weight  
14 rating of 10,001 pounds or more, trailers, semitrailers and  
15 passenger buses that are:

16  
17 (1) Registered through the International Registration  
18 Plan; and

19 (2) Operated under authority of a carrier authorized  
20 and certificated by the United States Department of  
21 Transportation or another federal authority to engage  
22 in the carriage of persons or property in interstate  
23 commerce;

24 C. Aircraft that are operated by air carriers authorized and  
25 certificated by the United States Department of  
26 Transportation or another federal authority or a foreign  
27 authority to engage in the carriage of persons or property  
28 in interstate or foreign commerce; or

29 D. Containers designed for use on, and component parts  
30 attached or secured to, any of the property described in  
31 paragraphs A, B and C.

32  
33 ~~20.--Trailer camp. "Trailer camp" means a place where space~~  
34 ~~is offered with or without service facilities to the public for~~  
35 ~~tenting or for the parking and accommodation of automobile~~  
36 ~~trailers which are used for living quarters and the rental price~~  
37 ~~shall include all service charges paid to the lesser.~~

38 20-A. Truck camper. "Truck camper" means a slide-in camper  
39 designed to be mounted on a truck body to provide temporary  
40 living quarters for recreational, camping, travel or other use.

41 21. Use. "Use" includes the exercise in this State of any  
42 right or power over tangible personal property incident to its  
43 ownership, including the derivation of income, whether received  
44 or not.

2 ~~in money or in the form of other benefits, by a lessor from the~~  
3 ~~rental of tangible personal property located~~ distribution of  
4 ~~direct mail to recipients~~ in this State.

6 **22. Camper trailer.** "Camper trailer" has the same meaning  
7 as in section 1481, but without any restriction on length.

8 **24. Watercraft.** "Watercraft" means any type of vessel,  
9 boat, canoe or craft designed for use as a means of  
10 transportation on water, other than a seaplane, including motors,  
11 electronic and mechanical equipment and other machinery, whether  
12 permanently or temporarily attached, which are customarily used  
13 in the operations of the watercraft.

14 **Sec. 16. 36 MRSA §1754-B, sub-§1,** as amended by PL 2005, c.  
15 12, Pt. O, §2 and affected by §5 and amended by c. 218, §§18 to  
16 21, is further amended to read:

17 **1. Persons required to register.** ~~Except as otherwise~~  
18 ~~provided in this section, the~~ The following persons, other than  
19 casual sellers, shall register with the ~~assessor~~ State Tax  
20 Assessor and collect and remit taxes in accordance with the  
21 provisions of this Part:

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

27 **B.** Every seller of tangible personal property or taxable  
28 services that does not maintain a place of business in this  
29 State but makes retail sales in this State or solicits  
30 orders, by means of one or more salespeople within this  
31 State, for retail sales within this State;

32 **C.** Every lessor engaged in the leasing of tangible personal  
33 property located in this State ~~that does not maintain a~~  
34 ~~place of business in this State but makes retail sales to~~  
35  ~~purchasers from this State;~~

36 **D.** Every person that makes retail sales in this State of  
37 tangible personal property or taxable services on behalf of  
38 a principal that is outside of this State if the principal  
39 is not the holder of a valid registration certificate;

40 **E.** Every agent, representative, salesperson, solicitor or  
41 distributor that receives compensation by reason of sales of  
42 tangible personal property or taxable services made outside  
43

2 this State by a principal for use, storage or other  
consumption in this State;

4 ~~F. Every person that manages or operates in the regular~~  
6 ~~course of business or on a casual basis a hotel, rooming~~  
8 ~~house or tourist or trailer camp in this State or that~~  
~~collects or receives rents from a hotel, rooming house or~~  
~~tourist or trailer camp in this State;~~

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

18 (1) Solicitation of business in this State through  
20 catalogs, flyers, telephone or electronic media when  
22 delivery of ordered goods is effected by the United  
States mail or by an interstate 3rd-party common  
carrier;

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

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

30 (4) Maintaining a bank account or banking relationship  
32 in this State; ~~or~~ and

34 (5) Using a vendor in this State for printing, drop  
36 shipping or telemarketing services; and

38 H. Every person that makes retail sales in this State of  
40 tangible personal property or taxable services on behalf of  
the owner of that property or the provider of those  
services.

42 **Sec. 17. 36 MRSA §1756**, as repealed and replaced by PL 1995,  
44 c. 640, §4, is repealed and the following enacted in its place:

46 **§1756. Voluntary registration**

48 **1. Registration of sellers.** A seller that is not required  
to register by section 1754-B may register under the provisions  
of the Streamlined Sales and Use Tax Agreement under chapter 921

2 and this section. The seller may be registered by an agent. The  
3 appointment of the agent must be in writing and the writing must  
4 be submitted to the State Tax Assessor if the assessor so  
5 requests. By registering, the seller agrees to collect and remit  
6 sales and use taxes for all taxable sales into the State.  
7 Withdrawal from or revocation by the State of the agreement does  
8 not relieve a seller of its responsibility to remit taxes  
9 previously or subsequently collected on behalf of the State. The  
10 seller may cancel its registration at any time, in accordance  
11 with uniform procedures adopted by the governing board.  
12 Cancellation does not relieve the seller of its liability for  
13 remitting any taxes collected to the State. The assessor may not  
14 use registration and collection of sales and use taxes under this  
15 section as a factor in determining whether the seller has a nexus  
16 with the State for any tax at any time.

17 2. Method of remittance. When registering, the seller may  
18 select any one of the following methods of remitting the taxes  
19 collected:

20 A. Model 1, whereby a seller selects a certified service  
21 provider as its agent to perform all of the seller's sales  
22 or use tax functions other than the seller's obligation to  
23 remit taxes on its own purchases;

24 B. Model 2, whereby a seller selects a certified automated  
25 system as defined in section 7122 to calculate the amount of  
26 tax due on each transaction;

27 C. Model 3, whereby a seller uses its own proprietary  
28 automated sales tax system that is a certified automated  
29 system; or

30 D. Any other method allowable under Maine law.

31 3. Amnesty for registrations. Subject to the limitations  
32 set forth in this section, an amnesty is provided to a seller who  
33 registers to pay or to collect and remit applicable sales or use  
34 tax on sales made to purchasers in the State in accordance with  
35 the terms of the agreement. The amnesty precludes assessment for  
36 uncollected or unpaid sales or use tax, penalty or interest with  
37 respect to sales made during the period the seller was not  
38 registered in the State if:

39 A. The seller was not registered in the State in the  
40 12-month period preceding the effective date of the State's  
41 participation in the agreement; and

42 B. Registration occurs before or within 12 months after the  
43 effective date of the State's participation in the agreement.  
44

2 Absent fraud or intentional misrepresentation of a material fact  
4 by the seller, the amnesty is fully effective as long as the  
6 seller continues registration and continues payment or collection  
8 and remittance of applicable sales or use taxes for a period of  
10 at least 36 months. The statute of limitations for asserting a  
12 tax liability is tolled during this 36-month period. The amnesty  
14 is applicable only to sales or use taxes due from a seller in its  
16 capacity as a seller and not to sales or use taxes due from a  
18 seller in its capacity as a purchaser.

20 **4. Limitations on amnesty.** The amnesty under subsection 3  
22 is not available to a seller with respect to:

24 A. Any matter for which the seller has received notice of  
26 the commencement of an audit, which audit is not yet finally  
28 resolved, including any related administrative and judicial  
30 processes; and

32 B. Any sales or use taxes already paid or remitted to the  
34 State or taxes collected by the seller.

36 **Sec. 18. 36 MRSA §1760, sub-§3,** as amended by PL 1991, c. 824,  
38 Pt. A, §73, is repealed and the following enacted in its place:

40 **3. Food and food ingredients.** Sales of food and food  
42 ingredients, other than prepared food.

44 **Sec. 19. 36 MRSA §1760, sub-§5** is repealed and the following  
46 enacted in its place:

48 **5. Prescription drugs.** Sales of drugs for human use sold  
50 on a doctor's prescription.

52 **Sec. 20. 36 MRSA §1760, sub-§5-A,** as amended by PL 1975, c.  
54 623, §57, is repealed and the following enacted in its place:

56 **5-A. Prosthetic devices.** Sales of prosthetic devices.

58 **Sec. 21. 36 MRSA §1760, sub-§6,** as amended by PL 1999, c. 502,  
60 §§1 to 3 and PL 2003, c. 689, Pt. B, §6, is repealed.

62 **Sec. 22. 36 MRSA §1760, sub-§9-B,** as amended by PL 1999, c.  
64 657, §21, is further amended to read:

66 **9-B. Residential electricity.** Sale-and-delivery Sales of  
68 the--first--750--kilowatt--hours--of--residential electricity per  
70 month,--For--the--purpose--of--this--subsection,--"residential  
72 electricity"--means--electricity and transmission and distribution

2 of electricity furnished to homes, mobile homes, boarding homes  
and apartment houses, with the exception of hotels and motels.  
4 ~~Where residential electricity is furnished through one meter to~~  
~~more than one residential unit and where the transmission and~~  
6 ~~distribution utility applies its tariff on a per unit basis, the~~  
~~furnishing of electricity is considered a separate sale for each~~  
8 ~~unit to which the tariff applies. For purposes of this~~  
~~subsection, "delivery" means transmission and distribution;~~

10 **Sec. 23. 36 MRSA §1760, sub-§9-D**, as amended by PL 1999, c.  
414, §20, is repealed.

12 **Sec. 24. 36 MRSA §1760, sub-§§17 and 18** are repealed.

14 **Sec. 25. 36 MRSA §1760, sub-§19**, as amended by PL 2003, c.  
16 588, §7, is repealed.

18 **Sec. 26. 36 MRSA §1760, sub-§20**, as amended by PL 1991, c.  
20 546, §20, is repealed.

22 **Sec. 27. 36 MRSA §1760, sub-§23-C, ¶A**, as affected by PL 2003,  
c. 614, §9, repealed and replaced by c. 688, Pt. B, §12 and  
24 affected by §13, is amended to read:

26 A. Motor vehicles, except ~~automobiles rented for a period~~  
~~of less than one year~~, all-terrain vehicles and snowmobiles  
as defined in Title 12, section 13001;

28 **Sec. 28. 36 MRSA §1760, sub-§45**, as amended by PL 2005, c.  
30 218, §24, is further amended to read:

32 **45. Certain property purchased outside State.** Sales of  
property purchased and used by the present owner outside the  
34 State:

36 A. If the property is an automobile, as defined in Title  
29-A, section 101, subsection 7, and if the owner was, at  
38 the time of purchase, a resident of the other state and  
either employed or registered to vote there;

40 A-1. If the property is a watercraft that is registered  
42 outside the State by an owner who at the time of purchase  
was a resident of another state and the watercraft is  
44 present in the State not more than 30 days during the 12  
months following its purchase for a purpose other than  
46 temporary storage;

48 A-2. If the property is a snowmobile or all-terrain vehicle  
as defined in Title 12, section 13001 and the purchaser is  
50 not a resident of the State; or

2 B. For more than 12 months in all other cases.

4 Property, other than automobiles, watercraft, snowmobiles and  
6 all-terrain vehicles, that is required to be registered for use  
8 in this State does not qualify for this exemption unless it was  
10 registered by its present owner outside this State more than 12  
12 months prior to its registration in this State. If property  
14 required to be registered for use in this State was not required  
16 to be registered for use outside this State, the owner must be  
able to document actual use of the property outside this State  
for more than 12 months prior to its registration in this State.  
For purposes of this subsection, "use" does not include storage  
but means actual use of the property for a purpose consistent  
with its design. This exemption does not apply to leased  
property.

18 **Sec. 29. 36 MRSA §1760, sub-§75,** as enacted by PL 1989, c.  
20 871, §15, is repealed.

22 **Sec. 30. 36 MRSA §1760, sub-§82,** as reallocated by RR 1999, c.  
1, §48, is repealed.

24 **Sec. 31. 36 MRSA §1760, sub-§83,** as reallocated by RR 1999, c.  
26 1, §49, is repealed.

28 **Sec. 32. 36 MRSA §1760, sub-§85,** as reallocated by RR 2001, c.  
1, §45, is repealed.

30 **Sec. 33. 36 MRSA §1760, sub-§§88 to 96** are enacted to read:

32 **88. Mobility enhancing equipment.** Sales of mobility  
34 enhancing equipment.

36 **89. Short-term rental of automobiles.** The sale, to a  
38 person engaged in the business of renting automobiles for a  
40 period of less than one year, of integral parts of automobiles or  
accessories of automobiles for use in an automobile rented for a  
period of less than one year.

42 **90. Certain leases and rentals.** Leases or rentals of  
44 tangible personal property that are subject to tax under chapter  
358 or chapter 723.

46 **91. Meals.** Sales of food and drink that are subject to tax  
under chapter 723.

48 **92. Repair services.** Charges for repair services that are  
50 separately stated on the invoice, billing or similar document  
given to the purchaser.



2           93. Arbitration and mediation fees. The fees imposed by  
Title 10, section 1169, subsection 11.

4           94. Recycling assistance fees. The fees imposed by section  
6 4832, subsection 1.

8           95. Lead-acid battery deposits. The lead-acid battery  
deposit imposed by Title 38, section 1604, subsection 2,  
10 paragraph B.

12           96. Certain associated equipment. The sale, to a person  
engaged in the business of providing cable or satellite  
14 television services, of associated equipment for rental or lease  
to subscribers in conjunction with a sale of extended cable or  
16 extended satellite television services.

18           **Sec. 34. 36 MRSA §1764**, as amended by PL 2005, c. 218, §25,  
is further amended to read:

20           **§1764. Tax against certain casual sales**

22           The tax imposed by ~~chapters 211 to 225~~ this Part must be  
24 levied upon all ~~casual rentals of living quarters in a hotel,~~  
~~rooming house or tourist or trailer camp and upon all~~ casual  
26 sales involving the sale of camper trailers, truck campers, motor  
vehicles, special mobile equipment ~~except farm tractors and~~  
28 ~~lumber harvesting vehicles or loaders~~, livestock trailers,  
watercraft or aircraft ~~except these~~, unless the property is sold  
30 for resale at retail sale or to a corporation, partnership,  
32 limited liability company or limited liability partnership when  
34 the seller is the owner of a majority of the common stock of the  
corporation or of the ownership interests in the partnership,  
36 limited liability company or limited liability partnership. This  
~~section does not apply to the rental of living quarters rented~~  
~~for a total of fewer than 15 days in the calendar year, except~~  
38 ~~that a person who owns and offers for rental more than one~~  
property in the State during the calendar year is liable for  
40 ~~collecting sales tax with respect to the rental of each unit~~  
regardless of the number of days for which it is rented. For  
42 purposes of this section, "special mobile equipment" does not  
include farm tractors and lumber harvesting vehicles or loaders.

44           **Sec. 35. 36 MRSA §1766** is enacted to read:

46           **§1766. Relief from certain liability**

48           A person registered under the provisions of section 1754-B  
or section 1756, or a certified service provider acting as the  
50 agent of such a person, is relieved from additional liability

2 resulting from the undercollection of sales and use tax when  
3 relying on erroneous data provided by the State Tax Assessor  
4 regarding tax rates, boundaries or taxing jurisdiction  
5 assignments or when relying on erroneous data provided by the  
6 assessor in a taxability matrix adopted by the governing board.

7 **Sec. 36. 36 MRS §1811, first ¶**, as amended by PL 2001, c. 439,  
8 Pt. TTTT, §2 and affected by §3, is further amended to read:

10 A tax is imposed on the value of all tangible personal  
11 property and taxable services sold at retail in this State. The  
12 rate of tax is ~~7% on the value of liquor sold in licensed~~  
13 ~~establishments as defined in Title 28-A, section 2, subsection~~  
14 ~~15, in accordance with Title 28-A, chapter 43, 7% on the value of~~  
15 ~~rental of living quarters in any hotel, rooming house or tourist~~  
16 ~~or trailer camp, 10% on the value of rental for a period of less~~  
17 ~~than one year of an automobile, 7% on the value of prepared feed,~~  
18 .25% on the value of all fuel, electricity and transmission and  
19 distribution of electricity purchased for use at a manufacturing  
20 facility and 5% on the value of all other tangible personal  
21 property and taxable services. Value is measured by the sale  
22 price, except as otherwise provided.

24 **Sec. 37. 36 MRS §1811-A**, as amended by PL 1981, c. 706, §22,  
25 is further amended to read:

26 **§1811-A. Credit for worthless accounts**

27  
28 The tax paid on sales represented by accounts charged off as  
29 worthless may be credited against the tax due on a subsequent  
30 report filed within 3 years of the charge-off, ~~but, if any such~~  
31 ~~accounts are thereafter collected by the retailer, a tax shall be~~  
32 ~~paid upon the amounts so collected~~ subject to the following  
33 provisions.

34  
35 **1. Definition.** For purposes of this section, a worthless  
36 account means a bad debt, as defined in Section 166 of the Code,  
37 adjusted to exclude finance charges or interest, sales or use  
38 taxes charged on the sale price, uncollectible amounts on  
39 property that remains in the possession of the seller until the  
40 full sale price is paid, expenses incurred in attempting to  
41 collect any debt and repossessed property.

42  
43 **2. Period.** A credit may be taken on the return filed for  
44 the period during which a worthless account is written off as  
45 uncollectible in the claimant's books and records and is eligible  
46 to be deducted for federal income tax purposes. A claimant who  
47 is not required to file federal income tax returns may claim the  
48 credit on a return filed for the period in which the worthless  
49 account is written off as uncollectible in the claimant's books  
50

2 and records and would be eligible for a bad debt deduction for  
3 federal income tax purposes if the claimant were required to file  
4 a federal income tax return.

5 **3. Subsequent collection.** If a deduction is taken for a bad  
6 debt under subsection 2 and the debt is subsequently collected in  
7 whole or in part, the tax on the amount so collected must be paid  
8 and reported on the return filed for the period in which the  
9 collection is made.

10 **4. Refund authorized.** When the amount of the allowable  
11 credit exceeds the amount of taxable sales for the period during  
12 which the worthless account is written off, a refund claim may be  
13 filed as provided in section 2011. For purposes of this  
14 subsection, the date of overpayment is the due date of the return  
15 on which the credit could first be claimed.

16 **5. Claim by service provider.** If the seller has selected a  
17 certified service provider as an agent to perform all the  
18 seller's sales or use tax functions, the certified service  
19 provider may claim the credit provided by this section on behalf  
20 of the seller. The certified service provider must credit or  
21 refund the full amount of any refund or credit received to the  
22 seller.

23 **6. Application of payments.** For the purpose of reporting a  
24 payment received on a previously claimed worthless account, any  
25 payments made on a debt or account are applied first  
26 proportionally to the taxable price of the property or service  
27 and the sales tax thereon and secondly to interest, service  
28 charges and any other charges.

29 **7. Allocation.** The bad debts under subsection 2 may be  
30 allocated among the member states if the books and records of the  
31 person claiming the bad debt allowance support such an allocation.

32 **Sec. 38. 36 MRSA §1812, sub-§1,** as reallocated by PL 1999, c.  
33 790, Pt. A, §48, is repealed and the following enacted in its  
34 place:

35 **1. Computation.** Every retailer shall add the sales tax  
36 imposed by section 1811 to the sale price on all sales of  
37 tangible personal property and taxable services that are subject  
38 to tax under this Part. The tax when so added is a debt of the  
39 purchaser to the retailer until it is paid, and is recoverable at  
40 law by the retailer from the purchaser in the same manner as the  
41 sale price. When the sale price involves a fraction of a dollar,  
42 the tax computation must be carried to the 3rd decimal place,  
43 then rounded down to the next whole cent whenever the 3rd decimal  
44 is 5 or more.

2 place is 1, 2, 3 or 4 and rounded up to the next whole cent  
3 whenever the 3rd decimal place is 5, 6, 7, 8 or 9.

4 **Sec. 39. 36 MRSA §1812, sub-§2**, as amended by PL 1991, c. 846,  
5 **§24**, is further amended to read:

6  
7 **2. Several items.** When several purchases are made together  
8 and at the same time, the tax ~~must~~ may be computed on each item  
9 individually or on the total amount of the several items, ~~except~~  
10 ~~that--purchases--taxed--at--different--rates--must--be--separately~~  
11 totaled as the retailer may elect.

12 **Sec. 40. 36 MRSA §1812, sub-§4** is enacted to read:

13  
14 **4. Application.** The application of any tax rate change  
15 under section 1811 that is applicable to services provided over a  
16 period starting before and ending after the statutory effective  
17 date of that change is as follows:

18  
19 A. For a rate increase, the new rate applies to billing  
20 periods that start on or after the statutory effective date;  
21 and

22  
23 B. For a rate decrease, the new rate applies to bills  
24 rendered on or after the statutory effective date.

25  
26 **Sec. 41. 36 MRSA §1814, sub-§4** is enacted to read:

27  
28 **4. Recovery by purchaser.** A cause of action against a  
29 retailer for over-collected sales or use taxes does not accrue  
30 until a purchaser has provided written notice to the retailer and  
31 the retailer has had 60 days to respond. The notice to the  
32 retailer must contain the information necessary to determine the  
33 validity of the request. In connection with a purchaser's  
34 request to a retailer for return of over-collected sales or use  
35 taxes, a retailer is presumed to have a reasonable business  
36 practice if, in the collection of sales or use taxes, the  
37 retailer uses either a provider or a system, including a  
38 proprietary system, that is certified by the governing board or  
39 the State, and has remitted to the State all taxes collected less  
40 any deductions or credits otherwise provided by law. The  
41 customer refund procedures in this subsection provide the first  
42 course of remedy available to purchasers seeking a return from  
43 the retailer of over-collected sales or use taxes.

44  
45 **Sec. 42. 36 MRSA §1817** is enacted to read:

46  
47 **§1817. Sourcing rules**

2 1. Application. The provisions of this section apply only  
3 to determine a seller's obligation to pay or to collect and remit  
4 a sales or use tax with respect to the seller's retail sale of a  
5 product and do not affect the obligation of a purchaser or lessee  
6 to remit tax on the use of the product.

7 2. General sourcing rules. Retail sales of tangible  
8 personal property and taxable services are sourced as provided in  
9 this subsection. For purposes of this subsection, "retail sale"  
10 does not include a lease or rental, except lease or rental of  
11 transportation equipment.

12 A. When the product is received by the purchaser at a  
13 business location of the seller, the sale is sourced to that  
14 business location.

15 B. When the product is not received by the purchaser at a  
16 business location of the seller, the sale is sourced to the  
17 location where the product is received by the purchaser or  
18 by the purchaser's donee, designated as such by the  
19 purchaser, including the location indicated by instructions  
20 for delivery to the purchaser or donee, known to the seller.

21 C. When paragraphs A and B do not apply, the sale is  
22 sourced to the location indicated by an address for the  
23 purchaser that is available from the business records of the  
24 seller that are maintained in the ordinary course of the  
25 seller's business when use of this address does not  
26 constitute bad faith.

27 D. When paragraphs A, B and C do not apply, the sale is  
28 sourced to the location indicated by an address for the  
29 purchaser obtained during the consummation of the sale,  
30 including the address of a purchaser's payment instrument,  
31 if no other address is available, when use of this address  
32 does not constitute bad faith.

33 E. When paragraphs A, B, C and D do not apply, including the  
34 circumstance in which the seller is without sufficient  
35 information to apply the rules set forth in those  
36 paragraphs, the sale is sourced to the location from which  
37 the tangible personal property was shipped, from which the  
38 digital good or the computer software delivered  
39 electronically was first available for transmission by the  
40 seller or from which the service was provided, disregarding  
41 for these purposes any location that merely provided the  
42 digital transfer of the product sold. In the case of a sale  
43 of prepaid wireless calling service, the sale is sourced to  
44 the location associated with the mobile telephone number.

2 3. Sourcing of lease transactions. The lease or rental of  
3 tangible personal property, except lease or rental of  
4 transportation equipment and except as otherwise provided in  
5 subsection 4, is sourced as follows.

6 A. For a lease or rental that requires recurring periodic  
7 payments, the first periodic payment is sourced in  
8 accordance with the provisions of subsection 2. Periodic  
9 payments made subsequent to the first payment are sourced to  
10 the primary property location for the period covered by each  
11 payment. The primary property location is an address for the  
12 property provided by the lessee that is available to the  
13 lessor from its records maintained in the ordinary course of  
14 business, when use of this address does not constitute bad  
15 faith. The primary property location is not altered by  
16 intermittent use at different locations, such as use of  
17 business property that accompanies employees on business  
18 trips and service calls.

19 B. For a lease or rental that does not require recurring  
20 periodic payments, the payment is sourced in accordance with  
21 the provisions of subsection 2.

22 This subsection does not affect the imposition or computation of  
23 sales or use tax on leases or rentals based on a lump sum or  
24 accelerated basis or on the acquisition of property for lease.

25 4. Sourcing of certain vehicle leases. The lease or rental  
26 of motor vehicles, trailers, semitrailers or aircraft that do not  
27 qualify as transportation equipment are sourced as follows.

28 A. For a lease or rental that requires recurring periodic  
29 payments, each periodic payment is sourced to the primary  
30 property location for the period covered by that payment.  
31 The primary property location is an address for the property  
32 provided by the lessee that is available to the lessor from  
33 its records maintained in the ordinary course of business,  
34 when use of this address does not constitute bad faith. The  
35 primary property location is not altered by intermittent use  
36 at different locations.

37 B. For a lease or rental that does not require recurring  
38 periodic payments, the payment is sourced in accordance with  
39 the provisions of subsection 2.

40 This subsection does not affect the imposition or computation of  
41 sales or use tax on leases or rentals based on a lump sum or  
42 accelerated basis or on the acquisition of property for lease.

2           **Sec. 43. 36 MRSA §1861**, as amended by PL 1995, c. 640, §6, is  
further amended to read:

4           **§1861. Imposition**

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

22           **Sec. 44. 36 MRSA §1862**, as amended by PL 1987, c. 772, §24,  
is further amended to read:

24           **§1862. Taxes paid in other jurisdictions**

26           ~~The use tax provisions of chapters 211 to 225 shall imposed~~  
28          ~~by this Part does~~ not apply with respect to the use, storage or  
other consumption in this State of purchases outside the State  
30          where the purchaser has paid a sales or use tax equal to or  
greater than the amount imposed by ~~chapters 211 to 225~~ this Part  
32          in another taxing jurisdiction, ~~the proof of payment of the tax~~  
~~to be according to rules made by the State Tax Assessor~~. If the  
34          amount of sales or use tax paid in another taxing jurisdiction is  
not equal to or greater than the amount of tax imposed by  
36          ~~chapters 211 to 225~~ this Part, then the purchaser shall pay to  
the State Tax Assessor an amount sufficient to make the total  
38          amount of tax paid in the other taxing jurisdiction and in this  
State equal to the amount imposed by ~~chapters 211 to 225~~ this  
40          Part. When tangible personal property is leased outside the  
State and subsequently brought into the State, a credit is not  
42          allowed under this section for sales or use tax paid in another  
jurisdiction with respect to periodic payments that are  
44          attributable to periods during which the property is primarily  
located in this State.

46           **Sec. 45. 36 MRSA §1951-A, sub-§1**, as enacted by PL 1991, c. 9,  
48          Pt. E, §24, is amended to read:

1. **Monthly report and payment.** Every retailer shall file with the State Tax Assessor, on or before the ~~15th~~ 20th day of each month, a ~~report~~ return made under the ~~pains-and~~ penalties of perjury on such a form as ~~prescribed by the State-Tax-Assessor~~ ~~may-prescribe-that-disseases~~ assessor. ~~The return must report~~ the total sale price of all sales made during the preceding calendar month and such other information as the ~~State--Tax Assessor~~ assessor requires. The ~~State-Tax-Assessor~~ assessor may permit the filing of returns other than monthly. The ~~State-Tax Assessor~~ assessor, by rule, may waive reporting nontaxable sales. Upon application of a retailer, the ~~State-Tax-Assessor~~ assessor shall issue a classified permit establishing the percentage of exempt sales. The classified permit may be amended or revoked as ~~to-its-classification-when-ever~~ if the ~~State-Tax-Assessor~~ assessor determines that the percentage of exempt sales is inaccurate. The ~~State-Tax-Assessor~~ assessor may for good cause extend for not more than 30 days the time for making returns required under ~~ehapters-211-to-225~~ this Part. Every person subject to the use tax shall file similar ~~reports~~ returns, at similar dates, and pay the tax or furnish a receipt for the ~~same~~ tax from a registered retailer.

Sec. 46. 36 MRSA §§1966 to 1968 are enacted to read:

**§1966. Direct payment permits**

1. **Application and issuance.** A manufacturer or utility that purchases tangible personal property or taxable services may apply to the State Tax Assessor for a direct payment permit. The assessor may, in the assessor's discretion, issue such a permit to the applicant if the assessor finds that:

A. The collection of the taxes imposed by this Part will not be jeopardized by the issuance of such a permit;

B. Because of the nature of the applicant's business, the permit will significantly reduce the work of administering the taxes imposed by this Part;

C. The applicant's accounting system will clearly indicate the amount of tax that the applicant owes under this Part; and

D. The applicant makes taxable purchases in sufficient volume to justify the expense of regular audits by the assessor.

2. **Limitations and requirements.** The assessor, by rule, may provide for further limitations and requirements regarding the issuance and use of a direct payment permit. The holder of a



2 direct payment permit shall make a determination of the  
3 taxability of each purchase and then report and pay the  
4 applicable tax due directly to the assessor. The direct payment  
5 permit may be suspended or revoked by the assessor at any time if  
6 the assessor determines that the collection of any tax due from  
7 the permit holder is in jeopardy or that the permit holder has  
8 not complied with the conditions to which the permit is subject.  
9 Rules adopted pursuant to this subsection are routine technical  
10 rules as defined in Title 5, chapter 375, subchapter 2-A.

11 **§1967. Direct mail sourcing**

12  
13 The State Tax Assessor, by rule, may establish procedures  
14 whereby a purchaser of direct mail that is not a holder of a  
15 direct payment permit shall provide to the seller in conjunction  
16 with the purchase either a direct mail form prescribed by the  
17 assessor or information to show the jurisdictions to which the  
18 direct mail is delivered to recipients. Upon receipt of a direct  
19 mail form, the seller is relieved of its obligation to collect,  
20 pay or remit the applicable tax, and the purchaser is obligated  
21 to pay the applicable tax directly to the assessor. The direct  
22 mail form remains in effect for all future sales of direct mail  
23 by that seller to that purchaser until it is revoked in writing.  
24 Upon receipt of information from the purchaser showing the  
25 jurisdictions to which the direct mail is delivered to  
26 recipients, the seller shall collect the tax according to the  
27 delivery information provided by the purchaser. In the absence of  
28 bad faith, the seller is relieved of any further obligation for  
29 tax on any transaction for which the seller has collected tax in  
30 accordance with the delivery information provided by the  
31 purchaser. If the purchaser of direct mail is not a holder of a  
32 direct payment permit under section 1966 and does not provide the  
33 seller with either a direct mail form or delivery information,  
34 the seller shall collect the tax in accordance with section 1817,  
35 subsection 2, paragraph E. Rules adopted pursuant to this  
36 section are routine technical rules as defined in Title 5,  
37 chapter 375, subchapter 2-A.

38 **§1968. Multiple points of use**

39  
40  
41 **1. Certificate of exemption.** The State Tax Assessor, by  
42 rule, shall establish procedures whereby a business purchaser  
43 that is not a holder of a direct payment permit under section  
44 1966 that knows at the time of its purchase of a digital good,  
45 computer software or taxable service that the digital good,  
46 computer software or taxable service will be concurrently  
47 available for use in more than one jurisdiction provides to the  
48 seller an exemption certificate claiming multiple points of use  
49 in a form prescribed by the assessor. Upon receipt of the  
50 exemption certificate, the seller is relieved of its obligation

2 to collect, pay or remit the applicable tax. The exemption  
3 certificate remains in effect for all future sales by that seller  
4 to that purchaser, except as to the specific apportionment of  
5 subsequent sales, until it is revoked in writing. Rules adopted  
6 pursuant to this subsection are routine technical rules as  
7 defined in Title 5, chapter 375, subchapter 2-A.

8 2. Payment of tax. A business purchaser that provides an  
9 exemption certificate claiming multiple points of use pursuant to  
10 subsection 1 shall report and pay the applicable tax directly to  
11 the assessor. The tax due must be calculated as if the  
12 apportioned amount of the digital good, computer software or  
13 taxable service had been delivered to each jurisdiction to which  
14 the sale is apportioned. The purchaser may use any reasonable,  
15 but consistent and uniform, method of apportionment that is  
16 supported by the purchaser's books and records kept in connection  
17 with the sale.

18 3. Certification of apportionment. If the seller knows  
19 that the digital good, computer software or taxable service will  
20 be concurrently available for use in more than one jurisdiction,  
21 but the business purchaser does not provide an exemption  
22 certificate claiming multiple points of use as required in  
23 subsection 1, the seller may cooperate with the purchaser to  
24 determine the correct apportionment. The purchaser and seller  
25 may use any reasonable, but consistent and uniform, method of  
26 apportionment that is supported by the seller's and purchaser's  
27 books and records kept in connection with the sale. If the  
28 purchaser certifies to the accuracy of the apportionment and the  
29 seller accepts the certification, the seller shall collect and  
30 remit the tax pursuant to subsection 2. In the absence of bad  
31 faith, the seller is relieved of any further obligation to  
32 collect tax on any transaction for which the seller has collected  
33 tax pursuant to the information certified by the purchaser.

34 4. Direct payment permit. A holder of a direct payment  
35 permit under section 1966 is not required to provide the  
36 exemption certificate required by subsection 1 to the seller, but  
37 must follow the provisions of subsection 2 in apportioning the  
38 tax due on a digital good, computer software or taxable service  
39 that will be concurrently available for use in more than one  
40 jurisdiction.

41 5. Sourcing. If the seller knows that the product will be  
42 concurrently available for use in more than one jurisdiction and  
43 the business purchaser does not have a direct payment permit  
44 under section 1966 and does not provide the seller with an  
45 exemption certificate as required in subsection 1 or  
46 certification pursuant to subsection 3, the seller shall collect

2 and remit the tax based on the provisions of section 1817,  
3 subsection 2.

4 6. Generally. This section does not limit a person's  
5 obligation to pay sales or use tax to a state in which a digital  
6 good, computer software or taxable service is concurrently  
7 available for use. This section does not limit a person's  
8 ability to claim a credit pursuant to section 1862 for sales or  
9 use tax legally due and paid in another taxing jurisdiction. The  
10 provisions of this section do not apply to computer software  
11 received in person by a business purchaser at a business location  
12 of the seller. As used in this section, "computer software"  
13 includes, without limitation, computer software delivered  
14 electronically, by load and leave or in tangible form.

15 **Sec. 47. 36 MRSA §2015, as enacted by PL 1993, c. 701, §8 and**  
16 **affected by §10, is repealed.**

17 **Sec. 48. 36 MRSA §2551, sub-§§1-C to 1-G are enacted to read:**

18  
19 **1-C. Ancillary services.** "Ancillary services" means services  
20 that are associated with or incidental to the provision of  
21 telecommunications services, including, but not limited to,  
22 conference bridging service, detailed telecommunications billing  
23 service, directory assistance, vertical service and voice mail  
24 services.

25 **1-D. Call-by-call basis.** "Call-by-call basis" means any  
26 method of charging for telecommunications services by which the  
27 price is measured by individual calls.

28 **1-E. Conference bridging service.** "Conference bridging  
29 service" means an ancillary service that links 2 or more  
30 participants of an audio or video conference call and may include  
31 the provision of a telephone number. "Conference bridging  
32 service" does not include the telecommunications services used to  
33 reach the conference bridge.

34 **1-F. Detailed telecommunications billing service.** "Detailed  
35 telecommunications billing service" means an ancillary service of  
36 separately stating information pertaining to individual calls on  
37 a customer's billing statement.

38 **1-G. Directory assistance.** "Directory assistance" means an  
39 ancillary service of providing either telephone number  
40 information or address information or both.

41 **Sec. 49. 36 MRSA §2551, sub-§§5-A, 5-B and 6-A are enacted to**  
42 **read:**

2           **5-A. International telecommunications service.**  
3           "International telecommunications service" means a  
4           telecommunications service that originates or terminates in the  
5           United States and terminates or originates outside the United  
6           States, respectively. For purposes of this subsection, the United  
7           States includes the District of Columbia and a territory or  
8           possession of the United States.

10           **5-B. Interstate telecommunications service.** "Interstate  
11           telecommunications service" means a telecommunications service  
12           that originates in one state, territory or possession of the  
13           United States and terminates in a different state, territory or  
14           possession of the United States. For purposes of this subsection,  
15           "United States state" includes the District of Columbia.

16           **6-A. Mobile wireless service.** "Mobile wireless service"  
17           means a telecommunications service that is transmitted, conveyed  
18           or routed, regardless of the technology used, in which the  
19           origination point or termination point or both of the  
20           transmission, conveyance or routing is not fixed. "Mobile  
21           wireless service" includes, but is not limited to,  
22           telecommunications services provided by a commercial mobile radio  
23           service provider.

24           **Sec. 50. 36 MRSA §2551, sub-§8,** as enacted by PL 2003, c. 673,  
25           Pt. V, §25 and affected by §29, is amended to read:

26           **8. Place of primary use.** "Place of primary use" means the  
27           street address representative of where a customer's use of mobile  
28           telecommunications services primarily occurs, ~~which~~. The place of  
29           primary use must be either the residential street address or the  
30           primary business street address of the customer and, in the case  
31           of mobile telecommunications services, it must also be located  
32           within the licensed service area of the home service provider.  
33           For purposes of determining the place of primary use, "customer"  
34           means the person ~~or entity~~ that contracts with the home service  
35           provider for mobile telecommunications services or, if the end  
36           user ~~of such person that uses the telecommunications services is~~  
37           not the contracting party, the person that ~~is the end user of~~  
38           such uses the services. The term "customer" does not include a  
39           reseller of mobile telecommunications services or a ~~servicing~~  
40           facilities-based carrier under an agreement providing mobile  
41           telecommunications services to serve the a customer outside the a  
42           home service provider's licensed service area.

43           **Sec. 51. 36 MRSA §2551, sub-§8-A** is enacted to read:

44           **8-A. Post-paid calling service.** "Post-paid calling service"  
45           means a telecommunications service obtained by making payment on  
46

2 a call-by-call basis either through the use of a credit card or  
3 payment mechanism such as a bank card, travel card, credit card,  
4 or debit card or by means of a charge made to a telephone number  
5 that is not associated with the origination or termination of the  
6 telecommunications service. "Post-paid calling service" includes  
7 a telecommunications service, except a prepaid wireless calling  
8 service that would be a prepaid calling service except that it is  
9 not exclusively a telecommunications service.

10 **Sec. 52. 36 MRSA §2551, sub-§9**, as enacted by PL 2003, c. 673,  
11 Pt. V, §25 and affected by §29, is amended to read:

12 **9. Prepaid calling service.** "Prepaid calling service"  
13 means the right to access exclusively telecommunications services  
14 that must be paid for in advance and that enables the origination  
15 of calls using an access number or authorization code or both,  
16 whether manually or electronically dialed, and that is sold in  
17 predetermined units or dollars, the number of which declines with  
18 use in a known amount.

19 **Sec. 53. 36 MRSA §2551, sub-§§9-A and 9-B** are enacted to read:

20 **9-A. Prepaid wireless calling service.** "Prepaid wireless  
21 calling service" means a telecommunications service that provides  
22 the right to utilize mobile wireless service as well as other  
23 nontelecommunications services including the downloading of  
24 digital products delivered electronically, content and ancillary  
25 services, that must be paid for in advance and that is sold in  
26 predetermined units of dollars of which the number declines with  
27 use in a known amount.

28 **9-B. Private communication service.** "Private communication  
29 service" means a telecommunications service that entitles the  
30 customer to exclusive or priority use of a communications channel  
31 or group of channels between or among termination points,  
32 regardless of the manner in which the channel or channels are  
33 connected. It includes switching capacity, extension lines,  
34 stations and any other associated services that are provided in  
35 connection with the use of the channel or channels. For the  
36 purposes of this subsection, "communications channel" means a  
37 physical or virtual path of communications over which signals are  
38 transmitted between or among termination points, and "termination  
39 point" means the location where the customer either inputs or  
40 receives the communications.

41 **Sec. 54. 36 MRSA §2551, sub-§15**, as enacted by PL 2003, c.  
42 673, Pt. V, §25 and affected by §29, is repealed.  
43

2           **Sec. 55. 36 MRSA §2551, sub-§§15-A and 16-A** are enacted to  
read:

4           15-A. Sale price. "Sale price" means the total amount of  
6 consideration, including cash, credit, property and services, for  
8 which personal property or services are sold, leased or rented,  
10 valued in money, whether received in money or otherwise, without  
12 any deduction for the cost of materials used, labor or service  
14 cost, interest, losses or any other expense of the seller.

16           A. "Sale price" includes the value of any property or  
18 service that is transferred to the purchaser along with a  
20 service subject to tax under this chapter in a bundled  
22 transaction.

24           B. "Sale price" includes consideration received by the  
26 seller from 3rd parties if:

28                   (1) The seller actually receives consideration from a  
30 party other than the purchaser and the consideration is  
32 directly related to a price reduction or discount on  
34 the sale;

36                   (2) The seller has an obligation to pass the price  
38 reduction or discount through to the purchaser;

40                   (3) The amount of the consideration attributable to the  
42 sale is fixed and determinable by the seller at the  
44 time of the sale of the item to the purchaser; and

46                   (4) One of the following criteria is met:

48                           (a) The purchaser presents a coupon, certificate  
50 or other documentation to the seller to claim a  
price reduction or discount where the coupon,  
certificate or documentation is authorized,  
distributed or granted by a 3rd party with the  
understanding that the 3rd party will reimburse  
any seller to whom the coupon, certificate or  
documentation is presented;

(b) The purchaser identifies the purchaser to the  
seller as a member of a group or organization  
entitled to a price reduction or discount. A  
preferred customer card that is available to any  
customer does not constitute membership in such a  
group; or

(c) The price reduction or discount is identified  
as a 3rd-party price reduction or discount on the

2 invoice received by the purchaser or on a coupon,  
3 certificate or other documentation presented by  
4 the purchaser.

6 C. "Sale price" does not include:

8 (1) Discounts allowed and taken on sales;

10 (2) Allowances in cash or by credit made upon the  
11 return of services pursuant to warranty;

12 (3) The price of services rejected by customers when  
13 the full sale price is refunded either in cash or by  
14 credit; or

16 (4) The amount of any tax imposed by the United States  
17 or the State on or with respect to the sale of a  
18 service, whether imposed upon the seller or the  
19 consumer.

20 16-A. Service address. "Service address" means:

22 A. The location of the telecommunications equipment to which  
23 a customer's call is charged and from which the call  
24 originates or terminates, regardless of where the call is  
25 billed or paid;

28 B. If the location described in paragraph A is not known,  
29 the origination point of the signal of the  
30 telecommunications service first identified by either the  
31 seller's telecommunications system or in information  
32 received by the seller from its service provider if the  
33 system used to transport the signal is not that of the  
34 seller; or

36 C. If the locations described in paragraphs A and B are not  
37 known, the customer's place of primary use.

38 **Sec. 56. 36 MRSA §2551, sub-§20,** as enacted by PL 2003, c.  
40 673, Pt. V, §25 and affected by §29, is repealed.

42 **Sec. 57. 36 MRSA §2551, sub-§§20-A, 20-B and 22** are enacted to  
43 read:

44 **20-A. Telecommunications services.** "Telecommunications  
45 services" means the electronic transmission, conveyance or  
46 routing of voice, data, audio, video or any other information or  
47 signals to a point, or between or among points.  
48 "Telecommunications services" includes transmission, conveyance  
49 or routing in which computer processing applications are used to

2 act on the form, code or protocol of the content for purposes of  
3 transmission, conveyance or routing without regard to whether the  
4 service is referred to as "Voice over Internet Protocol" services  
5 or is classified by the Federal Communications Commission as  
6 enhanced or value added. "Telecommunications services" does not  
7 include:

8 A. Data processing and information services that allow data  
9 to be generated, acquired, stored, processed or retrieved  
10 and delivered by an electronic transmission to a purchaser  
11 when the purchaser's primary purpose for the underlying  
12 transaction is to obtain the processed data or information;

14 B. Installation or maintenance of wiring or equipment on a  
15 customer's premises;

16 C. Tangible personal property;

18 D. Advertising, including but not limited to directory  
20 advertising;

22 E. Billing and collection services provided to 3rd parties;

24 F. Internet access service;

26 G. Radio and television audio and video programming  
27 services, regardless of the medium, including the furnishing  
28 of transmission, conveyance and routing of such services by  
29 the programming service provider. Radio and television audio  
30 and video programming services must include but not be  
31 limited to cable service as defined in 47 United States  
32 Code, Section 522(6) and audio and video programming  
33 services delivered by commercial mobile radio service  
34 providers, as defined in 47 Code of Federal Regulations,  
35 Section 20.3;

36 H. Ancillary services; or

38 I. Digital products delivered electronically, including but  
39 not limited to software, music, video, reading materials or  
40 ringtones.

42 20-B. Vertical service. "Vertical service" means an  
43 ancillary service that is offered in connection with one or more  
44 telecommunications services that offers advanced calling features  
45 that allow customers to identify callers and to manage multiple  
46 calls and call connections, including conference bridging  
47 services.



2        22. Voice mail service. "Voice mail service" means an  
3        ancillary service that enables the customer to store, send or  
4        receive recorded messages. "Voice mail service" does not include  
5        any vertical services that the customer may be required to have  
6        in order to use the voice mail service.

7        **Sec. 58. 36 MRSA §2552, sub-§1, ¶¶J and K**, as enacted by PL  
8        2005, c. 386, Pt. S, §6 and affected by §9, are amended to read:

9            J. Personal support services; and

10          K. Residential training services; and

11        **Sec. 59. 36 MRSA §2552, sub-§1, ¶L** is enacted to read:

12            L. Ancillary services.

13        **Sec. 60. 36 MRSA §2556, sub-§1**, as enacted by PL 2003, c. 673,  
14        Pt. V, §25 and affected by §29, is amended to read:

15            1. **Identifying place of primary use.** Mobile  
16        ~~telecommunications services provided to a customer whose place of~~  
17        ~~primary use is located in this State, the charges for which are~~  
18        ~~billed by or for the customer's home service provider, are deemed~~  
19        ~~to be provided at the customer's place of primary use.~~ A home  
20        service provider is responsible for obtaining and maintaining a  
21        record of a customer's place of primary use. Subject to  
22        subsection 2 and if the home service provider's reliance on the  
23        information provided by its customer is in good faith, the home  
24        service provider:

25            A. May rely on the applicable residential or business  
26        street address supplied by the home service provider's  
27        customer; and

28            B. May not be held liable for any additional taxes under  
29        this chapter based on a different determination of the place  
30        of primary use.

31        **Sec. 61. 36 MRSA §2556-A** is enacted to read:

32            **§2556-A. Telecommunications sourcing**

33            1. **Call-by-call basis.** Except as otherwise provided in  
34        subsection 3, a sale of telecommunications services sold on a  
35        call-by-call basis must be sourced to the taxing jurisdiction  
36        where the call originates and terminates, if the call originates  
37        and terminates in the same jurisdiction, or otherwise to the  
38        taxing jurisdiction where the call either originates or

2 terminates and in which the customer's service address is also  
3 located.

4 2. Other than call-by-call basis. Except as provided in  
5 subsection 3, a sale of telecommunications services sold on a  
6 basis other than a call-by-call basis is sourced to the  
7 customer's place of primary use.

8  
9  
10 3. Exceptions. The sale of the following telecommunications  
11 services must be sourced as follows:

12 A. A sale of a mobile telecommunications service is sourced  
13 to the customer's place of primary use;

14  
15 B. A sale of a post-paid calling service is sourced to the  
16 origination point of the telecommunications signal as first  
17 identified either by the seller's telecommunications system  
18 or, if the system used to transport the signals is not that  
19 of the seller, by information received by the seller from  
20 its service provider; and

21  
22 C. A sale of a private communication service is sourced as  
23 follows:

24  
25 (1) Service for a separate charge related to a customer  
26 channel termination point is sourced to the  
27 jurisdiction in which the customer channel termination  
28 point is located;

29  
30 (2) Service where all customer termination points are  
31 located entirely within one jurisdiction is sourced to  
32 that jurisdiction;

33  
34 (3) Service for a separate charge for segments of a  
35 channel between 2 customer channel termination points  
36 located in different jurisdictions is sourced 50% to  
37 each of those jurisdictions; and

38  
39 (4) Service for segments of a channel located in more  
40 than one jurisdiction that are not separately billed is  
41 sourced to each jurisdiction based on the percentage  
42 determined by dividing the number of customer channel  
43 termination points in that jurisdiction by the total  
44 number of customer channel termination points.

45 **Sec. 62. 36 MRS** §2557, sub-§30, as amended by PL 2005, c.  
46 218, §35, is further amended to read:

47  
48 **30. Sales for resale.** Sales of services to another service  
49 provider for resale; and  
50



2           3. Casual sale or rental. "Casual sale" or "casual rental"  
3           means an isolated sale or rental that is not in the ordinary  
4           course of repeated and successive transactions of like character  
5           by the person making the sale or rental.

6           4. Eating establishment. "Eating establishment" means an  
7           establishment more than 75% of whose gross receipts from sales of  
8           food and drink are attributable to sales of meals prepared by  
9           that establishment. "Eating establishment" includes, but is not  
10          limited to, a cafe, lunch counter, private or social club,  
11          cocktail lounge, hotel, catering business, tavern, diner, snack  
12          bar, dining room, mobile eating place, doughnut shop, bagel shop,  
13          sandwich shop, pizza parlor, dairy bar or other place or  
14          establishment where meals are served, whether or not the serving  
15          of meals is the primary function or activity of the establishment.

16          5. Grocery staples. "Grocery staples" means food and drink  
17          products that are not ordinarily sold for immediate consumption.  
18          "Grocery staples" does not include food and drink sold in a  
19          heated state or alcoholic beverages.

20          6. Living quarters. "Living quarters" means sleeping rooms,  
21          sleeping or housekeeping accommodations and tent or trailer space.

22          7. Meal. "Meal" means food and drink products, other than  
23          grocery staples, sold or served by an eating establishment.

24          8. Nonprofit. "Nonprofit" means an organization that has  
25          been determined by the United States Internal Revenue Service to  
26          be exempt from taxation under Section 501(c) of the Code.

27          9. Operator. "Operator" means any person who:

28                A. Operates an eating establishment;

29                B. Makes rentals of living quarters or receives rents from  
30                rentals of living quarters; or

31                C. Makes rentals, other than casual rentals, of automobiles  
32                for a period of less than one year.

33          "Operator" does not include a person who makes rentals of living  
34          quarters or receives rents from rentals of living quarters rented  
35          for a total of fewer than 15 days in the calendar year, but does  
36          include a person who owns and offers for rental more than one  
37          property in the State during the calendar year.

38          10. Rural community health center. "Rural community health  
39          center" means a person that delivers, or provides facilities for  
40          the delivery of, comprehensive primary health care in a place or  
41          other facility.

territory that is classified as rural according to the most recent federal decennial census.

**11. Sale price.** "Sale price" means the total amount of consideration, valued in money, whether received in money or otherwise.

A. "Sale price" includes cash, credit, property and services for which property or services are sold, without any deduction for:

(1) The seller's cost of property sold, materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller or any other expense of the seller;

(2) Charges by the seller for any services necessary to complete the sale, other than delivery charges that are separately stated on the invoice, billing or similar document given to the purchaser; or

(3) The value of exempt personal property transferred to the purchaser, when taxable and exempt personal property have been bundled together and sold as a single product or piece of merchandise.

B. "Sale price" includes consideration received by the seller from 3rd parties if:

(1) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(2) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(4) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount when the coupon, certificate or documentation is authorized, distributed or granted by a 3rd party with the understanding that the 3rd party will reimburse



2 price except as otherwise provided. The value of a meal or rental  
3 does not include any amount charged or collected in lieu of a  
4 gratuity or tip as a specifically stated service charge when that  
5 amount is to be disbursed by the operator to its employees as  
6 wages. The value of a meal does not include any amount paid with  
7 federal food stamps or Women, Infants and Children Special  
8 Supplemental Food Program food instruments distributed by the  
9 Department of Health and Human Services.

10 2. Computation. An operator shall add the tax imposed by  
11 this chapter to the sale price on all sales of meals, rentals of  
12 living quarters, and rentals of automobiles for a period of less  
13 than one year. The tax when so added is a debt of the purchaser  
14 to the operator until it is paid, and is recoverable at law by  
15 the operator from the purchaser in the same manner as the sale  
16 price. When the sale price involves a fraction of a dollar, the  
17 tax computation must be carried to the 3rd decimal place, then  
18 rounded down to the next whole cent whenever the 3rd decimal  
19 place is 1, 2, 3 or 4 and rounded up to the next whole cent  
20 whenever the 3rd decimal place is 5, 6, 7, 8 or 9. Breakage under  
21 this section is retained by the operator as compensation for the  
22 collection.

23 3. Excessive collection prohibited. Any person who knowingly  
24 charges or collects as the tax due on the value of a sale of a  
25 meal, a rental of living quarters, or a rental of an automobile  
26 for a period of less than one year an amount in excess of that  
27 provided by this section commits a Class E crime.

28 4. Tax a levy on consumer. The liability for, or the  
29 incidence of, the tax imposed by this chapter is declared to be a  
30 levy on the consumer. An operator shall add the amount of the tax  
31 to the sale price of meals and rentals subject to tax under this  
32 chapter and may state the amount of the tax separately from the  
33 sale price on price display signs, sales or delivery slips, bills  
34 and statements that advertise or indicate the sale price of those  
35 meals or rentals.

#### 36 §4944. Return and payment of tax

37 1. Monthly return required. An operator shall file with the  
38 State Tax Assessor, on or before the 20th day of each month, a  
39 return made under the penalties of perjury on a form prescribed  
40 by the assessor. The return must report the total sale price of  
41 all sales of meals, rentals of living quarters, and rentals of  
42 automobiles for a period of less than one year made during the  
43 preceding calendar month and such other information as the  
44 assessor requires. The assessor may permit the filing of returns  
45 other than monthly. The assessor, by rule, may waive reporting  
46 nontaxable sales and rentals. The assessor may for good cause  
47 waive the filing of returns for any other reason.  
48 The assessor may, by rule, require the filing of returns for  
49 any other reason.  
50 The assessor may, by rule, require the filing of returns for

2 extend for not more than 30 days the time for making returns  
3 required under this chapter. Rules adopted pursuant to this  
4 subsection are routine technical rules as defined in Title 5,  
5 chapter 375, subchapter 2-A.

6 2. Payment of tax. The tax imposed by this chapter is due  
7 and payable at the time of the sale or rental. Upon terms and  
8 conditions that the assessor may prescribe, the assessor may  
9 permit a postponement of payment to a date not later than the  
10 date on which the sale or rental is required to be reported.

12 **§4945. Registration required**

14 1. Persons required to register. The following persons shall  
15 register with the State Tax Assessor and collect and remit taxes  
16 in accordance with the provisions of this chapter:

18 A. A person that makes sales, other than casual sales, of  
19 meals in this State;

20 B. A person that rents living quarters or receives rents  
21 from rentals of living quarters in the regular course of  
22 business or as a casual rental; and

23 C. A person that makes rentals of automobiles for a period  
24 of less than one year in this State, other than casual  
25 rentals.

26 2. Registration certificate. Application forms for  
27 registration certificates must be prescribed and furnished free  
28 of charge by the assessor. The assessor shall issue a  
29 registration certificate to each applicant that properly  
30 completes and submits an application form. A separate application  
31 must be completed and a separate registration certificate issued  
32 for each place of business. A registration certificate issued  
33 pursuant to this section is nontransferable and is not a license  
34 within the meaning of that term in the Maine Administrative  
35 Procedure Act. If the operator maintains a place of business in  
36 this State, the registration certificate must be conspicuously  
37 displayed at that place of business.

38 3. Failure to register. A person who is required by this  
39 section to register with the assessor and who makes sales of  
40 meals, rentals of living quarters, or rentals of automobiles for  
41 a period of less than one year without being so registered  
42 commits a Class E crime. Violation of this subsection is a strict  
43 liability crime as defined in Title 17-A, section 34, subsection  
44 4-A.



2        4. Revocation of registration. The assessor may revoke the  
3 registration certificate of an operator who has failed to file  
4 with the assessor a return required under section 4944 within 15  
5 days after the due date, who has failed to file, within 15 days  
6 after receipt of notice, a bond or deposit required under section  
7 4946 or who has failed to pay any tax required by this chapter  
8 that is shown to be due on a return filed by the operator, is  
9 admitted to be due by the operator or has been determined to be  
10 due by the assessor and that determination has become final. The  
11 revocation is reviewable in accordance with section 151. The  
12 registration certificate is suspended from the date of notice of  
13 the suspension until the delinquent tax is paid or a bond or  
14 deposit required under section 4946 is filed with the assessor or  
15 it is determined by an appropriate court that revocation is not  
16 warranted.

17        5. Making sales or rentals after revocation. A person whose  
18 registration certificate has been revoked by the assessor who  
19 continues to make sales of meals, rentals of living quarters or  
20 rentals of automobiles for a period of less than one year commits  
21 a Class D crime. Violation of this subsection is a strict  
22 liability crime as defined in Title 17-A, section 34, subsection  
23 4-A.

#### 24        §4946. Bonds

25        If the State Tax Assessor determines it necessary or  
26 advisable, either as a condition for issuance or subsequent to  
27 the issuance of a registration certificate pursuant to this  
28 chapter, the assessor may require from an operator a bond,  
29 written by a surety company qualified to do business in this  
30 State, in an amount and upon conditions determined by the  
31 assessor. In lieu of a bond, the assessor may accept, for  
32 delivery to the custody of the Treasurer of State, a deposit of  
33 money or securities in an amount and of a kind approved by the  
34 assessor. The Treasurer of State shall accept the deposit and  
35 keep it safely, subject to the instructions of the assessor.

#### 36        §4947. Advertising of payment by operator

37        It is unlawful for any operator to advertise or hold out or  
38 state to the public or to any consumer, directly or indirectly,  
39 that the tax imposed by this chapter or any part of it will be  
40 assumed or absorbed by the operator, that it will not be added to  
41 or included in the price of a taxable meal or rental or, if added  
42 or included, that it or any part of it will be refunded. Any  
43 person who violates any part of this section is guilty of a Class  
44 E crime.

#### 45        §4948. Overpayments; refunds

2        If the State Tax Assessor determines, upon written  
4        application by a taxpayer or during the course of an audit, that  
6        any tax under this chapter has been paid more than once or has  
8        been erroneously or illegally computed, the assessor shall  
10       certify to the State Controller the amount paid in excess of that  
12       legally due. That amount must be credited by the assessor on any  
14       taxes then due from the taxpayer and the balance refunded to the  
16       taxpayer or its successor in interest, but no such credit or  
18       refund may be allowed unless within 3 years from the date of  
20       overpayment either a written petition stating the grounds upon  
22       which the refund or credit is claimed is filed with the assessor  
24       or the overpayment is discovered on audit. Interest at the rate  
26       determined pursuant to section 186 must be paid on any balance  
28       refunded pursuant to this chapter from the date the return  
30       listing the overpayment was filed or the date the payment was  
32       made, whichever is later, except that in cases of excessive or  
34       erroneous collections interest must be paid in accordance with  
36       section 4949, subsection 3. At the election of the assessor,  
38       unless the taxpayer specifically requests a cash refund, the  
40       refund may be credited to the taxpayer's meals and rentals tax  
42       account, but in the case of a credit no further interest may  
44       accrue from the date of that election. The taxpayer may not apply  
46       for a refund of any amount assessed when administrative and  
48       judicial review under section 151 has been completed.

28       A taxpayer dissatisfied with the decision of the assessor  
30       upon a written request for refund filed under this section may  
32       request reconsideration and appeal from the reconsideration to  
34       the Superior Court in the same manner and under the same  
36       conditions as in the case of assessments made under chapter 7.  
38       The decision of the assessor upon a written request for refund  
40       becomes final as to law and fact in the same manner and under the  
42       same conditions as in the case of assessments made under chapter  
44       7.

#### **§4949. Excessive and erroneous collections**

38       1. Tax liability. Whenever the tax collected by an operator  
40       for any period exceeds that provided by law, whether the excess  
42       is attributable to the collection of tax on exempt or nontaxable  
44       transactions or to erroneous computation, the total amount  
46       collected, excluding only that portion of the excess that has  
48       been returned or credited to the person or persons from whom it  
50       was collected, constitutes a tax liability of the operator that  
52       must be reported and paid at the time and in the manner provided  
54       by section 4944.

50       2. Tax liability subject to assessment, collection and  
52       enforcement. The tax liability specified in subsection 1 is  
54       subject to assessment, collection and enforcement by the State  
56       Tax Assessor as provided in chapter 7.

2           3. Refund or credit. The assessor shall refund or credit an  
4           amount that has been paid by or collected from an operator  
6           pursuant to this section only upon submission of proof to the  
8           satisfaction of the assessor that the amount has been returned or  
10           credited to the person or persons from whom it was originally  
          collected. The assessor shall pay interest in such a case only  
          upon submission of proof to the satisfaction of the assessor that  
          interest was included in the repayment by the operator to that  
          person or persons.

12           §4950. Continuous residence; refund and credit

14           Rental of living quarters to any person who resides  
16           continuously for 28 days or more at any one establishment is not  
18           subject to the tax imposed by this chapter if the person does not  
20           maintain a primary residence at some other location or the person  
22           is residing away from that person's primary residence in  
24           connection with employment or education. Any tax paid pursuant to  
26           this chapter by such a person to the operator of the  
          establishment during the initial 28-day period must be refunded  
          to the person by the operator. If the tax has been reported and  
          paid to the State Tax Assessor by the operator, it may be taken  
          as a credit by the operator on the return filed by the operator  
          under this chapter covering the month in which the refund was  
          made to the person.

28           §4951. Exempt sales and rentals

30           The following sales and rentals are not subject to the tax  
32           imposed by this chapter:

34           1. Exemptions by constitutional provisions. Any sale or  
36           rental that this State is prohibited from taxing under the United  
          States Constitution or laws of the United States or under the  
          Constitution of Maine;

38           2. Casual sale or rental. Casual sales of meals and casual  
40           rentals of automobiles for a period of less than one year;

42           3. Schools. Sales of meals served by schools, school  
44           districts, student organizations and parent-teacher associations  
46           to the students or teachers of a school, and rental charged for  
          living or sleeping quarters or housekeeping accommodations to any  
          student necessitated by attendance at a school;

48           4. Certain institutions. Sales of meals served to patients  
          of hospitals licensed by the State for the care of human beings  
          and other institutions licensed by the State for the

2 hospitalization or nursing care of human beings, or institutions,  
3 agencies, hospitals, boarding homes and boarding houses licensed  
4 by the Department of Health and Human Services under Title 22,  
5 Subtitle 6 and Title 22, section 1781;

6 5. Area agencies on aging. Sales of meals sold by hospitals,  
7 schools, long-term care facilities, food contractors and  
8 restaurants to incorporated nonprofit area agencies on aging for  
9 the purpose of providing meals to the elderly;

10 6. Congregate housing facilities. Sales of meals sold to  
11 residents of incorporated nonprofit church-affiliated congregate  
12 housing facilities for the elderly in which at least 75% of the  
13 units are available for leasing to eligible low-income residents;

14 7. Colleges. Sales of meals served by a college to employees  
15 of the college when the meals are purchased with debit cards  
16 issued by the college;

17 8. Camps. Rental charged for living or sleeping quarters or  
18 housekeeping accommodations at camps that are entitled to  
19 exemption from property tax under section 652, subsection 1;

20 9. Hospitals and nursing facilities. Rental charged for  
21 living or sleeping quarters in an institution licensed by the  
22 State for the hospitalization or nursing care of human beings;

23 10. Schools and school-sponsored organizations. Sales of  
24 meals sold by elementary and secondary schools and by student  
25 organizations sponsored by those schools, including booster clubs  
26 and student or parent-teacher organizations, as long as the  
27 profits from the sales are used to benefit those schools or  
28 student organizations or are used for a charitable purpose;

29 11. Certain meals and lodging. The value of meals or lodging  
30 provided to employees at their place of employment, when the  
31 value of those meals or that lodging is allowed as a credit  
32 toward the wages of those employees; and

33 12. Auxiliary organization of American Legion. Sales of  
34 meals sold by a nonprofit auxiliary organization of the American  
35 Legion in connection with a fund-raising event sponsored by the  
36 auxiliary organization if the meals and related items and  
37 services are provided in a room that is separate from the lounge  
38 facilities, if any, of the American Legion and patrons are  
39 prohibited from taking alcoholic beverages from the lounge  
40 facilities to the separate room where the meals are provided.

41 **§4952. Persons exempt from tax**

2       1. Exempt entities. Sales or rentals made directly to the  
3       following persons are not subject to tax under this chapter:

4       A. The State or any political subdivision of the State, the  
5       Federal Government or any unincorporated agency or  
6       instrumentality of either of them or any incorporated agency  
7       or instrumentality of them wholly owned by them;

8       B. Incorporated hospitals;

10       C. Incorporated nonprofit nursing homes licensed by the  
11       Department of Health and Human Services;

14       D. Incorporated nonprofit assisted housing programs for the  
15       elderly licensed by the Department of Health and Human  
16       Services;

18       E. Incorporated nonprofit residential care facilities  
19       licensed by the Department of Health and Human Services;

20       F. Incorporated nonprofit home health agencies certified  
21       under the United States Social Security Act of 1965, Title  
22       XVIII, as amended;

24       G. Incorporated nonprofit rural community health centers  
25       engaged in, or providing facilities for, the delivery of  
26       comprehensive primary health care;

28       H. Incorporated nonprofit dental health centers;

30       I. Institutions incorporated as nonprofit corporations for  
31       the sole purpose of conducting medical research or for the  
32       purpose of establishing and maintaining laboratories for  
33       scientific study and investigation in the field of biology  
34       or ecology or operating educational television or radio  
35       stations;

38       J. Schools;

40       K. Incorporated nonprofit organizations or their affiliates  
41       whose purpose is to provide literacy assistance or free  
42       clinical assistance to children with dyslexia;

44       L. Regularly organized churches or houses of religious  
45       worship;

46       M. Incorporated private nonprofit residential child care  
47       institutions licensed by the Department of Health and Human  
48       Services as child care institutions;

50

- 2           N. Incorporated nonprofit fire departments and incorporated  
nonprofit ambulance services;
- 4           O. Mental health facilities, mental retardation facilities  
6           or substance abuse facilities that are contractors under or  
receiving support under the Federal Community Mental Health  
8           Centers Act or its successors, or receiving support from the  
Department of Health and Human Services pursuant to Title 5,  
10           section 20005 or Title 34-B, section 3604, 5433 or 6204;
- 12           P. Regional planning commissions and councils of government  
established in accordance with Title 30-A;
- 14           Q. Incorporated nonprofit memorial foundations that  
16           primarily provide cultural programs free to the public,  
historical societies and museums;
- 18           R. Licensed, incorporated nonprofit nursery schools and  
day-care centers;
- 20           S. Any church-affiliated nonprofit organization that  
22           operates, under a charter granted by the Legislature, a  
residential home for adults;
- 24           T. Incorporated nonprofit organizations providing temporary  
26           residential accommodations to pediatric patients suffering  
from critical illness or disease such as cancer or who are  
28           accident victims, to adult patients with cancer or to the  
families of the patients;
- 30           U. Incorporated nonprofit organizations providing temporary  
32           residential accommodations or food, or both, to hospital  
patients or to the families of hospital patients;
- 34           V. Incorporated nonprofit organizations that provide free  
36           temporary emergency shelter or food for underprivileged  
individuals in this State;
- 38           W. Incorporated nonprofit child abuse and neglect councils  
40           as defined in Title 22, section 3872, subsection 1-A;
- 42           X. Statewide organizations that advocate for children and  
that are members of the Medicaid Advisory Committee;
- 44           Y. Community action agencies designated in accordance with  
46           Title 22, section 5324;
- 48           Z. Any nonprofit free public lending library that is funded  
50           in part or wholly by the State or any political subdivision  
of the State or the Federal Government;

2           AA. Incorporated nonprofit veterans' memorial cemetery  
3           associations;  
4  
5           BB. Incorporated nonprofit volunteer search and rescue  
6           organizations;  
7  
8           CC. Incorporated nonprofit hospice organizations that  
9           provide a program or care for the physical and emotional  
10           needs of terminally ill patients;  
11  
12           DD. Nonprofit youth organizations whose primary purpose is  
13           to provide athletic instruction in a nonresidential setting;  
14  
15           EE. Councils and local units of incorporated nonprofit  
16           national scouting organizations;  
17  
18           FF. Incorporated nonprofit educational organizations that  
19           are receiving, or have received, funding from the Department  
20           of Education and that provide educational programs  
21           specifically designed for teaching young people how to make  
22           decisions about drugs, alcohol and interpersonal  
23           relationships at a residential camp setting;  
24  
25           GG. Local branches of incorporated international nonprofit  
26           charitable organizations that provide, on a loan basis and  
27           free of charge, medical supplies and equipment to persons;  
28  
29           HH. Incorporated nonprofit organizations whose sole purpose  
30           is to fulfill the wishes of children with life-threatening  
31           diseases when their families or guardians are unable to  
32           otherwise financially fulfill those wishes;  
33  
34           II. Incorporated nonprofit organizations engaged primarily  
35           in providing support systems for single-parent families for  
36           the development of psychological and economic  
37           self-sufficiency;  
38  
39           JJ. Local branches of incorporated nonprofit organizations  
40           whose purpose is to construct low-cost housing for  
41           low-income people;  
42  
43           KK. Incorporated nonprofit organizations whose sole purpose  
44           is to create, maintain and update a registry of Vietnam  
45           veterans;  
46  
47           LL. Incorporated nonprofit organizations whose primary  
48           purposes are to promote public understanding of hearing  
49           impairment and to assist hearing-impaired persons through  
50           the dissemination of information about hearing impairment to

2 the general public and referral to and coordination of  
3 community resources available to hearing-impaired persons;

4 MM. Credit unions that are organized under the laws of this  
5 State. This paragraph remains in effect only for the time  
6 that federally chartered credit unions are, by reason of  
7 federal law, exempt from payment of state sales tax;

8  
9 NN. Nonprofit organizations whose primary purpose is to  
10 develop housing for low-income people;

11 OO. Nonprofit organizations whose primary purpose is to  
12 obtain, medically evaluate and distribute eyes for use in  
13 corneal transplantation, research and education; and

14  
15 PP. Centers for innovation as described in Title 5, section  
16 13141.

17  
18 2. Exempt activities. The exemptions provided by this  
19 section to a person based upon its charitable, nonprofit or other  
20 public purposes apply only to purchases intended to be used by  
21 the person primarily in the activity identified by the particular  
22 exemption. Exemption certificates issued by the State Tax  
23 Assessor pursuant to this section must identify the exempt  
24 activity and must state that the certificate may be used by the  
25 holder only for purchases intended to be used by the holder  
26 primarily in the exempt activity. When an otherwise qualifying  
27 person is engaged in both exempt and nonexempt activities, an  
28 exemption certificate may be issued to the person only if the  
29 person has established to the satisfaction of the assessor that  
30 the applicant has adequate accounting controls to limit the use  
31 of the certificate to exempt purchases.

32  
33 **§4953. Credit for worthless accounts**

34  
35 The tax paid on sales represented by accounts charged off as  
36 worthless may be credited against the tax due on a subsequent  
37 return filed within 3 years of the charge-off. For purposes of  
38 this section, a worthless account is a bad debt as defined in  
39 Section 166 of the Code, adjusted to exclude finance charges or  
40 interest, taxes charged on the sale price and expenses incurred  
41 in attempting to collect the debt. A credit may be taken on the  
42 return filed for the period during which the account is written  
43 off as uncollectible in the claimant's books and records and is  
44 eligible to be deducted for federal income tax purposes. If a  
45 deduction is taken for a bad debt and the debt is subsequently  
46 collected in whole or in part, the tax on the amount so collected  
47 must be paid and reported on the return filed for the period in  
48 which the collection is made.

49  
50



2

## SUMMARY

4           This bill makes changes to Maine's sales and use tax law in  
6           order to bring it into conformity with the Streamlined Sales Tax  
8           Agreement, which is a product of the Streamlined Sales Tax  
          Project, which is an effort of state governments, with input from  
          local governments and the private sector, to simplify and  
          modernize sales and use tax collection and administration.