

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1325

H.P. 971

House of Representatives, March 28, 2011

An Act To Amend the Tax Laws

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

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative KNIGHT of Livermore Falls.

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

2 **Sec. 1. 5 MRSA §13090-L, sub-§4**, as amended by PL 2009, c. 470, §1, is
3 further amended to read:

4 **4. Certified visual media production report.** No later than 4 weeks after
5 completion of a certified visual media production, the visual media production company
6 shall report, in a format specified by the Maine State Film Office or the department, its
7 compliance with the requirements of subsection 3 with respect to the certified visual
8 media production to the Maine State Film Office ~~and the State Tax Assessor.~~

9 **Sec. 2. 36 MRSA §1753**, as repealed and replaced by PL 1987, c. 497, §26, is
10 amended to read:

11 **§1753. Tax is a levy on consumer**

12 The ~~liability for, or the incidence of,~~ the tax imposed by this Part is declared to be a
13 levy on the consumer. The retailer shall add the amount of the tax to the sale price and
14 may state the amount of the tax separately from the sale price of tangible personal
15 property or taxable services on price display signs, sales or delivery slips, bills and
16 statements ~~which~~ that advertise or indicate the sale price of that property or those
17 services. If the retailer does not state the amount of the tax separately from the sale price
18 of tangible personal property or taxable services, the retailer shall include a statement on
19 the sales slip or invoice presented to the purchaser that the stated price includes Maine
20 sales tax.

21 **Sec. 3. 36 MRSA §1760, sub-§25, ¶B**, as enacted by PL 2009, c. 620, §1 and
22 affected by §2, is repealed and the following enacted in its place:

23 B. The purchase of a watercraft outside this State is exempt if the watercraft is
24 registered outside the State by the purchaser and used outside the State by the
25 purchaser and the watercraft is present in the State not more than 30 days, not
26 including any time spent in this State for temporary storage, during the 12 months
27 following its purchase. For purposes of this paragraph, "used outside the State" does
28 not include storage but means actual use of the watercraft for a purpose consistent
29 with its design.

30 **Sec. 4. 36 MRSA §1760, sub-§45, ¶A-1**, as amended by PL 2007, c. 438, §45, is
31 repealed.

32 **Sec. 5. 36 MRSA §1760-D**, as enacted by PL 2009, c. 632, §2, is amended to
33 read:

34 **§1760-D. Exemptions of certain products; information posted on publicly accessible**
35 **website**

36 **1. List of products.** The assessor shall post on the bureau's publicly accessible
37 website, and update quarterly, a list of products used in commercial agricultural or
38 silvicultural crop production or in animal ~~agriculture~~ for agricultural production with

1 respect to which the assessor has made a written ~~definitive~~ determination on the
2 applicability of a sales tax exemption under section 1760, subsection 7-B or 7-C ~~has been~~
3 ~~made on the bureau's publicly accessible website and of items of depreciable machinery~~
4 ~~and equipment that the assessor has determined may be eligible for a refund of sales tax~~
5 ~~under section 2013.~~ ~~The~~ In the case of products exempt from tax under section 1760,
6 subsection 7-B or 7-C, the list must include the name of the product, and any other
7 information necessary to identify the product at the point of sale and the determination of
8 whether or not that product is exempt from sales tax under section 1760, subsection 7-B
9 or 7-C.

10 When the assessor receives a request in writing for ~~an interpretation on a~~ determination as
11 to whether or not a product used in commercial agricultural or silvicultural crop
12 production or in animal ~~agriculture~~ agricultural production is exempt from sales tax under
13 section 1760, subsection 7-B or 7-C, the assessor shall respond in writing. ~~When the~~
14 ~~information in the request is sufficient to make a definitive determination on the~~
15 ~~applicability of the sales tax exemption, the assessor shall within 3 weeks of making the~~
16 ~~determination add the appropriate information to the list maintained under this section.~~

17 **2. Information on procedures for appeals and refunds.** The assessor shall
18 provide information on the bureau's publicly accessible website ~~on regarding the process~~
19 ~~to appeal a determination on the applicability of an exemption to a product under section~~
20 ~~1760, subsection 7-B or 7-C and to request a refund for sales tax paid on an exempt~~
21 ~~product.~~ procedures for:

22 A. Requesting a refund of sales tax paid on an exempt product;

23 B. Appealing an assessment of tax liability; and

24 C. Appealing the denial of an exemption certificate or refund request under section
25 2013.

26 **Sec. 6. 36 MRSA §1951-A**, as amended by PL 2007, c. 539, Pt. KKK, §1, is
27 further amended to read:

28 **§1951-A. Collection of tax; report to State Tax Assessor**

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

41 **3. Reporting tax on casual rentals on individual income tax returns.** ~~A person~~
42 An individual whose only sales tax collection responsibility under this Title is the

1 collection of sales tax on casual rentals of living quarters pursuant to section 1764 and
2 whose sales tax liability in connection with those rentals during the period of the
3 individual's income tax return is expected to be less than \$2,000 may report and pay that
4 sales tax on the ~~person's~~ individual's Maine ~~individual~~ income tax return for that year in
5 lieu of filing ~~reports~~ returns under subsection 1. If the ~~person's~~ individual's actual sales
6 tax liability for the year in connection with those rentals is \$2,000 or more for that year,
7 the ~~person~~ individual must file ~~reports~~ returns as required under subsection 1 during the
8 succeeding year.

9 **Sec. 7. 36 MRSA §2013, sub-§4**, as enacted by PL 2009, c. 632, §3, is amended
10 to read:

11 **4. Information on processes for refunds and appeals.** The assessor shall post
12 information describing the process for requesting a refund under this section on the
13 bureau's publicly accessible website along with a description of the process to appeal a
14 ~~decision by the assessor under section 2011~~ denial of refund request.

15 **Sec. 8. 36 MRSA §4361, sub-§1-B** is enacted to read:

16 **1-B. Delivery sale.** "Delivery sale" means a sale of cigarettes to a consumer in this
17 State when:

18 A. The purchaser submits the order for the sale by means of telephonic or other
19 electronic method of voice transmission, the Internet or a delivery service; or

20 B. The cigarettes are delivered by use of a delivery service.

21 **Sec. 9. 36 MRSA §4361, sub-§2**, as amended by PL 1997, c. 458, §1, is further
22 amended to read:

23 **2. Distributor.** "Distributor" means any person engaged in this State in the business
24 of producing or manufacturing cigarettes in this State, importing cigarettes into this State,
25 making delivery sales or making wholesale purchases or sales of cigarettes in this State
26 on which the tax imposed by this chapter has not been paid.

27 **Sec. 10. 36 MRSA §4401, sub-§1-A** is enacted to read:

28 **1-A. Delivery sale.** "Delivery sale" means a sale of tobacco products to a consumer
29 in this State when:

30 A. The purchaser submits the order for the sale by means of telephonic or other
31 electronic method of voice transmission, the Internet or a delivery service; or

32 B. The tobacco products are delivered by use of a delivery service.

33 **Sec. 11. 36 MRSA §4401, sub-§2**, as amended by PL 2005, c. 627, §1, is further
34 amended to read:

35 **2. Distributor.** "Distributor" means ~~any~~ a person engaged in the business of
36 producing or manufacturing tobacco products in this State for sale in this State, ~~any~~ a
37 person engaged in the business of selling tobacco products in this State who brings, or

1 causes to be brought, into this State any tobacco products for sale to a retailer ~~or any~~ a
2 person engaged in the business of selling tobacco products who ships or transports
3 tobacco products to retailers for sale in this State ~~or any~~ a retailer who imports, receives
4 or acquires, from a person other than a licensed distributor, tobacco products for sale
5 within the State or a person who makes delivery sales.

6 **Sec. 12. 36 MRSA §5333, sub-§1,**as enacted by PL 2003, c. 452, Pt. U, §18 and
7 affected by Pt. X, §2, is amended to read:

8 **1. False tax return or other document.** A person who knowingly ~~makes and~~
9 ~~subscribes any~~ files a return, statement or other document that contains or is verified by a
10 ~~written~~ declaration that it is made under the penalties of perjury that the person does not
11 believe to be true and correct ~~as to~~ in every material ~~matter~~ respect or who knowingly
12 aids or procures the preparation or presentation in a matter arising under this Part of a
13 return, affidavit, claim or other document that is fraudulent or is false ~~as to~~ in any
14 material ~~matter~~ respect commits a Class D crime.

15 **Sec. 13. Certain classified permits grandfathered.** A classified permit issued
16 by the State Tax Assessor pursuant to the Maine Revised Statutes, Title 36, section
17 1951-A that is valid on the effective date of this Act remains in force until it is
18 relinquished or revoked under the laws and rules that existed on the day preceding the
19 effective date of this Act.

20 **Sec. 14. Retroactivity.** That section of this Act that repeals and replaces the
21 Maine Revised Statutes, Title 36, section 1760, subsection 25, paragraph B applies
22 retroactively to August 1, 2010. That section of this Act that repeals Title 36, section
23 1760, subsection 45, paragraph A-1 applies retroactively to August 1, 2010. That section
24 of this Act that amends Title 36, section 1760-D applies retroactively to July 12, 2010.
25 That section of this Act that amends Title 36, section 2013, subsection 4 applies
26 retroactively to July 12, 2010.

27 SUMMARY

28 This bill makes the following changes to the laws governing taxation.

29 It eliminates the requirement that a visual media production company submit a copy
30 of its certified visual media production report to the State Tax Assessor.

31 It imposes a specific requirement that, if the sales tax is not separately stated, a
32 retailer must include a statement on the sales slip or invoice presented to the purchaser
33 that the stated price includes Maine sales tax.

34 In Public Law 2009, chapter 620, the Legislature changed the law to provide for a
35 reduced sales tax rate for watercraft purchased and kept in the State or brought into the
36 State by nonresidents for more than 30 days. The bill clarifies the intent of the
37 Legislature in changing the Maine Revised Statutes, Title 36, section 1760, subsection 25
38 to exempt from sales and use tax watercraft used in this State for no more than 30 days by
39 a nonresident. The bill also repeals redundant language. The bill provides for a

1 retroactive application of these changes to the effective date of Public Law 2009, chapter
2 620.

3 The bill clarifies and expands provisions enacted by Public Law 2009, chapter 632
4 that require the State Tax Assessor to post certain information relating to products used in
5 commercial agricultural or silvicultural crop production or in animal agricultural
6 production on the publicly accessible website of the Department of Administrative and
7 Financial Services, Bureau of Revenue Services.

8 The bill removes the requirement that the State Tax Assessor issue classified permits
9 to registered retailers and clarifies that only individual taxpayers may report sales tax on
10 casual rentals of living quarters on their individual income tax returns. The bill provides
11 that classified permits previously issued remain in effect.

12 The bill requires persons making delivery sales of cigarettes or tobacco products to
13 obtain a distributor's license and pay Maine taxes, as provided by federal law.

14 The bill applies the criminal penalties for filing a false tax return or document to false
15 tax returns and documents filed electronically.