

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)

AMC
H. 868

L.D. 1836

Date: 3/30/12

(Filing No. H-868)

majority

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1357, L.D. 1836, Bill, "An Act To Facilitate Rapid Response by Out-of-state Businesses to State Disasters"

Amend the bill in section 1 in §9901 by striking out all of the 2nd and 3rd indented paragraphs and inserting the following:

'The Legislature further finds that, while these businesses are operating in the State providing assistance on a temporary basis solely for the purpose of helping the State recover from the disaster or emergency, these businesses and their employees should not be burdened by requirements for certain business and employee taxes as a result of such temporary activities.'

'To ensure that these businesses focus on responding quickly to the needs of the State and its citizens during a declared state disaster or emergency, the Legislature finds that it is appropriate to consider that such activity for a reasonable period of time during and after the disaster or emergency undertaken to repair and restore property and infrastructure in the State does not establish presence or residency in the State or constitute doing business in the State for purposes of subjecting the businesses to certain taxes or licensing and regulatory requirements.'

Amend the bill in section 1 in §9902 in subsection 5 in the 3rd and 4th lines (page 3, lines 7 and 8 in L.D.) by striking out the following: "neither a resident of this State nor had a nexus in the State" and inserting the following: 'not a resident of this State'

Amend the bill in section 1 by striking out all of §9903 and inserting the following:

'§9903. Status of out-of-state businesses and employees during disaster period

1. Out-of-state businesses. Notwithstanding any other provision of law to the contrary, during a disaster period an out-of-state business that conducts operations within the State for the purpose of performing work or providing services related to a declared state disaster or emergency is deemed to have not established a level of presence that would require that business or its out-of-state employees to be subject to any of the following state or local employment, licensing or registration requirements:

1 A. Business licensing or registration requirements;

2 B. Unemployment insurance, taxes or fees or workers' compensation insurance taxes
3 or fees; and

4 C. Occupational licensing fees.

5 **2. Status after disaster period.** After the termination of a disaster period, an out-of-
6 state business or out-of-state employee that remains in the State is fully subject to the
7 state or local employment, licensing or registration requirements listed in subsection 1 or
8 that were otherwise suspended under this chapter during the disaster period.'

9 Amend the bill in section 1 in §9904 in subsection 3 in the last 2 lines (page 4, lines
10 24 and 25 in L.D.) by striking out the following: "establishing a business presence in the
11 State" and inserting the following: "any business presence or activity in the State"

12 Amend the bill in section 1 in §9905 in the indented paragraph in the first 2 lines
13 (page 4, lines 27 and 28 in L.D) by striking out the following: "the Department of
14 Administrative and Financial Services, Bureau of Revenue Services,"

15 Amend the bill in section 1 in §9905 in the indented paragraph in the 4th line from
16 the end (page 4, line 31 in L.D.) by striking out the following: "shall" and inserting the
17 following: "may"

18 Amend the bill by inserting after section 1 the following:

19 '**Sec. 2. 36 MRSA §1760, sub-§45, ¶A-3**, as amended by PL 2011, c. 380, Pt.
20 GGGG, §2, is further amended to read:

21 A-3. If the property is an aircraft not exempted under subsection 88 or 88-A and the
22 owner at the time of purchase was a resident of another state or tax jurisdiction and
23 the aircraft is present in this State not more than 20 days during the 12 months
24 following its purchase, exclusive of days during which the aircraft is in this State for
25 the purpose of undergoing "major alterations," "major repairs" or "preventive
26 maintenance" as those terms are described in 14 Code of Federal Regulations,
27 Appendix A to Part 43, as in effect on January 1, 2005. For the purposes of this
28 paragraph, the location of an aircraft on the ground in the State at any time during a
29 day is considered presence in the State for that entire day, and a day must be
30 disregarded if at any time during that day the aircraft is used to provide free
31 emergency or compassionate air transportation arranged by an incorporated nonprofit
32 organization providing free air transportation in private aircraft by volunteer pilots so
33 children and adults may access life-saving medical care; or

34 **Sec. 3. 36 MRSA §1760, sub-§45, ¶A-4** is enacted to read:

35 A-4. If the property is brought into this State solely to conduct activities directly
36 related to a declared state disaster or emergency, at the request of the State, a county,
37 city, town or political subdivision of the State or a registered business, the property is
38 owned by a person not otherwise required to register as a seller under section 1754-B
39 and the property is present in this State only during a disaster period. As used in this
40 paragraph, "declared state disaster or emergency" has the same meaning as in Title
41 10, section 9902, subsection 1 and "disaster period" means the period of 60 days that
42 begins with the date of the Governor's proclamation of a state of emergency or the

1 declaration by the President of the United States of a major disaster or major
2 emergency, whichever occurs first; or

3 **Sec. 4. 36 MRSA §5102, sub-§§6-B and 6-C** are enacted to read:

4 **6-B. Declared state disaster or emergency.** "Declared state disaster or emergency"
5 has the same meaning as in Title 10, section 9902, subsection 1.

6 **6-C. Disaster period.** "Disaster period" means the period of 60 days that begins
7 with the date of the Governor's proclamation of a state of emergency or the declaration by
8 the President of the United States of a major disaster or major emergency, whichever
9 occurs first.

10 **Sec. 5. 36 MRSA §5142, sub-§8-B,** as enacted by PL 2011, c. 380, Pt. CCCC, §2
11 and affected by §4, is amended to read:

12 **8-B. Minimum taxability threshold; exemptions.** Minimum taxability thresholds
13 for nonresidents are governed by this subsection.

14 A. ~~Compensation~~ Except as provided by paragraph D, compensation for personal
15 services performed in the State as an employee is Maine-source income subject to
16 taxation under this Part if the nonresident taxpayer is present in the State performing
17 personal services for more than 12 days during that taxable year and directly earns or
18 derives more than \$3,000 in gross income during the year in the State from all
19 sources.

20 B. A Except as provided by paragraph D, a nonresident individual who is present for
21 business in the State on other than a systematic or regular basis, either directly or
22 through agents or employees, has Maine-source income derived from or effectively
23 connected with a trade or business in the State and subject to taxation under this Part
24 only if the nonresident individual was present in the State for business more than 12
25 days during the taxable year and earns or derives more than \$3,000 of gross income
26 during the taxable year from contractual or sales-related activities.

27 C. Performance of the following personal services for 24 days during a calendar year
28 may not be counted toward the 12-day threshold under paragraph A:

29 (1) Personal services performed in connection with presenting or receiving
30 employment-related training or education;

31 (2) Personal services performed in connection with a site inspection, review,
32 analysis of management or any other supervision of a facility, affiliate or
33 subsidiary based in the State by a representative from a company, not
34 headquartered in the State, that owns that facility or is the parent company of the
35 affiliate or subsidiary;

36 (3) Personal services performed in connection with research and development at
37 a facility based in the State or in connection with the installation of new or
38 upgraded equipment or systems at that facility; or

39 (4) Personal services performed as part of a project team working on the
40 attraction or implementation of new investment in a facility based in the State.

12 of 13

D. Compensation for personal services performed in the State as an employee and income derived from or effectively connected with a trade or business in the State is not Maine-source income subject to taxation under this Part if the nonresident taxpayer is present in the State during the taxable year solely for the performance of services or the conducting of business during a disaster period and the compensation or income is directly related to a declared state disaster or emergency and the services were requested by the State, a county, city, town or political subdivision of the State or a registered business.

Sec. 6. 36 MRSA §5211, sub-§16-B is enacted to read:

16-B. Sales factor formula for certain disaster period receipts. The sales factor must exclude from the numerator sales receipts of a person whose only business activity in the State during the taxable year is the performance of services during a disaster period that are solely and directly related to a declared state disaster or emergency that were requested by the State, a county, city, town or political subdivision of the State or a registered business.

Sec. 7. Application. Those sections of this Act that enact the Maine Revised Statutes, Title 36, section 5102, subsections 6-B and 6-C and Title 36, section 5211, subsection 16-B and that amend Title 36, section 5142, subsection 8-B apply to tax years beginning on or after January 1, 2013.'

SUMMARY

This amendment is the majority report of the committee. It removes the blanket exemption from all sales and income taxes for businesses and employees of those businesses that enter the State during a declared state disaster or emergency. Instead, this amendment amends the Maine tax laws to provide for an exclusion from the use tax of property brought into the State by an out-of-state business and income earned by an employee of an out-of-state business during the disaster period. The amendment also provides that rulemaking is not mandatory to implement the provisions and removes the Department of Administrative and Financial Services, Bureau of Revenue Services from the list of agencies that the Secretary of State consults with prior to adopting rules.

FISCAL NOTE REQUIRED

(See attached)



Approved: 03/27/12 *MAC*

125th MAINE LEGISLATURE

LD 1836

LR 2704(02)

An Act To Facilitate Rapid Response by Out-of-state Businesses to State Disasters

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-868)
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue decrease - General Fund
Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Additional costs to the Departments of Economic and Community Development, Professional and Financial Regulation, Defense, Veterans and Emergency Management and Secretary of State associated with rulemaking can be absorbed within each department's existing budgeted resources. Additional costs to the Department of Secretary of State associated with collecting and posting information from out-of-state businesses can also be absorbed within existing budgeted resources.

Any reduction in General Fund revenue associated with business licenses and registrations is expected to be minor, not requiring any change to the budget.