

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 346

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H.P. 251

House of Representatives, February 12, 2013

**An Act To Require the Collection of Sales Tax by any Business  
Making Sales to Persons in Maine**

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Reference to the Committee on Taxation suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative KNIGHT of Livermore Falls.  
Cosponsored by Senator KATZ of Kennebec and  
Representatives: BENNETT of Kennebunk, BERRY of Bowdoinham, CHASE of Wells,  
KESCHL of Belgrade, NUTTING of Oakland, WILSON of Augusta, Senators: President  
ALFOND of Cumberland, FLOOD of Kennebec.

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

2 **Sec. 1. 36 MRSA §1752, sub-§10**, as repealed and replaced by PL 1997, c. 393,  
3 Pt. A, §41, is amended to read:

4 **10. Retailer.** "Retailer" means a person who makes retail sales ~~or~~ and who is  
5 ~~required to register by section 1754-A or 1754-B or who is registered under section~~  
6 ~~1756;~~

7 A. Required to register by section 1754-A or 1754-B; or

8 B. Registered under section 1756.

9 **Sec. 2. 36 MRSA §1754-B, sub-§1, ¶D**, as amended by PL 2005, c. 218, §18, is  
10 further amended to read:

11 D. Every person that has a substantial physical presence in this State sufficient to  
12 satisfy the requirements of the due process and commerce clauses of the United  
13 States Constitution and that makes retail sales in this State of tangible personal  
14 property or taxable services on behalf of a principal that is outside of this State if the  
15 principal is not the holder of a valid registration certificate; For purposes of this  
16 paragraph, paragraph E and paragraph G, the following activities do not constitute a  
17 substantial physical presence in this State sufficient to satisfy the requirements of the  
18 due process and commerce clauses of the United States Constitution:

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

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

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

25 (4) Maintaining a bank account or banking relationship in this State; or

26 (5) Using a vendor in this State for printing;

27 **Sec. 3. 36 MRSA §1754-B, sub-§1, ¶E**, as enacted by PL 1995, c. 640, §3, is  
28 amended to read:

29 E. Every agent, representative, salesperson, solicitor or distributor that has a  
30 substantial physical presence in this State sufficient to satisfy the requirements of the  
31 due process and commerce clauses of the United States Constitution and that receives  
32 compensation by reason of sales of tangible personal property or taxable services  
33 made outside this State by a principal for use, storage or other consumption in this  
34 State;

35 **Sec. 4. 36 MRSA §1754-B, sub-§1, ¶G**, as amended by PL 2007, c. 328, §5, is  
36 further amended to read:

37 G. Every seller of tangible personal property or taxable services that has a substantial  
38 physical presence in this State sufficient to satisfy the requirements of the due process

1 and commerce clauses of the United States Constitution. ~~The following activities do~~  
2 ~~not constitute a substantial physical presence for the purpose of this paragraph:~~

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

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

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

9 ~~(4) Maintaining a bank account or banking relationship in this State; or~~

10 ~~(5) Using a vendor in this State for printing, drop shipping or telemarketing~~  
11 ~~services;~~

12 **Sec. 5. 36 MRSA §1754-B, sub-§1, ¶H**, as amended by PL 2009, c. 373, §5, is  
13 repealed.

14 **Sec. 6. 36 MRSA §1754-B, sub-§1-A** is enacted to read:

15 **1-A. Persons presumptively required to register.** This subsection creates a  
16 rebuttable presumption that a seller not subject to subsection 1 is engaged in the business  
17 of selling tangible personal property or taxable services for use in this State and is  
18 required to register as a retailer with the assessor.

19 A. As used in this subsection, unless the context otherwise indicates, the following  
20 terms have the following meanings.

21 (1) "Affiliated person" means a person that is a member of the same controlled  
22 group of corporations as the seller or any other entity that, notwithstanding its  
23 form of organization, bears the same ownership relationship to the seller as a  
24 corporation that is a member of the same controlled group of corporations. For  
25 purposes of this subparagraph, "controlled group of corporations" has the same  
26 meaning as in the Code, Section 1563(a).

27 (2) "Person" means an individual or entity that qualifies as a person under the  
28 Code, Section 7701(a)(1).

29 (3) "Seller" means a person that sells, other than in a casual sale, tangible  
30 personal property or taxable services.

31 B. A seller is presumed to be engaged in the business of selling tangible personal  
32 property or taxable services for use in this State if an affiliated person has a  
33 substantial physical presence in this State or if any person, other than a person acting  
34 in its capacity as a common carrier, that has a substantial physical presence in this  
35 State:

36 (1) Sells a similar line of products as the seller and does so under a business  
37 name that is the same or similar to that of the seller;

1                   (2) Maintains an office, distribution facility, warehouse or storage place or  
2                   similar place of business in the State to facilitate the delivery of property or  
3                   services sold by the seller to the seller's customers;

4                   (3) Uses trademarks, service marks or trade names in the State that are the same  
5                   or substantially similar to those used by the seller;

6                   (4) Delivers, installs, assembles or performs maintenance services for the seller's  
7                   customers within the State;

8                   (5) Facilitates the seller's delivery of property to customers in the State by  
9                   allowing the seller's customers to pick up property sold by the seller at an office,  
10                  distribution facility, warehouse, storage place or similar place of business  
11                  maintained by the person in the State; or

12                  (6) Conducts any activities in the State that are significantly associated with the  
13                  seller's ability to establish and maintain a market in the State for the seller's sales.

14                  A seller who meets the requirements of this paragraph shall register with the assessor  
15                  and collect and remit taxes in accordance with the provisions of this Part. A seller  
16                  may rebut the presumption created in this paragraph by demonstrating that the  
17                  person's activities in the State are not significantly associated with the seller's ability  
18                  to establish or maintain a market in this State for the seller's sales.

19                  C. A seller that does not otherwise meet the requirements of paragraph B is  
20                  presumed to be engaged in the business of selling tangible personal property or  
21                  taxable services for use in this State if the seller enters into an agreement with a  
22                  person under which the person, for a commission or other consideration, while within  
23                  this State:

24                   (1) Directly or indirectly refers potential customers, whether by a link on an  
25                   Internet website, by telemarketing, by an in-person presentation or otherwise, to  
26                   the seller; and

27                   (2) The cumulative gross receipts from retail sales by the seller to customers in  
28                   the State who are referred to the seller by all persons with this type of an  
29                   agreement with the seller are in excess of \$10,000 during the preceding 12  
30                   months.

31                  A seller who meets the requirements of this paragraph shall register with the assessor  
32                  and collect and remit taxes in accordance with the provisions of this Part.

33                  A seller may rebut the presumption created in this paragraph by submitting proof that  
34                  the person with whom the seller has an agreement did not engage in any activity  
35                  within the State that was significantly associated with the seller's ability to establish  
36                  or maintain the seller's market in the State during the preceding 12 months. Such  
37                  proof may consist of sworn, written statements from all of the persons within this  
38                  State with whom the seller has an agreement stating that they did not engage in any  
39                  solicitation in the State on behalf of the seller during the preceding 12 months; these  
40                  statements must be provided and obtained in good faith.

41                  **Sec. 7. 36 MRSA §1754-B, sub-§4** is enacted to read:

1 **4. Agreement requiring legislative approval.** Any ruling, agreement or contract,  
2 whether written or oral, express or implied, between a seller and the Governor or a state  
3 agency or department stating, agreeing or ruling that a seller, as defined in subsection  
4 1-A, paragraph A, that meets the requirements of subsection 1-A, paragraph B or C is not  
5 required to collect sales and use tax in this State is null and void unless it is specifically  
6 approved by a majority vote of both Houses of the Legislature.

7 **Sec. 8. Application.** The provisions of the Maine Revised Statutes, Title 36,  
8 section 1754-B, subsection 1-A, paragraph C apply to sales made, uses occurring and  
9 services rendered on or after the effective date of this Act regardless of the date on which  
10 the seller and the person entered into the agreement described in that paragraph; except  
11 that, when calculating the 12-month period for purposes of determining whether the  
12 threshold amount specified in Title 36, section 1754-B, subsection 1-A, paragraph C,  
13 subparagraph (2) has been met, the 12-month period begins one year immediately  
14 preceding the seller's registering as a retailer pursuant to this Act.

15 **SUMMARY**

16 This bill creates a presumption that a seller of goods or services is engaged in  
17 business in this State and therefore required to register with the State Tax Assessor as a  
18 retailer and collect and remit sales and use tax on purchases made by persons in the State,  
19 if a person affiliated with the seller has a substantial presence in the State or a person who  
20 has a substantial presence in the State engages in certain activities, such as selling a line  
21 of products similar to that of the seller or maintaining an office or distribution center in  
22 the State to facilitate the delivery of the seller's products. Alternatively, a seller is  
23 presumed to be required to register with the State and collect and remit sales and use tax  
24 if the seller has an agreement with a person to refer potential customers to the seller and  
25 the seller generates more than \$10,000 in sales in the State annually. Both presumptions  
26 may be rebutted. This bill also requires any agreement or ruling by the Governor or an  
27 executive branch department or agency that allows a seller to avoid registering as a seller  
28 to be approved by both Houses of the Legislature.