

# MAINE STATE LEGISLATURE

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Date: 6/8/2017

(Filing No. S-227)

**TAXATION**

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**STATE OF MAINE  
SENATE  
128TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 198, L.D. 583, Bill, "An Act To Improve the Tax Appeal Process for Maine Businesses and Consumers"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 36 MRSA §2011, as amended by PL 2013, c. 331, Pt. C, §10 and affected by §41, is further amended to read:

**§2011. Overpayment; refunds**

If the State Tax Assessor determines, upon written application by a taxpayer or during the course of an audit, that any tax under this Part has been paid more than once or has been erroneously or illegally collected or computed, the assessor shall certify to the State Controller the amount paid in excess of that legally due. That amount must be credited by the assessor on any taxes then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor in interest, but no such credit or refund may be allowed unless within 3 years from the date of overpayment either a written petition stating the grounds upon which the refund or credit is claimed is filed with the assessor or the overpayment is discovered on audit. Interest at the rate determined pursuant to section 186 must be paid on any balance refunded pursuant to this chapter from the date the return listing the overpayment was filed or the date the payment was made, whichever is later, except that no interest may be paid with respect to the refunds provided by section 2013 and, in cases of excessive or erroneous collections, interest must be paid in accordance with section 1814, subsection 3. At the election of the assessor, unless the taxpayer specifically requests a cash refund, the refund may be credited to the taxpayer's sales and use tax account, but, in the case of a credit no further interest may accrue from the date of that election. The taxpayer may not apply for a refund of any amount assessed when administrative and judicial review under section 151 has been completed.

A taxpayer making an application for a refund or credit of erroneously or illegally collected sales tax paid by the taxpayer to the retailer must submit an affidavit as prescribed by the assessor stating in part that the refund or credit has not been and will not be requested from the retailer.

**COMMITTEE AMENDMENT**

1 A taxpayer dissatisfied with the decision of the assessor, upon a written request for  
2 refund filed under this section may request reconsideration and appeal from the  
3 reconsideration in the same manner and under the same conditions as in the case of  
4 assessments made under chapter 7. The decision of the assessor upon a written request for  
5 refund becomes final as to law and fact in the same manner and under the same  
6 conditions as in the case of assessments made under chapter 7.

7 **Sec. 2. 36 MRSA §2551, sub-§2-A** is enacted to read:

8 **2-A. Customer.** "Customer" means a person who purchases one or more services  
9 subject to tax under section 2552, subsection 1.

10 **Sec. 3. 36 MRSA §2555, first ¶**, as enacted by PL 2003, c. 673, Pt. V, §25 and  
11 affected by §29, is amended to read:

12 If the assessor determines, upon written application by a taxpayer or during the  
13 course of an audit, that any tax has been paid more than once or has been erroneously or  
14 illegally computed, the assessor shall certify to the State Controller the amount paid in  
15 excess of that legally due and that amount must be credited by the assessor on any taxes  
16 then due from the taxpayer and the balance refunded to the taxpayer or its successor in  
17 interest, but no such credit or refund may be allowed unless within 3 years of the date of  
18 overpayment either a written petition stating the grounds upon which the refund or credit  
19 is claimed is filed with the assessor or the overpayment is discovered on audit. A credit  
20 or refund may not be allowed for tax that has been erroneously or illegally collected and  
21 separately stated on a customer's bill until the service provider has provided evidence  
22 satisfactory to the assessor that the tax has been refunded or credited to the customer.  
23 Interest at the rate determined pursuant to section 186 must be paid on any balance  
24 refunded pursuant to this chapter from the date the return listing the overpayment was  
25 filed or the payment was made, whichever is later. At the election of the assessor, unless  
26 the taxpayer specifically requests a cash refund, the refund may be credited to the  
27 taxpayer's service provider tax account, but in the case of a credit no further interest may  
28 accrue from the date of that election. The taxpayer may not apply for a refund of any  
29 amount assessed when administrative and judicial review under section 151 has been  
30 completed.

31 **Sec. 4. 36 MRSA §2555-A** is enacted to read:

32 **§2555-A. Refund or credit to customer**

33 A service provider tax that has been erroneously or illegally computed by a service  
34 provider and included on a customer's bill must be refunded or credited to the customer  
35 by the service provider.

36 **Sec. 5. Report.** By February 1, 2018, the State Tax Assessor shall review the  
37 adequacy of procedures and notices involved in the process of notifying taxpayers  
38 regarding the basis of an assessment or a denial of a refund request and provide a report  
39 of the review to the Joint Standing Committee on Taxation. The report must describe the  
40 procedures and documents reviewed and any revisions implemented to ensure that  
41 taxpayers who receive notices or determinations from the assessor are provided a brief,  
42 nontechnical explanation for an assessment or a denial of a refund request.

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**Sec. 6. Application.** The sections of the bill that amend the Maine Revised Statutes, Title 36, sections 2011 and 2555 apply to requests for credit or refund of sales tax paid to a retailer and service provider tax paid to a service provider for which administrative or judicial review is still available.<sup>1</sup>

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**SUMMARY**

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This amendment requires a person requesting a refund of sales and use tax to submit an affidavit to the State Tax Assessor stating that a refund or credit has not been and will not be requested from the retailer. The requirement applies to pending reconsiderations and administrative appeals. The amendment also revises the process for a customer of a service provider to obtain a refund or credit of tax that was erroneously or illegally computed.

12

**FISCAL NOTE REQUIRED**

13

**(See attached)**



# 128th MAINE LEGISLATURE

LD 583

LR 874(02)

**An Act To Improve the Tax Appeal Process for Maine Businesses and Consumers**

**Fiscal Note for Bill as Amended by Committee Amendment "A" (S-227)**

**Committee: Taxation**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Additional costs to the Department of Administrative and Financial Services associated with reviewing and processing affidavits can be absorbed within existing budgeted resources.