

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1734

S.P. 633

In Senate, December 22, 2017

An Act To Clarify the Sales Tax Exemption for Vehicles Used in Interstate or Foreign Commerce

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 19, 2017. Referred to the Committee on Taxation pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by President THIBODEAU of Waldo.
Cosponsored by Speaker GIDEON of Freeport and
Senators: DIAMOND of Cumberland, JACKSON of Aroostook, KATZ of Kennebec, VOLK
of Cumberland, Representatives: ESPLING of New Gloucester, GILLWAY of Searsport,
GOLDEN of Lewiston, TIMBERLAKE of Turner.

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

2 **Sec. 1. 36 MRSA §1760, sub-§41**, as amended by PL 2011, c. 501, §1, is
3 repealed.

4 **Sec. 2. 36 MRSA §1760, sub-§41-A** is enacted to read:

5 **41-A. Certain instrumentalities of interstate or foreign commerce.** The sale of a
6 vehicle, railroad rolling stock, aircraft or watercraft that is placed in use by the purchaser
7 as an instrumentality of interstate or foreign commerce within 30 days after that sale and
8 that is used by the purchaser for not less than 80% of the days of the next 2 years as an
9 instrumentality of interstate or foreign commerce. The State Tax Assessor may for good
10 cause extend for not more than 60 days the time for placing the instrumentality in use in
11 interstate or foreign commerce.

12 For purposes of this subsection:

13 A. Property is placed in use as an instrumentality of interstate or foreign commerce
14 by its carrying of, or providing the motive power for the carrying of, a bona fide
15 payload in interstate or foreign commerce or by being dispatched to a specific
16 location at which it will be loaded with, or will be used as motive power for the
17 carrying of, a bona fide payload in interstate or foreign commerce.

18 (1) Property waiting to be loaded or unloaded or not being used while being
19 repaired or maintained is considered placed in use as an instrumentality of
20 interstate or foreign commerce as long as its next intended use is interstate or
21 foreign commerce.

22 (2) The days a trailer is used by another entity must be used to calculate
23 eligibility for the exemption under this subsection as long as there is a written
24 transportation agreement between the 2 parties.

25 (3) Personal property that is a bus with a capacity of at least 47 passengers that is
26 engaged in transporting within the State a bona fide payload of travelers on an
27 interstate or foreign cruise that originates outside the State and terminates outside
28 the State, if the transportation is provided pursuant to a contract between the
29 interstate or foreign cruise provider and the person providing the transportation,
30 is considered to be placed in use as an instrumentality of interstate or foreign
31 commerce;

32 B. "Bona fide payload" means a cargo of persons or property transported by a
33 contract or common carrier for compensation that exceeds the direct cost of carrying
34 that cargo or pursuant to a legal obligation to provide service as a public utility or a
35 cargo of property transported in the reasonable conduct of the purchaser's own
36 nontransportation business in interstate or foreign commerce; and

37 C. "Interstate or foreign commerce" has the same meaning as "interstate commerce"
38 as defined in 49 Code of Federal Regulations, Section 390.5T.

39 The exemption provided by this subsection is not limited to instrumentalities otherwise
40 required to be exempt under the United States Constitution.

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Sec. 3. Application to pending investigations and audits. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to investigations or audits conducted by the Department of Administrative and Financial Services, Bureau of Revenue Services that are not final as of the effective date of this Act.

SUMMARY

This bill clarifies the exemption from sales and use tax for instrumentalities of interstate or foreign commerce by specifying that property waiting to be loaded or unloaded or not being used while being repaired or maintained is considered to be placed in use in interstate or foreign commerce as long as the intended next use of that property is interstate or foreign commerce. This bill provides that a trailer being used by an entity other than the owner is eligible for the exemption as long as there is a written transportation agreement between the owner and the other entity. This bill provides a definition of "interstate or foreign commerce" that is the same as the definition of "interstate commerce" in the Federal Motor Carrier Safety Regulations. This bill also specifies that the changes made in the bill apply to any ongoing audit or investigation being conducted by the Department of Administrative and Financial Services, Bureau of Revenue Services.