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1	L.D. 2011	
2	Date: 3/16/20 (Filing No. H-767)	
3	TAXATION	
4	Reproduced and distributed under the direction of the Clerk of the House.	
5	STATE OF MAINE	
6	HOUSE OF REPRESENTATIVES	
7	129TH LEGISLATURE	
8	SECOND REGULAR SESSION	
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9 10	COMMITTEE AMENDMENT "/ " to H.P. 1432, L.D. 2011, Bill, "An Act To Update Certain Provisions in the Income Tax and Service Provider Tax Laws"	
11 12	Amend the bill in Part A in section 2 by striking out all of subsection 2-B (page 1, lines 26 to 33 in L.D.) and inserting the following:	
13 14 15 16 17	'2-B. Digital audio-visual and digital audio services. "Digital audio-visual and digital audio services" means the electronic transfer of digital audio-visual works and digital audio works to an end user with the right of less than permanent use granted by the seller, including when conditioned upon continued payment from the purchaser or a subscription.	
18	For purposes of this subsection:	
19 20 21 22	A. "End user" means a person other than a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person;	
23	B. "Permanent" means perpetual or for an indefinite or unspecified length of time;	
24 25 26	C. "Subscription" means an agreement with a seller that grants a purchaser the right to obtain products transferred electronically, in a fixed quantity or for a fixed period of time, or both; and	
27	D. "Transfer electronically" or "electronic transfer" means obtainment by the	
28	purchaser by means other than tangible storage media.'	
29	Amend the bill in Part A by striking out all of section 8 and inserting the following:	
30	'Sec. A-8. 36 MRSA §2556-A is enacted to read:	
31	§2556-A. Sourcing for sales of digital audio-visual and digital audio services	
32 33	The sale of digital audio-visual and digital audio services is sourced in this State pursuant to this section.	

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# **COMMITTEE AMENDMENT**

COMMITTEE AMENDMENT "to H.P. 1432, L.D. 2011

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1. Sourced to address of purchaser in seller's business records. The sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

2. Sourced to address of purchaser not in seller's business records. For a sale when subsection 1 does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

3. Sourced to address from which service provided. When subsections 1 and 2 do not apply, including the circumstance in which the seller is without sufficient information to apply subsection 1 or 2, the location is determined by the address from which the service was provided, disregarding for these purposes any location that was merely the site from which the digital transfer of the product sold was provided.

4. Mobile telecommunications service providers. Notwithstanding subsections 1 to 3, the sale of digital audio-visual and digital audio services by a provider of mobile telecommunications service is sourced in the same manner as mobile telecommunications services pursuant to section 2556.'

Amend the bill in Part B in section 1 in subsection 10 on the 2nd line (page 3, line 26
in L.D.) by striking out the following: "substantial"

Amend the bill in Part B in section 2 in §5200-B in subsection 1 on the first line (page 3, line 33 in L.D.) by striking out the following: "substantial"

Amend the bill in Part B in section 2 in §5200-B in subsection 3 on the 2nd line (page 4, line 14 in L.D.) by striking out the following: "<u>substantial</u>"

Amend the bill in Part B in section 2 in §5200-B by inserting at the end the following:

<sup>1</sup>4. Federal protection. A state that is without jurisdiction to impose a tax on the net
 income of a taxpayer because that taxpayer comes under the protection of 15 United
 States Code, Sections 381 to 384, does not gain jurisdiction to impose such a tax because
 the taxpayer's property, payroll or sales in the State exceed a threshold established in
 subsection 1.'

- Amend the bill by inserting after Part D the following:
  - 'PART E
- 34 Sec. E-1. 36 MRSA §1760, sub-§104 is enacted to read:

35 <u>104. Section 501(c)(3) nonprofit organizations.</u> Sales to a nonprofit organization 36 that has been determined by the United States Internal Revenue Service to be exempt 37 from federal income taxation under Section 501(c)(3) of the Code, if the tangible personal 38 property or taxable services sold are to be used primarily for the purposes for which the 39 nonprofit organization was organized.

40 Sec. E-2. 36 MRSA §2557, sub-§40 is enacted to read:

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40. Section 501(c)(3) nonprofit organizations. Sales to a nonprofit organization that has been determined by the United States Internal Revenue Service to be exempt from federal income taxation under Section 501(c)(3) of the Code, if the services sold are to be used primarily for the purposes for which the nonprofit organization was organized.

Sec. E-3. Study; additional legislation. The Department of Administrative and Financial Services, Bureau of Revenue Services, Office of Tax Policy shall study the entity-based exemptions provided to qualifying nonprofit organizations from sales tax pursuant to the Maine Revised Statutes, Title 36, section 1760 and from service provider tax pursuant to Title 36, section 2557. The department shall submit legislation repealing or otherwise modifying any of those exemptions that are found to be duplicative or unnecessary to the joint standing committee of the Legislature having jurisdiction over taxation matters by December 2, 2020. The joint standing committee may report out a bill to the First Regular Session of the 130th Legislature regarding that report. Notwithstanding Title 36, section 191, the Office of Tax Policy may disclose the number of nonprofit organizations not exempt under Section 501(c)(3) of the federal Internal Revenue Code of 1986 that have active exemption certificates under each sales or service provider tax exemption.

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Sec. E-4. Effective date. This Part takes effect October 1, 2020.

- PART F
- Sec. F-1. Appropriations and allocations. The following appropriations and 20 allocations are made. 21

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF 22

- 23 **Revenue Services, Bureau of 0002**
- Initiative: Provides one-time funding for computer programming charges. 24

25 26		GENERAL FUND All Other	<b>2019-20</b> \$0	<b>2020-21</b> \$26,000
27			\$0	\$26,000
28 29	I.	GENERAL FUND TOTAL	\$U	\$20,000

Amend the bill by relettering or renumbering any nonconsecutive Part letter or 30 section number to read consecutively.

### SUMMARY

This amendment is the majority report of the committee. This amendment amends 33 provisions of the bill relating to the taxation of digital audio-visual and digital audio 34 services. The amendment clarifies the corporate income tax nexus provisions of the bill 35 by referring to "nexus" instead of "substantial nexus." The amendment also exempts 36 from the sales and use tax and from the service provider tax sales to a nonprofit 37 organization that has been determined by the United States Internal Revenue Service to 38 39 be exempt from income taxation under Section 501(c)(3) of the federal Internal Revenue

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Code of 1986 if the property or services sold are to be used primarily for the purposes for which the nonprofit organization was organized. The amendment requires the Department of Administrative and Financial Services, Bureau of Revenue Services, Office of Tax Policy to review sales tax and service provider tax exemptions to identify provisions that should be repealed or amended because they are duplicative or otherwise unnecessary and to submit legislation repealing or modifying those exemptions. The amendment also adds an appropriations and allocations section.

#### FISCAL NOTE REQUIRED

### (See attached)

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### **COMMITTEE AMENDMENT**

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### **129th MAINE LEGISLATURE**

LD 2011

LR 2993(02)

### An Act To Update Certain Provisions in the Income Tax and Service Provider Tax Laws

### Fiscal Note for Bill as Amended by Committee Amendment 'A'(H-767) Committee: Taxation Fiscal Note Required: Yes

Fiscal	Note
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	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings) General Fund	\$0	(\$3,117,525)	(\$1,668,200)	(\$844,550)
Appropriations/Allocations General Fund	\$0	\$26,000	\$0	\$0
<b>Revenue</b> General Fund Other Special Revenue Funds	\$0 \$0	\$3,143,525 \$122,475	\$1,668,200 \$87,800	\$844,550 \$44,450

#### **Fiscal Detail and Notes**

This bill makes changes to the state tax laws and will increase General Fund revenue by \$3,143,525 in fiscal year 2020-21 and increase Other Special Revenue Funds revenue by \$122,475 in fiscal year 2020-21. The bill includes a one-time General Fund appropriation to the Department of Administrative and Financial Services of \$26,000 in fiscal year 2020-21 for computer programming costs.