

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 2000

H.P. 1278

House of Representatives, May 23, 2023

**An Act to Change the Taxation of Rental Tangible Personal
Property to Make It Consistent with the Predominant Method in
Other States' Rental Industry Laws for Sales and Use Tax**

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TERRY of Gorham.
Cosponsored by Senator FARRIN of Somerset and
Representatives: GATTINE of Westbrook, HASENFUS of Readfield, MILLETT of Waterford,
Senator: STEWART of Aroostook.

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

2 **Sec. 1. 36 MRSA §1752, sub-§5-D** is enacted to read:

3 **5-D. Lessor.** "Lessor" means a person who leases or rents tangible personal property
4 located in this State to another person.

5 **Sec. 2. 36 MRSA §1752, sub-§10**, as amended by PL 2019, c. 401, Pt. B, §3, is
6 further amended to read:

7 **10. Retailer.** "Retailer" means a person who makes retail sales or who is required to
8 register by section 1754-B or who is registered under section 1756. "Retailer" includes a
9 lessor.

10 **Sec. 3. 36 MRSA §1752, sub-§10-A** is enacted to read:

11 **10-A. Retail lease or rental.** "Retail lease or rental" means any transfer of possession
12 or control by lease or rental of tangible personal property for a fixed or indeterminate term
13 for consideration by a lessor in the ordinary course of business and includes a sublease.

14 "Retail lease or rental" does not include:

15 A. Provision, through a lease, rental or otherwise, of tangible personal property along
16 with an operator for a fixed or indeterminate period of time, when that operator is
17 necessary for the equipment to perform as designed and the operator does more than
18 maintain, inspect or set up the tangible personal property;

19 B. The lease or rental of property that is subject to the provisions of the service provider
20 tax imposed pursuant to chapter 358;

21 C. The rental for a period of less than one year of:

22 (1) An automobile;

23 (2) A truck or van with a gross vehicle weight of less than 26,000 pounds rented
24 from a person primarily engaged in the business of renting automobiles; or

25 (3) A loaner vehicle that is provided other than to a motor vehicle dealer's service
26 customers pursuant to a manufacturer's or dealer's warranty;

27 D. Any taxable service;

28 E. The lease of computer software that is not a custom computer software program; or

29 F. The lease or rental of trucks or truck tractors from a person primarily engaged in
30 the business of leasing or renting trucks and truck tractors.

31 **Sec. 4. 36 MRSA §1752, sub-§11**, as amended by PL 2021, c. 578, §1, is further
32 amended to read:

33 **11. Retail sale.** "Retail sale" means any sale of tangible personal property or a taxable
34 service in the ordinary course of business. "Retail sale" includes the retail lease or rental
35 of tangible personal property to another person.

36 A. "Retail sale" includes:

37 (1) Conditional sales, installment lease sales and any other transfer of tangible
38 personal property when the title is retained as security for the payment of the
39 purchase price and is intended to be transferred later;

(2) Sale of products for internal human consumption to a person for resale through vending machines when sold to a person more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines. The tax must be paid by the retailer to the State;

(3) A sale in the ordinary course of business by a retailer to a purchaser who is not engaged in selling that kind of tangible personal property or taxable service in the ordinary course of repeated and successive transactions of like character; and

(4) The sale or liquidation of a business or the sale of substantially all of the assets of a business, to the extent that the seller purchased the assets of the business for resale, lease or rental in the ordinary course of business, except when:

(a) The sale is to an affiliated entity and the transferee, or ultimate transferee in a series of transactions among affiliated entities, purchases the assets for resale, lease or rental in the ordinary course of business; or

(b) The sale is to a person that purchases the assets for resale, lease or rental in the ordinary course of business or that purchases the assets for transfer to an affiliate, directly or through a series of transactions among affiliated entities, for resale, lease or rental by the affiliate in the ordinary course of business.

For purposes of this subparagraph, "affiliate" or "affiliated" includes both direct and indirect affiliates.

B. "Retail sale" does not include:

(1) Any casual sale;

(2) Any sale by a personal representative in the settlement of an estate unless the sale is made through a retailer or the sale is made in the continuation or operation of a business;

(3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented for a period of less than one year;

(3-A) The sale, to a person primarily engaged in the business of renting automobiles, of trucks or vans with a gross vehicle weight of less than 26,000 pounds, integral parts of such vehicles or accessories for such vehicles, for rental or for use in such a vehicle rented for a period of less than one year;

(4) The sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental;

(5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more;

(6) The sale, to a person engaged in the business of providing cable or satellite television services or satellite radio services, of associated equipment for rental or lease to subscribers in conjunction with a sale of cable or satellite television services or satellite radio services;

(7) The sale, to a person engaged in the business of renting furniture or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;

(8) The sale of loaner vehicles to a new vehicle dealer licensed as such pursuant to Title 29-A, section 953;

(9) The sale of automobile repair parts used in the performance of repair services on an automobile pursuant to an extended service contract sold on or after September 20, 2007 that entitles the purchaser to specific benefits in the service of the automobile for a specific duration;

(10) The sale, lease or rental to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of tangible personal property for resale in the form of tangible personal property, except resale as a casual sale;

(11) The sale, to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of a taxable service for resale, except resale as a casual sale;

(12) The sale, to a retailer that is not required to register under section 1754-B, of tangible personal property for resale outside the State in the form of tangible personal property, except resale as a casual sale;

(13) The sale, to a retailer that is not required to register under section 1754-B, of a taxable service for resale outside the State, except resale as a casual sale;

(14) The sale of repair parts used in the performance of repair services on telecommunications equipment as defined in section 2551, subsection 19 pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the telecommunications equipment for a specific duration;

(15) The sale of positive airway pressure equipment and supplies and oxygen delivery equipment for rental for personal use to a person engaged in the business of renting positive airway pressure equipment and oxygen delivery equipment;

(16) The sale, to a person engaged in the business of renting or leasing motor homes, as defined in Title 29-A, section 101, subsection 40, or camper trailers, of motor homes or camper trailers for rental as tangible personal property but not as the rental of living quarters; ~~or~~

(17) The sale of truck repair parts used in the performance of repair services on a truck pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the truck for a specific duration; or

(18) The sale, lease or rental to a lessor who has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C of tangible personal property for retail lease or rental.

Sec. 5. 36 MRSA §1752, sub-§13, as amended by PL 1981, c. 706, §20, is further amended to read:

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes retail leases ~~and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase~~ or rentals, conditional sale contracts and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.

1 **Sec. 6. 36 MRSA §1752, sub-§14, ¶A**, as amended by PL 2021, c. 578, §2, is
2 further amended by amending subparagraph (4) to read:

3 (4) In the case of the lease or rental for a period of less than one year of an
4 automobile or of a truck or van with a gross vehicle weight of less than 26,000
5 pounds rented from a person primarily engaged in the business of renting
6 automobiles, the value is the total rental charged to the lessee and includes, but is
7 not limited to, maintenance and service contracts, drop-off or pick-up fees, airport
8 surcharges, mileage fees and any separately itemized charges on the rental
9 agreement to recover the owner's estimated costs of the charges imposed by
10 government authority for title fees, inspection fees, local excise tax and agent fees
11 on all vehicles in its rental fleet registered in the State. All fees must be disclosed
12 when an estimated quote is provided to the lessee; ~~and~~

13 **Sec. 7. 36 MRSA §1752, sub-§14, ¶A**, as amended by PL 2021, c. 578, §2, is
14 further amended by amending subparagraph (5) to read:

15 (5) In the case of the lease or rental of an automobile for one year or more, the
16 value is the total monthly lease payment multiplied by the number of payments in
17 the lease or rental, the amount of equity involved in any trade-in and the value of
18 any cash down payment. Collection and remittance of the tax is the responsibility
19 of the person that negotiates the lease transaction with the lessee; and

20 **Sec. 8. 36 MRSA §1752, sub-§14, ¶A**, as amended by PL 2021, c. 578, §2, is
21 further amended by enacting a new subparagraph (6) to read:

22 (6) For retail lease or rental payments, the value is measured by the full amount of
23 each payment.

24 **Sec. 9. 36 MRSA §1752, sub-§14, ¶B**, as repealed and replaced by PL 2019, c.
25 501, §28, is amended by amending subparagraph (12) to read:

26 (12) Federal universal service support funds that are paid directly to the seller
27 pursuant to 47 Code of Federal Regulations, Part 54; ~~or~~

28 **Sec. 10. 36 MRSA §1752, sub-§14, ¶B**, as repealed and replaced by PL 2019, c.
29 501, §28, is amended by amending subparagraph (13) to read:

30 (13) A paint stewardship assessment imposed pursuant to Title 38, section 2144-;
31 or

32 **Sec. 11. 36 MRSA §1752, sub-§14, ¶B**, as repealed and replaced by PL 2019, c.
33 501, §28, is amended by enacting a new subparagraph (14) to read:

34 (14) For retail lease or rental payments, separately stated charges for delivery and
35 pick-up; fuel or refueling services; damage waivers; standing time; cleaning fees;
36 assembly, setup or installation; loading or unloading; dismantling or take-down; or
37 repair, maintenance or service contracts associated with the rental or lease of
38 tangible personal property.

39 **Sec. 12. 36 MRSA §1754-B, sub-§1-B, ¶A**, as repealed and replaced by PL 2021,
40 c. 181, Pt. B, §5, is amended by amending subparagraph (3) to read:

(3) Every lessor ~~engaged in the leasing of tangible personal property located in this State~~ that does not maintain a place of business in this State but makes retail sales to purchasers ~~from~~ in this State;

Sec. 13. 36 MRSA §1758, as repealed and replaced by PL 1999, c. 708, §24, is repealed.

Sec. 14. 36 MRSA §1819, sub-§2, as amended by PL 2021, c. 181, Pt. B, §6, is further amended to read:

2. Sourcing for sales sale, but not retail lease or rental, of tangible personal property and taxable services. The Except as provided in subsection 3, the sale of tangible personal property or a taxable service is sourced in this State pursuant to this subsection.

A. When the tangible personal property or taxable service is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

B. When the tangible personal property or taxable service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee occurs, including the location indicated by instructions for delivery to the purchaser or donee known to the seller.

C. For a sale when paragraphs A and B do not apply, 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.

D. For a sale when paragraphs A to C do 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.

E. When paragraphs A to D do not apply, including the circumstance in which the seller is without sufficient information to apply paragraphs A to D, the location is determined by the address from which tangible personal property was shipped, from which the tangible personal property or taxable service transferred electronically was first available for transmission by the seller or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the tangible personal property or taxable service sold.

Sec. 15. 36 MRSA §1819, sub-§3 is enacted to read:

3. Sourcing for retail lease or rental. The retail lease or rental of tangible personal property is sourced pursuant to this subsection.

A. For a retail lease or rental that requires recurring periodic payments, the first periodic payment is sourced to this State when the product is received in this State. Periodic payments made subsequent to the first payment are sourced in this State as long as the primary property location for the period covered by each payment is in this State. For the purposes of this paragraph, "the primary property location" is an address for the property provided by the lessee that is available to the lessor from its records and maintained in the ordinary course of business, when use of this address does not constitute bad faith. The primary property location is not altered by intermittent use at

different locations, such as use of business property that accompanies employees on business trips and service calls.

B. For a retail lease or rental that does not require periodic recurring payments, the payment is sourced in this State if the product is received in this State or the product is present in this State for more than the lesser of 90 days during the term of the lease or rental and 50% of the days during the term of the lease or rental. The location of property in this State at any time during a day is considered presence in this State for that entire day.

For purposes of this subsection, leased or rented tangible personal property is received in this State when the lessee takes possession of the property in this State.

Sec. 16. 36 MRSA §2022 is enacted to read:

§2022. Refund of use tax on purchases of qualifying retail lease or rental property

1. Definitions. For purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Purchase price use tax" means Maine use tax that was paid to the State upon the acquisition or transfer of tangible personal property in the State by a qualified lessor on or after January 1, 2021 and before January 1, 2024.

B. "Qualified lessor" means a person that:

(1) Leases or rents qualifying retail lease or rental property to another person in this State; and

(2) Paid purchase price use tax to the State on qualifying retail lease or rental property on or after January 1, 2021 and before January 1, 2024.

C. "Qualifying retail lease or rental property" means tangible personal property:

(1) That was part of a taxable retail lease or rental transaction on or after January 1, 2024 for which Maine sales tax was remitted to the State; and

(2) Upon which purchase price use tax was paid during the qualifying retail lease or rental property on or after January 1, 2021 and before January 1, 2024.

2. Refund authorized. The assessor shall refund the use tax imposed pursuant to this Part and paid by a qualified lessor that purchased qualifying retail lease or rental property on or after January 1, 2021 and before January 1, 2024. The amount of the refund for each item of qualifying retail lease or rental property is limited to the total sales tax collected on that item of qualifying retail lease or rental property and remitted to the State on or after January 1, 2024 and before January 1, 2027.

3. Procedure and limitation. A qualified lessor may submit a claim for reimbursement on a form prescribed by the assessor filed after July 31, 2024. A qualified lessor may file only one claim per year and may not file a claim after March 1, 2027.

4. Audit. The assessor may audit a claim for reimbursement filed under this section. If the assessor determines that the amount of reimbursement is incorrect, the assessor may issue an assessment within 3 years from the date the claim was filed or at any time if a fraudulent claim was filed. The claimant may seek reconsideration of the assessment pursuant to section 151.

5. Payment of claims. The assessor shall pay the reimbursement amount to a qualified lessor under this section within 90 days after receipt of a properly completed claim. Interest is not allowed on any payment made to a claimant pursuant to this section.

Sec. 17. Application. This Act applies to retail leases or rental contracts entered into on or after January 1, 2024.

SUMMARY

In the current system of taxation for the rental or lease of tangible personal property, the rental or leasing company property is taxed at acquisition or when brought into Maine from out of state, but rental and lease receipts are exempt from sales and use tax. This bill amends Maine sales and use tax law to make it more consistent with the predominant method of taxation in other states by allowing rental and leasing companies to purchase exempt from taxation all rental fleet and tangible personal property for resale and requiring the rental and leasing companies to collect sales tax from the customer. The bill includes a limited refund opportunity for use tax paid on the purchase of rental fleet and tangible personal property by rental and leasing companies prior to January 1, 2024. The bill does not affect the lease or rental of trucks and truck tractors from a person primarily engaged in the business of leasing or renting trucks and truck tractors.