

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1995

Sec. 29. 36 MRSA §5276-A, sub-§1, as amended by PL 1993, c. 395, §23, is further amended to read:

1. Generally. ~~Any~~ An agency of the State, including the University of Maine System or the Maine Technical College System, that is authorized to collect from ~~any~~ an individual or corporation a liquidated debt greater than \$25 shall notify in writing the State Tax Assessor and supply information necessary to identify the debtor whose refund is sought to be set off. ~~The State Tax Assessor, assessor,~~ upon ~~any such~~ notification, shall assist the requesting agency by setting off that debt, ~~pursuant to rules promulgated by the State Tax Assessor,~~ against ~~any~~ a refund to which that individual or corporation is entitled under this Part. Liquidated child support debts that the Department of Human Services has contracted to collect, pursuant to Title 19, section 448-A or 495, subsection 2, are eligible, under the provisions of this section, for setoff against ~~any~~ a refund due the obligated individual. ~~The State Tax Assessor assessor~~ shall provide the creditor agency with the name, address and social security number of each debtor whose refund is subject to setoff.

Sec. 30. 36 MRSA §5284, sub-§1, as amended by PL 1993, c. 253, §1, is further amended to read:

1. Maine Endangered and Nongame Wildlife Fund. Taxpayers who, when filing their return, are entitled to a refund under this Part may designate ~~any~~ that a part of that refund be paid into the Maine Endangered and Nongame Wildlife Fund established in Title 12, section 7757. A taxpayer who is not entitled to a refund under this Part may contribute to the Maine Endangered and Nongame Wildlife Fund by including with that taxpayer's return sufficient funds to make the contribution. Each individual income tax return form must contain a designation in substantially the following form: "Contribution to Maine Endangered and Nongame Wildlife Fund: () \$5, () \$10, () \$25 or () Other \$."

Sec. 31. 36 MRSA §5285, sub-§1, as amended by PL 1993, c. 600, Pt. A, §280, is further amended to read:

1. Maine Children's Trust Incorporated. Taxpayers who, when filing their returns, are entitled to a refund under this Part may designate that a portion of that refund be paid into the Maine Children's Trust Incorporated established in Title 22, chapter 1058. A taxpayer who is not entitled to a refund under this Part may contribute to the Maine Children's Trust Incorporated by including with that taxpayer's return sufficient funds to make the contribution. Each individual income tax return form must contain a designation in substantially the

following form: "Contributions to Maine Children's Trust Incorporated: () \$5, () \$10, () \$25 or () Other \$."

Sec. 32. 36 MRSA §6207, sub-§1, ¶A-1, as amended by PL 1995, c. 368, Pt. CCC, §8 and affected by §11, is further amended to read:

A-1. Fifty percent of that portion of the benefit base that exceeds 5.0% but does not exceed 10.0% of income ~~and plus~~ 100% of that portion of the benefit base that exceeds 10% of income to a maximum payment of \$700.

Sec. 33. 36 MRSA §6213, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

§6213. Appeal

A denial in whole or in part of relief claimed under this chapter may be appealed in accordance with section 151 and the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. 34. 36 MRSA §6652, sub-§1, as enacted by PL 1995, c. 368, Pt. FFF, §2, is amended to read:

1. Generally. Subject to the provisions of subsection 2 and of sections 6653 and 6654, a person against whom taxes have been assessed pursuant to Part 2, except for chapters 111 and 112, with respect to eligible property and who has paid those taxes is entitled to reimbursement of those taxes from the State.

Sec. 35. Retroactivity. That section of this Act that amends the Maine Revised Statutes, Title 36, section 6652, subsection 1 applies retroactively to June 29, 1995.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 10, 1996.

CHAPTER 640

H.P. 1251 - L.D. 1713

An Act to Amend the Tax Laws Regarding Retail Business Registration and Penalty Relief to Taxpayers with Extensions

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

Sec. 1. 36 MRSA §1752, sub-§10, as repealed and replaced by PL 1987, c. 497, §21, is amended to read:

10. Retailer. "Retailer" means any person who makes retail sales or who is required to register by section 1754 1754-B or is registered under section 1756.

Sec. 2. 36 MRSA §1754, as amended by PL 1989, c. 880, Pt. H, is repealed.

Sec. 3. 36 MRSA §1754-B is enacted to read:

§1754-B. Registration of sellers

1. Persons required to register. The following persons, other than casual sellers, shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part:

A. Every seller of tangible personal property or taxable services, whether or not at retail, that maintains in this State any office, manufacturing facility, distribution facility, warehouse or storage facility, sales or sample room or other place of business;

B. Every seller of tangible personal property or taxable services that does not maintain a place of business in this State but makes retail sales in this State or solicits orders, by means of one or more salespeople within this State, for retail sales within this State;

C. 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 this State;

D. Every consignee, agent or salesperson that makes retail sales in this State of tangible personal property or taxable services on behalf of a principal that is outside of this State if the principal is not the holder of a valid registration certificate;

E. Every agent, representative, salesperson, solicitor or distributor that receives compensation by reason of sales of tangible personal property or taxable services made outside this State by a principal for use, storage or other consumption in this State;

F. Every person that manages or operates a hotel, rooming house or tourist or trailer camp in this State or collects or receives rents from a hotel, rooming house or tourist or trailer camp; and

G. Every seller of tangible personal property or taxable services that has a substantial physical

presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. The following activities do not constitute a substantial physical presence for purpose of this paragraph:

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

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

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

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

(5) Using a vendor in this State for printing, drop shipping or telemarketing services.

2. Registration certificates. Application forms for sales tax registration certificates must be prescribed and furnished free of charge by the assessor. The assessor shall issue a registration certificate to each applicant that properly completes and submits an application form. A separate application must be completed and a separate registration certificate issued for each place of business. A registration certificate issued pursuant to this section is nontransferable and is not a license within the meaning of that term in the Maine Administrative Procedure Act.

When a retailer maintains a place of business in this State, the registration certificate must be conspicuously displayed at that place of business. In the case of a retailer that does not have a fixed place of business and makes sales from one or more motor vehicles, each motor vehicle constitutes a place of business.

3. Penalties. A person that is required by this section to register as a retailer with the assessor and that makes retail sales in this State without being so registered commits a Class E crime. When a person's sales tax registration certificate has been revoked by the assessor pursuant to section 1757, that person commits a Class D crime by continuing to make retail sales in this State.

Sec. 4. 36 MRSA §1756, as amended by PL 1987, c. 497, §35, is repealed and the following enacted in its place:

§1756. Voluntary registration

Every seller of tangible personal property or taxable services that is not required by section 1754-B to register may register upon those terms that the assessor prescribes. Upon registration, the seller has the rights and duties of a person required to be registered and is subject to the same penalties, except that the seller's liability may be limited to tax actually collected. The seller so registered may at any time surrender the seller's registration certificate and request that the registration certificate be canceled. Upon receipt of the certificate and request, the assessor shall grant the cancellation, if it appears to the assessor that the seller has satisfied all liability to the State and that the seller is not required by law to register. Upon surrender of the certificate, the seller must cease to collect sales or use taxes upon sales that occur on and after the date of the surrender.

Sec. 5. 36 MRSA §1760, sub-§21 is amended to read:

21. Automobiles used in driver education program. Sales to automobile dealers, registered under section ~~1754~~ 1754-B, of automobiles for the purpose of equipping the same with dual controls and loaning or leasing the same to public or private secondary schools without consideration or for a consideration of not more than \$1 a year, and used exclusively by such schools in driver education programs.

Sec. 6. 36 MRSA §1861, as amended by PL 1991, c. 846, §25, is further amended to read:

§1861. Imposition

A tax is imposed, at the respective rate provided in section 1811, on the storage, use or other consumption in this State of tangible personal property or a service, the sale of which would be subject to tax under section 1764 or 1811. Every person so storing, using or otherwise consuming is liable for the tax until the person has paid the tax or has taken a receipt from the seller, as duly authorized by the ~~State Tax Assessor~~ assessor, showing that the seller has collected the sales or use tax, in which case the seller is liable for it. Retailers registered under section ~~1754~~ 1754-B or 1756 shall collect the tax and make remittance to the ~~State Tax Assessor~~ assessor. The amount of the tax payable by the purchaser is that provided in the case of sales taxes by section 1812. When tangible personal property purchased for resale is withdrawn from inventory by the retailer for the retailer's own use, use tax liability accrues at the date of withdrawal.

Sec. 7. 36 MRSA §2113, first ¶, as amended by PL 1977, c. 696, §277, is further amended to read:

~~Any~~ A violation of any provision of chapters 211 to 225 for which a penalty or forfeiture is not provided by any other Title of the Revised Statutes ~~shall be~~ is a Class E crime. For the purpose of this section, every person required to register under section ~~1754~~ 1754-B who ~~shall engage~~ engages in any business for which registration is required under section ~~1754~~ 1754-B, without being the holder of a currently valid registration certificate, ~~shall commit~~ commits a separate offense for each calendar week or part thereof during which ~~he shall be so engaged~~ that person engages in that business.

Sec. 8. 36 MRSA §5231, sub-§3 is enacted to read:

3. Penalty. A taxpayer that files an income tax or franchise tax return after the due date with a valid extension and that remits the amount of the balance due with that return will not incur a failure-to-pay penalty imposed by section 187-B, subsection 2 unless the amount remitted with the return is more than 10% of the total tax liability shown on the return.

Sec. 9. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1996-97

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Bureau of Taxation

Positions - Legislative Count	(5.0)
Personal Services	\$161,802
All Other	128,355
Capital Expenditures	44,081
TOTAL	\$334,238

Provides funds for one Principle Revenue Agent position, 2 Revenue Agent positions, 2 Tax Examiner positions and 3 Office Review contract positions and associated administrative costs to enforce the expanded sales and use tax registration requirements.

See title page for effective date.