

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

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Augusta, Maine
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CHAPTER 496

S.P. 668 - L.D. 1872

An Act to Enable the State to Enter into an Agreement with Other States to Simplify and Modernize Sales and Use Tax Administration

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Streamlined Sales Tax Project is an effort on the part of state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration; and

Whereas, the Streamlined Sales Tax Project is focused on improving sales and use tax administration systems for all sellers and for all types of commerce; and

Whereas, it is imperative for states to develop a more modern sales and use tax system in order to level the playing field between in-state and out-of-state sellers and prevent a continued erosion of state sales and use tax revenue bases; and

Whereas, legislative action is immediately necessary in order to ensure the State's full participation in, and the ultimate success of, the Streamlined Sales Tax Project; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA c. 921 is enacted to read:

CHAPTER 921**UNIFORM SALES AND USE TAX ADMINISTRATION ACT****§7121. Short title**

This chapter may be known and cited as the "Uniform Sales and Use Tax Administration Act."

§7122. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agreement. "Agreement" means the Streamlined Sales and Use Tax Agreement.

2. Certified automated system. "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

3. Certified service provider. "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

4. Sales tax. "Sales tax" means the tax imposed by section 1811.

5. Seller. "Seller" means any person making sales, leases or rentals of personal property or services.

6. State. "State" means any state of the United States or the District of Columbia.

7. Use tax. "Use tax" means the tax imposed by section 1861.

§7123. Purpose and intent

The Legislature finds that this State should enter with one or more states into the agreement in order to simplify and modernize sales and use tax administration and to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

§7124. Authority to enter agreement

The State Tax Assessor shall enter into the agreement on behalf of this State, subject to the provisions of section 7126. The assessor is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and to establish performance standards for multistate sellers. The assessor may take other actions reasonably required to implement the provisions of this chapter. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the agreement. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The assessor or the assessor's designee may represent this State before the other states that are signatories to the agreement.

§7125. Relationship to state law

No provision of the agreement in whole or in part invalidates or amends any other provision of this Title

or of any other law of this State. Adoption of the agreement by the State Tax Assessor does not amend or modify any law of this State. Implementation of any condition of the agreement in this State, whether implemented before, upon or after membership of this State in the agreement must be by the action of the Legislature.

§7126. Agreement requirements

The State Tax Assessor may not enter into the agreement unless the agreement requires each state to abide by the following requirements.

1. Uniform state rate. The agreement must set restrictions to achieve over time more uniform state rates through:

A. Limiting the number of state rates;

B. Limiting the application of maximums on the amount of state tax that is due on a transaction; and

C. Limiting the application of thresholds on the application of state tax.

2. Uniform standards. The agreement must establish uniform standards for:

A. The sourcing of transactions to taxing jurisdictions;

B. The administration of exempt sales;

C. The allowances a seller can take for bad debts; and

D. Sales and use tax returns and remittances.

3. Uniform definitions. The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable each state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

4. Central registration. The agreement must provide for a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states to the agreement.

5. No nexus attribution. The agreement must provide that registration with the central registration system described in subsection 4 and the collection of sales and use taxes in the signatory states to the agreement are not factors in determining whether a seller has a nexus with a state for any tax.

6. Local sales and use taxes. The agreement must provide for reduction of the burdens of complying with local sales and use taxes through:

A. Restricting variances between the state and local tax bases;

B. Requiring a state to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes do not have to register or file returns with, remit funds to or be subject to independent audits from local taxing jurisdictions;

C. Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

D. Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

7. Monetary allowances. The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

8. State compliance. The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance under its laws with all provisions of the agreement while a member.

9. Taxpayer privacy. The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of taxpayers and maintains the confidentiality of tax information.

10. Advisory councils. The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with the signatory states to the agreement in the administration of the agreement.

§7127. Cooperating sovereigns

The agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

§7128. Limited binding and beneficial effect

1. Generally. The agreement binds and inures only to the benefit of this State and the other member states. A person, other than a member state, may not be an intended beneficiary of the agreement. Any benefit to a person other than a state is established by

the laws of this State and the other member states and not by the terms of the agreement.

2. No cause of action. A person does not have any cause of action or defense under the agreement or by virtue of this State's approval of the agreement. A person may not challenge, in any action brought under any provision of law, any action or inaction by any department, agency or other instrumentality of this State, or any political subdivision of this State, on the ground that the action or inaction is inconsistent with the agreement.

3. Other laws of State. A law of this State, or the application of a law of this State, may not be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

§7129. Seller and 3rd-party liability

1. Certified service provider agent of seller. A certified service provider is the agent of the seller with whom the certified service provider has contracted for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use taxes due each signatory state to the agreement on all sales transactions the certified service provider processes for the seller, except as set forth in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use taxes due on transactions processed by the certified service provider unless the seller misrepresents the type of items the seller sells or commits fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed for the seller by a certified service provider. A seller is subject to audit for transactions not processed by a certified service provider. The signatory states to the agreement acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by a certified service provider.

2. Responsibility for errors. A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the State for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the State for reporting and remitting tax.

3. Proprietary system of seller. A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement

with this State establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

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

Effective March 1, 2002.

CHAPTER 497

S.P. 716 - L.D. 1918

An Act to Amend the Integrated Pest Management Laws

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

Sec. 1. 5 MRSA §12004-G, sub-§22-A is enacted to read:

<u>22-A.</u>	<u>Integrated</u>	<u>Expenses</u>	<u>7 MRSA</u>
<u>Agriculture</u>	<u>Pest</u>	<u>Only</u>	<u>§2404</u>
	<u>Management</u>		
	<u>Council</u>		

Sec. 2. 7 MRSA §2402, as amended by PL 1993, c. 251, Pt. B, §2, is repealed.

Sec. 3. 7 MRSA §§2404 and 2405 are enacted to read:

§2404. Integrated Pest Management Council

1. Establishment; meetings. The Integrated Pest Management Council, referred to in this section as the "council," as established in Title 5, section 12004-G, subsection 22-A, is created within the department and is administered jointly by the department and the University of Maine Cooperative Extension Pest Management Office. Members of the council must be jointly appointed by the commissioner and the Director of the University of Maine Cooperative Extension. The council must meet at least 2 times a year. Members are entitled to reimbursement for expenses only in accordance with Title 5, chapter 379.

2. Membership. The council consists of the following 11 members:

A. Three members representing agricultural pest management;

B. One member representing a citizen interest organization;

C. One member representing the interest of forestry;