

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

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
2002

Sec. 15. 36 MRSA §5122, sub-§1, ¶F, as corrected by RR 1991, c. 2, §137, is repealed.

Sec. 16. 36 MRSA §5126, as amended by PL 1999, c. 401, Pt. QQQ, §1, is further amended to read:

§5126. Personal exemptions

For income tax years beginning on or after January 1, 1998 but before January 1, 1999, a resident individual is allowed \$2,400 for each exemption ~~to which that the individual is entitled~~ properly claims for the taxable year for federal income tax purposes, unless the taxpayer is claimed as a dependent on another return. For income tax years beginning on or after January 1, 1999 but before January 1, 2000, a resident individual is allowed \$2,750 for each exemption ~~to which that the individual is entitled~~ properly claims for the taxable year for federal income tax purposes, unless the taxpayer is claimed as a dependent on another return. For income tax years beginning on or after January 1, 2000, a resident individual is allowed \$2,850 for each exemption ~~to which that the individual is entitled~~ properly claims for the taxable year for federal income tax purposes, unless the taxpayer is claimed as a dependent on another return.

Sec. 17. 36 MRSA §5200-A, sub-§1, ¶G, as amended by PL 1991, c. 548, Pt. A, §26, is repealed.

Sec. 18. 36 MRSA §5228, sub-§§4 and 7, as repealed and replaced by PL 1985, c. 691, §§35 and 48, are amended to read:

4. Due dates for estimated tax installments.

For individuals, trusts and estates, an installment payment is due the 15th day of the 4th, 6th, 9th and 13th month following the beginning of their fiscal year, except that in the case of farmers and fishermen have, a single installment payment is due date of on January 15th of the following taxable year. For corporations and financial institutions, an installment payment is due on the 15th day of the 4th, 6th, 9th and 12th month following the beginning of their fiscal year.

7. Short taxable year. Payment of taxes for a short taxable year ~~shall~~ must be made as provided in this subsection.

A. For an individual having, a trust or an estate with a taxable year of less than 12 months, the estimated tax ~~is to~~ must be paid in full by the 15th day of the month following the end of the taxable year.

B. For a corporation having or financial institution with a taxable year of less than 12 months,

the estimated tax ~~is to~~ must be paid in full by the 15th day of the last month of the taxable year.

Sec. 19. 36 MRSA §5228, sub-§9, as amended by PL 1999, c. 414, §52, is further amended to read:

9. Underpayment of 4th installment. If, on or before January 31st of the following taxable year, an individual, ~~not including a corporation, trust or estate~~ files a return and pays in full the ~~individual's~~ tax liability for the taxable year of the return, ~~then~~ no penalty may be imposed with respect to any underpayment of the 4th required installment for ~~the~~ that year.

Sec. 20. 36 MRSA §5255-A, as amended by PL 1997, c. 495, §5, is repealed.

Sec. 21. 36 MRSA §5265, sub-§3, as amended by PL 1977, c. 694, §723, is repealed.

Sec. 22. 36 MRSA §5277, as enacted by P&SL 1969, c. 154, Pt. F, §1, is repealed.

Sec. 23. Application. That section of this Act that amends the Maine Revised Statutes, Title 36, section 1752, subsection 9-A applies to any period that is still open for purposes of administrative or judicial review.

Sec. 24. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 36, section 186 takes effect January 1, 2003.

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

Effective April 1, 2002, unless otherwise indicated.

CHAPTER 584

S.P. 667 - L.D. 1871

An Act to Conform Maine Tax Law to the Federal Mobile Telecommunications Sourcing Act

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

Whereas, the federal Mobile Telecommunications Sourcing Act requires states to make certain changes in the way they tax mobile telecommunications services, and that Act applies to customer bills issued after August 1, 2002; and

Whereas, legislative action is immediately necessary in order to ensure continued, efficient and

lawful administration of Maine's sales and use tax law as it applies to mobile telecommunications services; 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. 25 MRSA §2927, sub-§1-B, as amended by PL 2001, c. 439, Pt. EEEE, §6, is further amended to read:

1-B. Statewide E-9-1-1 surcharge. The activities authorized under this chapter are funded through a special statewide E-9-1-1 surcharge levied on each residential and business telephone exchange line, including private branch exchange lines and Centrex lines, cellular or wireless telecommunications service subscribers and semipublic coin and public access lines. The statewide E-9-1-1 surcharge may not be imposed on more than 25 lines or numbers per customer billing account. In the case of cellular or wireless telecommunications service subscribers, the place of residence of those subscribers must be determined according to the sourcing rules for mobile telecommunications services set forth in Title 36, section 1816. The statewide E-9-1-1 surcharge is 50¢ per month per line or number until 90 days after adjournment of the First Regular Session of the 121st Legislature, after which time the statewide E-9-1-1 surcharge is 32¢ per month per line or number. The statewide E-9-1-1 surcharge must be billed on a monthly basis by each local exchange telephone utility or cellular or wireless telecommunications service provider and be shown separately as a statewide E-9-1-1 surcharge on the customer's bill.

Sec. 2. 36 MRSA §1752, sub-§3-E is enacted to read:

3-E. Home service provider. "Home service provider" means the facilities-based carrier or reseller with which a customer contracts for the provision of mobile telecommunications services.

Sec. 3. 36 MRSA §1752, sub-§6-B is enacted to read:

6-B. Mobile telecommunications services. "Mobile telecommunications services" means commercial mobile radio service as defined in 47 Code of Federal Regulations, Section 20.3 as in effect on July 1, 1999. For purposes of sourcing, "mobile telecommunications services" does not include air-ground radiotelephone service as defined in 47 Code

of Federal Regulations, Section 22.99 as in effect in June 1, 1999.

Sec. 4. 36 MRSA §1752, sub-§7-E is enacted to read:

7-E. Place of primary use. "Place of primary use" means the street address representative of where a customer's use of mobile telecommunications services primarily occurs, which must be either the residential street address or the primary business street address of the customer and must also be located within the licensed service area of the home service provider. For purposes of determining the place of primary use, "customer" means the person or entity that contracts with the home service provider for mobile telecommunications services, or, if the end user of such services is not the contracting party, the person that is the end user of such services. The term "customer" does not include a reseller of mobile telecommunications services, or a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

Sec. 5. 36 MRSA §1752, sub-§8-B, as enacted by PL 1999, c. 488, §2, is amended to read:

8-B. Prepaid calling arrangement. "Prepaid calling arrangement" means the right to purchase exclusively telecommunications services, which that must be paid for in advance, that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis. The sale or recharge of the service is considered a sale within the State if the transfer for consideration takes place at the vendor's place of business in the State. If the sale or recharge of a prepaid calling arrangement does not take place at the vendor's place of business, the sale or recharge is deemed to take place at the customer's shipping address, or if there is no item shipped, at the customer's billing address or the location associated with the customer's mobile telephone number. The sale of the service is deemed to occur on the date of the transfer for consideration of the service.

Sec. 6. 36 MRSA §1752, sub-§9-D is enacted to read:

9-D. Reseller. "Reseller," when used in relation to mobile telecommunications services, means a provider that purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of or integrates the purchased services into mobile telecommunications services. "Reseller" does not include a serving carrier with which a home service provider arranges

for services to its customers outside the home service provider's licensed service area.

Sec. 7. 36 MRSA §1752, sub-§14-D is enacted to read:

14-D. Serving carrier. "Serving carrier," when used in relation to mobile telecommunications services, means a facilities-based carrier providing mobile telecommunications services to a customer outside a home service provider's licensed service area.

Sec. 8. 36 MRSA §1752, sub-§18-D, as enacted by PL 1999, c. 488, §10, is amended to read:

18-D. Telecommunications services. "Telecommunications services" means all telecommunications services as described in this subsection.

A. "Telecommunications services" includes:

(1) The provision of 2-way interactive communications through the use of telecommunications equipment, exclusive of mobile telecommunications services; ~~or~~

(2) The installation, maintenance or repair of telecommunications equipment; and

(3) Two-way interactive mobile telecommunications services provided by a home service provider to a customer whose place of primary use is within this State, to the extent those services are associated with transmissions that originate and terminate within this State or within any other state. For purposes of this paragraph, the term "state" includes the District of Columbia and any territory or possession of the United States.

B. "Telecommunications services" does not include:

(1) ~~Service~~ Except as otherwise provided by this subsection, service originating or terminating outside this State;

(2) Access services;

(3) Directory advertising services;

(4) The sale of unbundled network elements for use in the provision of telecommunications services;

(5) For leases entered into on or after October 1, 1996, ~~"telecommunications services" does not include~~ the lease of telecommunications equipment; ~~or~~

(6) A prepaid calling arrangement; or

(7) Mobile telecommunications services provided by a home service provider to a customer whose place of primary use is not within this State.

Sec. 9. 36 MRSA §1816 is enacted to read:

§1816. Special rules for mobile telecommunications services

1. Sourcing rule; identifying place of primary use. Mobile telecommunications services provided to a customer whose place of primary use is located in this State, the charges for which are billed by or for the customer's home service provider, are deemed to be provided at the customer's place of primary use. A home service provider is responsible for obtaining and maintaining a record of a customer's place of primary use. Subject to subsection 2 and if the home service provider's reliance on the information provided by its customer is in good faith, the home service provider:

A. May rely on the applicable residential or business street address supplied by the home service provider's customer; and

B. May not be held liable for any additional taxes under this Part based on a different determination of the place of primary use.

2. Correction of place of primary use; determination by State Tax Assessor. If the State Tax Assessor determines that the address used by a home service provider as a customer's place of primary use does not meet the definition provided by section 1752, subsection 7-E, the assessor shall notify the customer in writing of that determination and provide the customer an opportunity to demonstrate that that address is the customer's place of primary use. If the customer fails to demonstrate to the assessor's satisfaction within 30 days from the time it receives notice from the assessor, or within another time period as the assessor may allow, that the address in question is the customer's place of primary use, the assessor shall provide the home service provider with the proper address to be used as the customer's place of primary use. The home service provider shall begin using the address provided by the assessor as the customer's place of primary use within 30 days from the date it receives notice of the assessor's determination.

3. Hold harmless provision; use of electronic database or enhanced zip code. A home service provider is entitled to the hold harmless protections provided by the federal Mobile Telecommunications Sourcing Act, Public Law 106-252, Section 1, 114 Stat. 2, 2000.

4. Bundled services. Notwithstanding any other provision of this Part, otherwise nontaxable charges that are aggregated with and not separately stated from taxable mobile telecommunications charges are subject to taxation unless the home service provider can, to the satisfaction of the State Tax Assessor, reasonably identify such charges from books and records kept in the regular course of its business. A customer may not rely upon the nontaxability of bundled services unless the customer's home service provider separately states the otherwise nontaxable services or the home service provider elects, after receiving written notice from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business and that reasonably identify the nontaxable charges.

5. Transitional provision. Subject to subsection 2, a home service provider may treat the address used by it for purposes of the tax imposed by this Part for any customer under a service contract or agreement in effect on July 28, 2002 as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal period.

Sec. 10. Application date. This Act applies to customer bills issued by providers of mobile telecommunications services after August 1, 2002.

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

Effective April 1, 2002.

CHAPTER 585

H.P. 1421 - L.D. 1867

An Act to Ensure the Safety of Maine Children While Riding in a Vehicle

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

Sec. 1. 29-A MRSA §2081, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is repealed and the following enacted in its place:

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Child safety seat" means a child safety seat that meets the standards described in the Federal Motor Vehicle Safety Standards.

B. "Federal Motor Vehicle Safety Standards" means the standards described in 49 Code of Federal Regulations, Part 571, in effect on January 1, 1981, as subsequently amended.

C. "Federally approved child restraint system" means a child passenger restraint system that is designed to elevate a child to enable that child to properly sit in a federally approved lap and shoulder belt system and that meets the requirements of the Federal Motor Vehicle Safety Standards.

Sec. 2. 29-A MRSA §2081, sub-§2, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

2. Children under 40 pounds. When a child who is weighs less than 4 years of age 40 pounds is being transported in a motor vehicle that is required by the United States Department of Transportation to be equipped with safety seat belts, the operator must have the child properly secured in accordance with the manufacturer's instructions in a child safety seat.

Sec. 3. 29-A MRSA §2081, sub-§3, as amended by PL 1997, c. 450, §1, is repealed and the following enacted in its place:

3. Passengers less than 18 years of age. Except as provided in subsection 2, the following provisions apply to passengers less than 18 years of age riding in a vehicle that is required by the United States Department of Transportation to be equipped with seat belts.

A. The operator shall ensure that a child who weighs at least 40 pounds but less than 80 pounds and who is less than 8 years of age is properly secured in a federally approved child restraint system.

B. The operator shall ensure that a child who is less than 18 years of age but more than 8 years of age or who is less than 18 years of age and more than 4 feet, 7 inches in height is properly secured in a seat belt unless that child is required to be secured in a federally approved child restraint system pursuant to this subsection or in a child safety seat pursuant to subsection 2.

C. The operator shall ensure that a child who is less than 12 years of age and who weighs less than 100 pounds is properly secured in the rear seat of a vehicle, if possible.

Sec. 4. 29-A MRSA §2081, sub-§4, ¶B, as amended by PL 1995, c. 65, Pt. A, §107 and affected by §153 and Pt. C, §15, is further amended to read: