

**TESTIMONY OF  
MICHAEL J. ALLEN, ASSOCIATE COMMISSIONER FOR TAX POLICY  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Taxation  
Hearing Date: *Wednesday, March 27, 2024, at 1:00 PM*

L.D. 2279 – *“An Act to Promote Equity in the Forest Products Industry by  
Allowing Commercial Wood Haulers to Be Eligible for Certain Sales Tax  
Exemptions and Refunds”*

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Senator Grohoski, Representative Perry, and members of the Taxation Committee – good afternoon, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. I am testifying at the request of the Administration Against L.D. 2279, *“An Act to Promote Equity in the Forest Products Industry by Allowing Commercial Wood Haulers to Be Eligible for Certain Sales Tax Exemptions and Refunds.”*

This bill would both broaden and narrow the current commercial production sales tax refund and exemption provision in Title 36, section 2013, as it applies to commercial wood harvesting. It would broaden the current exemption in a manner that creates uneven treatment with the other natural resource commercial production sectors included in section 2013, and with other production exemptions generally in section 1760. It would narrow the exemption by limiting those who could qualify for an exemption, possibly affecting businesses who have been using the exemption, and doing so in a manner that may raise U.S. constitutional concerns and warrants further research and evaluation. More specifically, the bill would broaden the exemption by redefining qualifying “commercial wood harvesting” to include the “commercial hauling of trees, logs [and other forest products] ... to a facility that processes or uses trees, logs [and other forest

products],” and would allow persons engaged in commercial wood harvesting or hauling to purchase trucks, truck tractors, and trailers exempt from sales tax if used directly and primarily in the commercial activity. The bill would narrow the eligible persons to only those that participate in or are otherwise subject to the State’s unemployment compensation laws.

A brief summary of the existing section 2013 refund and exemption provides a framework for considering the changes proposed by this bill. The existing “commercial production” sales tax refund and exemption provision, section 2013, provides a refund and exemption for electricity, fuel, and depreciable machinery and equipment used directly and primarily in four natural resource commercial production sectors: commercial agricultural production, commercial fishing, commercial aquacultural production, and commercial wood harvesting. Further, the section 2013 definition of qualifying “machinery and equipment” expressly excludes motor vehicles and trailers, meaning that, even with a commercial production exemption certificate, purchases of these vehicles are taxable.

In exempting certain vehicles through section 2013, this bill would depart from longstanding principles of what is considered machinery and equipment used “*directly*” in “commercial production.” While expanding the section 2013 definition of exempt “machinery and equipment” to include vehicles generally would be broadly consistent with existing sales and use tax exemptions on business inputs and would accord in a theoretical sense with an economically efficient sales tax system, that type of broad expansion would have a significant fiscal cost and, moreover, is not the proposal here. As written, this bill would only expand the definition to exempt trucks, truck tractors, and trailers when purchased by persons engaged in commercial wood harvesting.

If the Committee chooses to expand the section 2013 commercial production exemption to include these vehicles, that expansion should apply to every type of commercial production equally – certainly for commercial agricultural, commercial fishing, and commercial aquacultural included in section 2013, and logically as well as for other commercial production exemptions in section 1760. This Committee took just that approach, as to section 2013, with respect to a bill currently sitting on the Appropriations Table, voting in Committee Amendment “A” to LD 1303, An Act to Exempt Utility Vehicles Purchased for Qualified Commercial Fishing or Commercial Farming from State Sales Tax. The bill as printed created a new section 1760 exemption applicable to commercial agricultural production and commercial fishing. The Committee Amendment in part put the proposed exemption in section 2013 and made it applicable to all four of the natural resource commercial production sectors.

As a technical matter, if the Committee chooses to limit the vehicle exemption to persons engaged in commercial wood harvesting, the proposal should be enacted as a separate, narrowly drafted exemption in section 1760 so as to not create technical conflicts and inconsistencies within section 2013.

If the Committee moves forward with the bill, a number of terms should be clarified. The bill defines “hauling” very broadly, as “the commercial hauling of [forest products] to a facility that *processes or uses* [forest products].” Qualifying forest products include “trees, logs, pulpwood, bolt wood, wood chips, stud wood, poles, pilings, biomass or fuel wood,” as well as or other products “commonly known as forest products.” This language could be interpreted in different ways, especially the term “uses.” One can posit many plausibly qualifying scenarios – for example, would “commercial hauling” include transporting poles from a lumber yard to a telecommunications facility for “use” in installing phone lines?

As noted, the bill would also narrow eligibility for the section 2013 exemption by limiting who qualifies as “engaged in commercial wood harvesting” to only those persons that are subject to and participate in Maine’s unemployment compensation system. This could cause certain businesses, which are currently covered by the existing commercial wood harvesting exemption, to become ineligible under section 2013 if the bill passes, if these businesses do not “make contributions [and are not] eligible to receive benefits” under Maine unemployment compensation law. This new eligibility condition would not apply to other commercial production activities like agriculture, fishing, or aquaculture.

Further, this link to Maine’s unemployment compensation system may raise constitutional concerns. Because the limitation on eligibility may have a differential impact on persons engaged in cross-national border and cross-state border commerce, and on persons admitted under the federal work visa programs, there may be potential concerns under the Commerce Clause of the U.S. Constitution. For reference, in 2022 a Maine law limiting intrastate transportation of forest products by nonresidents, P.L. 2021, c. 280, was preliminarily enjoined in federal court. *Me. Forest Prods. Council v. Cormier*, 586 F. Supp. 3d 22 (D. Me. 2022), *aff’d*, 51 F.4th 1 (1st Cir. 2022). That law prohibited both non-resident motor carriers from transporting forest products and landowners from hiring certain non-residents to transport forest products. In that case, the term “resident of the United States” was defined to expressly exclude a person with an H-2A visa. Further research and consultation with the State’s Department of Labor and Office of Attorney General is recommended to evaluate this possible concern.

To conclude, this bill creates an expanded, complicated, and uneven exemption for “commercial wood harvesting” activity in comparison with the three other commercial natural resource business sectors addressed in the section 2013

refund and exemption provision. The bill is similarly contrary to the section 1760 manufacturing exemption for machinery and equipment, which is limited to items “*directly*” used in production. Finally, the bill’s conditions linked to participation in the state’s unemployment insurance laws may have a differential impact on persons and entities qualifying for the exemption and thus may raise constitutional concerns under the U.S. Commerce Clause that should be reviewed further before moving forward with the bill.

The Administration looks forward to working with the Committee on the bill; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee’s questions.