

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the amendment by striking out everything after the title and before the summary and inserting the following:

Amend the bill by striking out the title and substituting the following:

**'An Act To Require Retailers with an Affiliate Nexus To Collect Sales Tax'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'Sec. 1. 36 MRSA §1754-B, sub-§1, ¶B,** as enacted by PL 1995, c. 640, §3, is repealed and the following enacted in its place:

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, independent contractors, representatives or affiliates within this State, for retail sales within this State.

(1) A seller is presumed to be soliciting business through a salesperson, independent contractor, representative or affiliate if the seller enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on a website or otherwise, to the seller and the cumulative gross receipts from sales by the seller to customers in the State who are referred to the seller by all residents of the State with this type of agreement with the seller exceed \$10,000 during the preceding 4 quarterly filing periods ending on the last day of March, June, September and December.

(2) A seller may rebut the presumption under subparagraph (1) by demonstrating that the resident of this State with whom the seller has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement under the United States Constitution during the preceding 4 quarterly filing periods;

**Sec. 2. 36 MRSA §1754-B, sub-§4** is enacted to read:

**4. Related transactions before October 1, 2012.** For sales tax periods beginning before October 1, 2012, the State Tax Assessor may not determine a tax or related interest or penalty required to be collected for retail sales described under subsection 1, paragraph B against a person who on October 1, 2012 is presumed to be a seller under subsection 1, paragraph B, subparagraph (1) if that person is registered under this section on October 1, 2012 and was not required to be registered under any other provision of this section at the time of the transaction.

**Sec. 3. Effective date.** This Act takes effect October 1, 2012.

## **SUMMARY**

This amendment strikes the bill and Committee Amendment "B" and requires a retail seller that does not maintain a place of business in the State but makes retail sales or solicits orders through salespeople, independent contractors, representatives or affiliates that exceed a minimum threshold to register with the State Tax Assessor and collect sales tax. The amendment establishes a presumption that a seller is soliciting business through a salesperson, independent contractor, representative or affiliate if that seller enters into an agreement with a resident of the State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on a website or otherwise, to the seller, if the cumulative gross receipts from sales by the seller to customers in the State who are referred to the seller by all residents with this type of agreement with the seller exceed \$10,000 during the preceding 4 quarterly filing periods. The amendment permits a seller to rebut the presumption that the seller is required to register and collect taxes by demonstrating the resident with whom the seller has an agreement did not engage in solicitation during the preceding 4 quarterly filing periods. It prohibits the State Tax Assessor from collecting taxes from a seller with a presumed nexus for periods before October 1, 2012 if the seller registers and begins to collect tax by that date.

## **FISCAL NOTE REQUIRED**

**(See attached)**