An Act To Simplify the Taxation of Leasing Tangible Personal Property and To Clarify the Incidence of Use Tax

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.
Reference to the Committee on Taxation suggested and ordered printed.

Presented by Representative HILLIARD of Belgrade.
Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 36 MRSA §1752, sub-§§5-D and 5-E are enacted to read:

5-D. Lease or rental. "Lease" or "rental" includes sublease or subrental and means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease" or "rental" does not include providing tangible personal property along with an operator for a fixed or indeterminate period of time, when that operator is necessary for the equipment to perform as designed and the operator does more than maintain, inspect or set up the tangible personal property.

5-E. Lessor. "Lessor" means a person who leases or rents tangible personal property located in this State to another person or who is required to register by section 1754-A or 1754-B or who is registered under section 1756.

Sec. A-2. 36 MRSA §1752, sub-§10, as repealed and replaced by PL 1997, c. 393, Pt. A, §41, is amended to read:

10. Retailer. "Retailer" means a person who makes retail sales or is a lessor of tangible personal property or who is required to register by section 1754-A or 1754-B or who is registered under section 1756.

Sec. A-3. 36 MRSA §1752, sub-§11, ¶B, as amended by PL 2015, c. 390, §5, is further amended to read:

B. "Retail sale" does not include:

(1) Any casual sale;

(2) Any sale by a personal representative in the settlement of an estate unless the sale is made through a retailer or the sale is made in the continuation or operation of a business;

(3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented for a period of less than one year. For the purposes of this subparagraph, "automobile" includes a pickup truck or van with a gross vehicle weight of less than 26,000 pounds;

(4) The sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental;

(5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more;

(6) The sale, to a person engaged in the business of providing cable or satellite television services or satellite radio services, of associated equipment for rental or lease to subscribers in conjunction with a sale of cable or satellite television services or satellite radio services;
(7) The sale, to a person engaged in the business of renting furniture or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;

(8) The sale of loaner vehicles to a new vehicle dealer licensed as such pursuant to Title 29-A, section 953;

(9) The sale of automobile repair parts used in the performance of repair services on an automobile pursuant to an extended service contract sold on or after September 20, 2007 that entitles the purchaser to specific benefits in the service of the automobile for a specific duration;

(10) The sale, to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of tangible personal property for resale in the form of tangible personal property, except resale as a casual sale;

(11) The sale, to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of a taxable service for resale, except resale as a casual sale;

(12) The sale, to a retailer that is not required to register under section 1754-B, of tangible personal property for resale outside the State in the form of tangible personal property, except resale as a casual sale;

(13) The sale, to a retailer that is not required to register under section 1754-B, of a taxable service for resale outside the State, except resale as a casual sale;

(14) The sale of repair parts used in the performance of repair services on telecommunications equipment as defined in section 2551, subsection 19 pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the telecommunications equipment for a specific duration;

(15) The sale of positive airway pressure equipment and supplies for rental for personal use to a person engaged in the business of renting positive airway pressure equipment;

(16) The sale, to a person engaged in the business of renting or leasing motor homes, as defined in Title 29-A, section 101, subsection 40, or camper trailers, of motor homes or camper trailers for rental; or

(17) The sale of truck repair parts used in the performance of repair services on a truck pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the truck for a specific duration; or

(18) The sale, to a retailer who has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C and is engaged in the business of renting or leasing tangible personal property, of tangible personal property for lease or rental.

Sec. A-4. 36 MRSA §1752, sub-§13, as amended by PL 1981, c. 706, §20, is repealed and the following enacted in its place:
13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are determined by the State Tax Assessor to be in lieu of purchase. "Sale" includes:

A. Any transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

B. Any transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of $100 and 1% of the total required payments; and

C. Agreements as defined in Section 7701(h)(1) of the Code covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property.

Sec. A-5. 36 MRSA §1752, sub-§14, as amended by PL 2015, c. 494, Pt. A, §44, is further amended to read:

14. Sale price. "Sale price" means the total amount of a retail sale or of a lease or rental valued in money, whether received in money or otherwise.

A. "Sale price" includes:

(1) Any consideration for services that are a part of a retail sale; and

(2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses;

(3) In the case of the lease or rental for a period of less than one year of an automobile or of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles, the value is the total rental charged to the lessee and includes, but is not limited to, maintenance and service contracts, drop-off or pick-up fees, airport surcharges, mileage fees and any separately itemized charges on the rental agreement to recover the owner's estimated costs of the charges imposed by government authority for title fees, inspection fees, local excise tax and agent fees on all vehicles in its rental fleet registered in the State. All fees must be disclosed when an estimated quote is provided to the lessee;

(4) In the case of the lease or rental of an automobile for one year or more, the value is the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee; and
(5) For all other lease or rental payments, the value is measured by the full amount of that payment.

B. "Sale price" does not include:

(1) Discounts allowed and taken on sales;

(2) Allowances in cash or by credit made upon the return of merchandise pursuant to warranty;

(3) The price of property returned by customers, when the full price is refunded either in cash or by credit;

(4) The price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated;

(5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, restaurant or other eating establishment to its employees as wages;

(6) The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax;

(7) The cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail;

(8) Any amount charged or collected by a person engaged in the rental of living quarters as a forfeited room deposit or cancellation fee if the prospective occupant of the living quarters cancels the reservation on or before the scheduled date of arrival;

(9) Any amount charged for the disposal of used tires;

(10) Any amount charged for a paper or plastic single-use carry-out bag; or

(11) Any charge, deposit, fee or premium imposed by a law of this State.

Sec. A-6. 36 MRSA §1752, sub-§17-B, as amended by PL 2013, c. 156, §2, is further amended to read:

17-B. Taxable service. "Taxable service" means the rental of living quarters in a hotel, rooming house or tourist or trailer camp; the transmission and distribution of electricity; the rental or lease of an automobile, a camper trailer, or a motor home, as defined in Title 29-A, section 101, subsection 40; the rental or lease of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds from a person primarily engaged in the business of renting automobiles; the sale of an extended service contract on an automobile or truck that entitles the purchaser to specific benefits in the service of the automobile or truck for a specific duration; and the sale of prepaid calling service.

Sec. A-7. 36 MRSA §1753, as amended by PL 2011, c. 285, §2, is further amended to read:
§1753. Tax is a levy on consumer

The tax imposed by this Part is declared to be a levy on the consumer. The retailer shall add the amount of the tax to the sale price and may separately state the amount of the tax separately from the sale price of tangible personal property or taxable services on price display signs, sales or delivery slips, bills or statements that advertise or indicate the sale price of that property or those services. If the retailer does not separately state the amount of the tax separately from the sale price of tangible personal property or taxable services, the retailer shall include a statement on the sales slip or invoice presented to the purchaser or lessee that the stated price includes Maine sales tax.

Sec. A-8. 36 MRSA §1754-B, sub-§1, ¶¶A, B and C, as enacted by PL 1995, c. 640, §3, are amended to read:

A. Every seller person that makes sales 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 person that makes sales 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 person engaged in the leasing lease or rental to another person 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;

Sec. A-9. 36 MRSA §1754-B, sub-§1, ¶G, as amended by PL 2013, c. 200, §3, is further amended to read:

G. Every seller person that makes sales 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.

Sec. A-10. 36 MRSA §1754-B, sub-§1-A, ¶B, as amended by PL 2013, c. 546, §10, is further amended to read:

B. A seller or lessor is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State or leasing tangible personal property in this State if an affiliated person has a substantial physical presence in this State or if any person, other than a person acting in its capacity as a common carrier, that has a substantial physical presence in this State:

(1) Sells or leases a similar line of products as the seller or lessor and does so under a business name that is the same as or similar to that of the seller or lessor;

(2) Maintains an office, distribution facility, warehouse or storage place or similar place of business in the State to facilitate the delivery of property or services sold or leased by the seller or lessor to the seller's its customers;
(3) Uses trademarks, service marks or trade names in the State that are the same as or substantially similar to those used by the seller or lessor;

(4) Delivers, installs, assembles or performs maintenance services for the seller's customers of the seller or lessor within the State;

(5) Facilitates the seller's delivery of property to customers of the seller or lessor in the State by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the State; or

(6) Conducts any activities in the State that are significantly associated with the seller's ability of the seller or lessor to establish and maintain a market in the State for the seller's sales.

A seller or lessor who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part. A seller or lessor may rebut the presumption created in this paragraph by demonstrating that the person's activities in the State are not significantly associated with the seller's ability of the seller or lessor to establish or maintain a market in this State for the seller's sales.

Sec. A-11. 36 MRSA §1754-B, sub-§1-A, ¶C, as enacted by PL 2013, c. 200, §4 and affected by §6, is amended to read:

C. A seller or lessor that does not otherwise meet the requirements of paragraph B is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State, or of leasing tangible personal property in this State, if the seller enters into an agreement with a person under which the person, for a commission or other consideration, while within this State:

(1) Directly or indirectly refers potential customers, whether by a link on an Internet website, by telemarketing, by an in-person presentation or otherwise, to the seller or lessor; and

(2) The cumulative gross receipts from retail sales or leases made by the seller or lessor to customers in the State who are referred to the seller or lessor by all persons with this type of an agreement with the seller are in excess of $10,000 during the preceding 12 months.

A seller or lessor who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part.

A seller or lessor may rebut the presumption created in this paragraph by submitting proof that the person with whom the seller or lessor has an agreement did not engage in any activity within the State that was significantly associated with the seller's ability of the seller or lessor to establish or maintain the seller's market in the State during the preceding 12 months. Such proof may consist of sworn, written statements from all of the persons within this State with whom the seller or lessor has an agreement stating that they did not engage in any solicitation in the State on behalf of the seller or lessor during the preceding 12 months; these statements must be provided and obtained in good faith.
A person who enters into an agreement with a seller or lessor under this paragraph to refer customers by a link on an Internet website is not required to register or collect taxes under this Part solely because of the existence of the agreement.

Sec. A-12. 36 MRSA §1754-B, sub-§2, as amended by PL 2011, c. 535, §5, is further amended to read:

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. Each application for a registration certificate must contain a statement as to the type or types of tangible personal property that the applicant intends to purchase for resale or for lease and the type or types of taxable services that the applicant intends to sell, and each retailer registered under this section must inform the assessor in writing of any changes to the type or types of tangible personal property that it purchases for resale or lease or to the type or types of taxable services that it sells.

If the retailer maintains a place of business in this State, the retailer shall make available a copy of the registration certificate issued for that place of business at that place of business for inspection by the assessor, the assessor's representatives and agents or authorized municipal officials. If the retailer does not have a fixed place of business and makes sales from one or more motor vehicles, each motor vehicle is deemed to be a place of business.

Sec. A-13. 36 MRSA §1754-B, sub-§2-A, as enacted by PL 2003, c. 452, Pt. U, §3 and affected by Pt. X, §2, is amended to read:

2-A. Making sales after revocation. A person whose sales tax registration certificate has been revoked by the assessor pursuant to section 1757 who continues to make retail sales in this State or to lease tangible personal property in this State commits a Class D crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. A-14. 36 MRSA §1754-B, sub-§2-B, as amended by PL 2005, c. 519, Pt. OOO, §1, is further amended to read:

2-B. Provisional resale certificates; new accounts. The assessor shall issue a provisional resale certificate to each applicant for initial registration that states on its application that it expects to have annual gross sales receipts derived from sales or leases in this State of $3,000 or more. A provisional resale certificate issued between January 1st and September 30th is effective for the duration of the calendar year in which it is issued and the 2 subsequent years. A provisional resale certificate issued between October 1st and December 31st is effective until the end of the 3rd succeeding calendar year. Each certificate must contain the name and address of the retailer, the expiration date of the certificate and the certificate number. If a vendor has a true copy of a retailer's
resale certificate on file, that retailer need not present the certificate for each subsequent
transaction with that vendor during the period for which it is valid.

A, §45, is further amended to read:

2-C. Issuance and renewal of resale certificates; contents; presentation to
vendor. On November 1st of each year, the assessor shall review the returns filed by
each registered retailer unless the retailer has a whose resale certificate expiring after
expires on or before December 31st of that year. If the retailer reports $3,000 or more in
gross sales receipts during the 12 months preceding the assessor's review, the assessor
shall issue to the registered retailer a resale certificate effective for 5 calendar years.
Each certificate must contain the name and address of the retailer, the expiration date of
the certificate and the certificate number. If a vendor has a true copy of a retailer's resale
certificate on file, that retailer need not present the certificate for each subsequent
transaction with that vendor during the period for which it is valid.

A registered retailer that fails to meet the $3,000 threshold upon the annual review of the
assessor is not entitled to renewal of its resale certificate except as provided in this
subsection. When any such retailer shows that its gross sales receipts for a more current
12-month period total $3,000 or more or explains to the satisfaction of the assessor why
temporary extraordinary circumstances caused its gross sales receipts for the period used
for the assessor's annual review to be less than $3,000, the assessor shall, upon the written
request of the retailer, shall issue to the retailer a resale certificate effective for the next 5
calendar years.

Sec. A-16. 36 MRSA §1754-B, sub-§3, as amended by PL 2003, c. 452, Pt. U,
§4 and affected by Pt. X, §2, is further amended to read:

3. Failure to register. A person who is required by this section to register as a
retailer with the assessor and who makes retail sales in this State or leases tangible
personal property in this State without being so registered commits a Class E crime.
Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34,
subsection 4-A.

Sec. A-17. 36 MRSA §1756, as repealed and replaced by PL 1995, c. 640, §4, is
amended to read:

§1756. Voluntary registration

Every seller or lessor 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 or lessor has the rights and duties of a person
required to be registered and is subject to the same penalties, except that the seller's or
lessor's liability may be limited to tax actually collected. The seller or lessor so registered
may at any time surrender the seller's or lessor'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 or lessor
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 or lessor must cease to collect sales or use taxes upon sales or leases that occur on and after the date of the surrender.

Sec. A-18. 36 MRSA §1758, as repealed and replaced by PL 1999, c. 708, §24, is repealed.

Sec. A-19. 36 MRSA §1760, first ¶, as amended by PL 1999, c. 521, Pt. A, §6, is further amended to read:

Subject to the provisions of section 1760-C, no tax on sales, storage or use may be collected upon or in connection with:

Sec. A-20. 36 MRSA §1760, sub-§1 is amended to read:

1. Exemptions by constitutional provisions. Sales which, leases or rentals that this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

Sec. A-21. 36 MRSA §1760, sub-§2, as amended by PL 2005, c. 622, §5, is further amended to read:

2. Certain governmental entities. Sales, leases or rentals to the State or any political subdivision of the State, or to the Federal Government, or to any unincorporated agency or instrumentality of either of them or to any incorporated agency or instrumentality of them wholly owned by them. This exemption does not apply to corporations organized under Title IV, Part E of the Farm Credit Act of 1971, 12 United States Code, Sections 2211 to 2214.

Sec. A-22. 36 MRSA §1760, sub-§16, as amended by PL 2015, c. 510, §1 and affected by §3, is further amended to read:

16. Hospitals, research centers, churches and schools. Sales, leases or rentals to:

A. Incorporated hospitals;
B. Incorporated nonprofit nursing homes licensed by the Department of Health and Human Services;
C. Incorporated nonprofit residential care facilities licensed by the Department of Health and Human Services;
D. Incorporated nonprofit assisted housing programs for the elderly licensed by the Department of Health and Human Services;
E. Incorporated nonprofit home health agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended;
F. Incorporated nonprofit rural community health centers and incorporated nonprofit federally qualified health centers. For the purposes of this paragraph, "federally qualified health center" means a health center that is qualified to receive funding under Section 330 of the federal Public Health Service Act, 42 United States Code,
Section 254b and a so-called federally qualified health center look-alike that meets the requirements of Section 254b;

G. Incorporated nonprofit dental health centers;
G-1. Incorporated nonprofit medical clinics whose sole mission is to provide free medical care to the indigent or uninsured;
H. Incorporated nonprofit organizations organized for the sole purpose of conducting medical research;
I. Incorporated nonprofit organizations organized for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology;
J. Institutions incorporated as nonprofit corporations for the purpose of operating educational television or radio stations;
K. Schools;
L. Incorporated nonprofit organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia; and
M. Regularly organized churches or houses of religious worship.

Sec. A-23. 36 MRSA §1760, sub-§18-A, as amended by PL 2015, c. 300, Pt. A, §15, is further amended to read:

18-A. Certain residential child care facilities. Sales, leases or rentals to incorporated private nonprofit residential child care facilities that are licensed by the Department of Health and Human Services as child care facilities.

Sec. A-24. 36 MRSA §1760, sub-§26, as amended by PL 2007, c. 419, §1, is further amended to read:

26. Nonprofit fire departments and nonprofit ambulance services. Sales, leases or rentals to incorporated nonprofit fire departments, sales to incorporated nonprofit ambulance services, sales to and air ambulance services that are limited liability companies all of whose members are nonprofit organizations and sales of tangible personal property leased to air ambulance services that are limited liability companies all of whose members are nonprofit organizations.

Sec. A-25. 36 MRSA §1760, sub-§28, as amended by PL 2011, c. 542, Pt. A, §135, is further amended to read:

28. Community mental health facilities, community adult developmental services facilities and community substance abuse facilities. Sales, leases or rentals to mental health facilities, adult developmental services facilities or substance abuse facilities that are:

A. Contractors under or receiving support under the Federal Community Mental Health Centers Act, or its successors; or
B. Receiving support from the Department of Health and Human Services pursuant to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204.

**Sec. A-26.** 36 MRSA §1760, sub-§33, as repealed and replaced by PL 1977, c. 238, is amended to read:

33. Diabetic supplies. All sales of all equipment and supplies, whether medical or otherwise, used in the diagnosis or treatment of diabetes.

**Sec. A-27.** 36 MRSA §1760, sub-§37, as amended by PL 1987, c. 737, Pt. C, §§82 and 106 and PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

37. Regional planning commissions and councils of government. Sales, leases or rentals to regional planning commissions and councils of government, which are established in accordance with Title 30-A.

**Sec. A-28.** 36 MRSA §1760, sub-§42, as amended by PL 2001, c. 439, Pt. PPP, §1 and affected by §2, is repealed and the following enacted in its place:

42. Historical societies, museums and certain memorial foundations. Sales, leases or rentals to incorporated nonprofit:

A. Historical societies;
B. Museums; and
C. Memorial foundations that primarily provide cultural programs for free to the public.

**Sec. A-29.** 36 MRSA §1760, sub-§43, as amended by PL 2015, c. 300, Pt. A, §20, is further amended to read:

43. Child care facilities. Sales, leases or rentals to licensed, incorporated nonprofit child care facilities.

**Sec. A-30.** 36 MRSA §1760, sub-§44, as amended by PL 2015, c. 300, Pt. A, §21, is further amended to read:

44. Certain church-affiliated residential homes. Sales, leases or rentals to an incorporated, church-affiliated nonprofit organization that operates a residential home for adults.

**Sec. A-31.** 36 MRSA §1760, sub-§46, as repealed and replaced by PL 2003, c. 451, Pt. AA, §1, is amended to read:

46. Medical patients and their families. Sales, leases or rentals to incorporated nonprofit organizations providing:

A. Temporary residential accommodations to pediatric patients suffering from critical illness or disease such as cancer or who are accident victims, to adult patients with cancer or to the families of the patients; or
B. Temporary residential accommodations, or food, or both, to hospital patients or to
the families of hospital patients.

Sec. A-32. 36 MRSA §1760, sub-§47-A, as corrected by RR 1995, c. 2, §95, is
amended to read:

47-A. Emergency shelter and feeding organizations. Beginning October 1, 1996,
sales Sales, leases or rentals to incorporated nonprofit organizations that provide free
temporary emergency shelter or food for underprivileged individuals in this State.

Sec. A-33. 36 MRSA §1760, sub-§49, as amended by PL 2009, c. 204, §12, is
further amended to read:

49. Child abuse and neglect prevention councils; child advocacy organizations;
community action agencies. Sales, leases or rentals to:

A. Incorporated, nonprofit child abuse and neglect prevention councils as defined in
Title 22, section 3872, subsection 1-A;
B. Statewide organizations that advocate for children and that are members of the
Medicaid Advisory Committee; and
C. Community action agencies designated in accordance with Title 22, section 5324.

Sec. A-34. 36 MRSA §1760, sub-§50, as amended by PL 2013, c. 420, §1, is
further amended to read:

50. Certain libraries. Sales, leases or rentals to any nonprofit free public lending
library that is funded in part or wholly by the State or any political subdivision or the
federal government and sales by any such library or a nonprofit corporation organized to
support that library as long as the proceeds from the sales are used to benefit the library.

Sec. A-35. 36 MRSA §1760, sub-§51, as repealed and replaced by PL 1985, c.
737, Pt. A, §95, is amended to read:

51. Veterans' Memorial Cemetery Associations. Sales, leases or rentals to
incorporated nonprofit Veterans' Memorial Cemetery Associations.

Sec. A-36. 36 MRSA §1760, sub-§52, as enacted by PL 1985, c. 737, Pt. A, §96,
is amended to read:

52. Railroad track materials. Railroad Sales of railroad track materials purchased
and installed on railroad lines located within the boundaries of the State. The track
materials shall include: As used in this subsection, "track materials" includes rail, ties,
ballast, joint bars and associated materials, such as bolts, nuts, tie plates, spikes, culverts,
steel, concrete or stone, switch stands, switch points, frogs, switch ties, bridge ties and
bridge steel.

In order for a taxpayer to qualify for an exemption under this subsection, the taxpayer
may not require any landowner to pay any fee or charge for maintenance or repair or to
assume liability for crossings or rights-of-way if the landowner was not required to do so.
prior to July 1, 1981, and the taxpayer must continue to maintain crossings and rights-of-way which that it was required to maintain on that date and may not remove the crossings if there is any objection to their being removed; and.

Sec. A-37. 36 MRSA §1760, sub-§53, as enacted by PL 1985, c. 737, Pt. A, §97, is amended to read:

53. Nonprofit volunteer search and rescue organizations. Sales, leases or rentals to incorporated, nonprofit volunteer search and rescue organizations.

Sec. A-38. 36 MRSA §1760, sub-§55, as enacted by PL 1985, c. 788, §1, is amended to read:

55. Incorporated nonprofit hospice organizations. Sales, leases or rentals to incorporated nonprofit hospice organizations which provide a program or care for the physical and emotional needs of terminally ill patients.

Sec. A-39. 36 MRSA §1760, sub-§56, as amended by PL 1989, c. 533, §7, is further amended to read:

56. Nonprofit youth organizations. Sales, leases or rentals to nonprofit youth organizations whose primary purpose is to provide athletic instruction in a nonresidential setting, or to councils and local units of incorporated nonprofit national scouting organizations.

Sec. A-40. 36 MRSA §1760, sub-§59, as amended by PL 2009, c. 211, Pt. B, §31, is further amended to read:

59. Certain incorporated nonprofit educational organizations. Incorporated Sales, leases or rentals to incorporated nonprofit educational organizations that are receiving, or have received, funding from the Department of Education and that provide educational programs specifically designed for teaching young people how to make decisions about drugs, alcohol and interpersonal relationships at a residential youth camp setting.

Sec. A-41. 36 MRSA §1760, sub-§60, as amended by PL 1997, c. 545, §1, is further amended to read:

60. Incorporated nonprofit animal shelters. Sales, leases or rentals to incorporated nonprofit animal shelters of tangible personal property used in the operation and maintenance of those shelters or in the maintenance and care of any animal, including wildlife, housed in those shelters.

Sec. A-42. 36 MRSA §1760, sub-§62, as amended by PL 2011, c. 240, §19, is further amended to read:

62. Charitable suppliers of medical equipment. Sales, leases or rentals to local branches of incorporated international nonprofit charitable organizations that lend medical supplies and equipment to persons free of charge.
Sec. A-43. 36 MRSA §1760, sub-§63, as enacted by PL 1989, c. 502, Pt. A, §130, is amended to read:

63. Organizations fulfilling the wishes of children with life-threatening diseases. Sales, leases or rentals to incorporated nonprofit organizations whose sole purpose is to fulfill the wishes of children with life-threatening diseases when their family or guardian is unable to otherwise financially fulfill those wishes.

Sec. A-44. 36 MRSA §1760, sub-§65, as amended by PL 1993, c. 670, §6, is further amended to read:

65. Monasteries and convents. Sales, leases or rentals of tangible personal property to incorporated nonprofit monasteries and convents for use in their operation and maintenance. For the purpose of this subsection, "monasteries" and "convents" means the dwelling places of communities of religious persons.

Sec. A-45. 36 MRSA §1760, sub-§66, as enacted by PL 1989, c. 502, Pt. B, §47 and c. 581, §20 and repealed and replaced by c. 871, §12, is amended to read:

66. Incorporated nonprofit providers of certain support systems for single-parent families. Sales, leases or rentals to incorporated nonprofit organizations engaged primarily in providing support systems for single-parent families for the development of psychological and economic self-sufficiency.

Sec. A-46. 36 MRSA §1760, sub-§67, as enacted by PL 1989, c. 501, Pt. P, §30 and c. 533, §8 and repealed and replaced by c. 871, §13, is amended to read:

67. Nonprofit home construction organizations. Sales, leases or rentals to local branches of incorporated nonprofit organizations whose purpose is to construct low-cost housing for low-income people.

Sec. A-47. 36 MRSA §1760, sub-§69, as enacted by PL 1989, c. 533, §8, is amended to read:

69. Vietnam veteran registries. Sales, leases or rentals to incorporated, nonprofit organizations whose sole purpose is to create, maintain and update a registry of Vietnam veterans.

Sec. A-48. 36 MRSA §1760, sub-§70, as enacted by PL 1989, c. 533, §8 and amended by c. 871, §14, is further amended to read:

70. Organizations providing certain services for hearing-impaired persons. Sales, leases or rentals to incorporated nonprofit organizations whose primary purposes are to promote public understanding of hearing impairment and to assist hearing-impaired persons through the dissemination of information about hearing impairment to the general public and referral to and coordination of community resources available to hearing-impaired persons.
Sec. A-49. 36 MRSA §1760, sub-§71, as enacted by PL 1989, c. 533, §8, is amended to read:

71. State-chartered credit unions. Sales, leases or rentals to credit unions that are organized under the laws of this State. This subsection shall remain in effect only for the time that federally chartered credit unions are, by reason of federal law, exempt from payment of state sales tax.

Sec. A-50. 36 MRSA §1760, sub-§72, as amended by PL 1999, c. 708, §30, is further amended to read:

72. Nonprofit housing development organization. Sales, leases or rentals to nonprofit organizations whose primary purpose is to develop housing for low-income people.

Sec. A-51. 36 MRSA §1760, sub-§77, as enacted by PL 1993, c. 532, §1, is amended to read:

77. Eye banks. Sales, leases or rentals to nonprofit organizations whose primary purpose is to obtain, medically evaluate and distribute eyes for use in corneal transplantation, research and education.

Sec. A-52. 36 MRSA §1760, sub-§81, as enacted by PL 1999, c. 530, §10 and amended by PL 2011, c. 657, Pt. W, §6, is further amended to read:

81. Animal waste storage facility. Any sales of any materials for the construction, repair or maintenance of an animal waste storage facility. For the purposes of this section, "animal waste storage facility" means a structure or pit constructed and used solely for storing manure, animal bedding waste or other wastes generated by animal production. For a facility to be eligible for this exemption, the Commissioner of Agriculture, Conservation and Forestry must certify that a nutrient management plan has been prepared in accordance with Title 7, section 4204 for the farm utilizing that animal waste storage facility.

Sec. A-53. 36 MRSA §1760, sub-§84, as enacted by PL 2001, c. 95, §6, is amended to read:

84. Centers for innovation. Sales, leases or rentals to centers for innovation as described in Title 5, section 13141.

Sec. A-54. 36 MRSA §1760, sub-§§98 and 99, as enacted by PL 2015, c. 267, Pt. OOOO, §4 and affected by §7, are amended to read:

98. Certain veterans’ support organizations. Sales, leases or rentals to incorporated nonprofit organizations organized for the purpose of providing direct supportive services in the State to veterans and their families living with service-related post-traumatic stress disorder or traumatic brain injury.

99. Nonprofit library collaboratives. Sales, leases or rentals to nonprofit collaboratives of academic, public, school and special libraries that provide support for
library resource sharing, promote quality library information services and support the
cultural, educational and economic development of the State.

Sec. A-55. 36 MRSA §1760, sub-§100, as enacted by PL 2015, c. 465, Pt. C, §1
and affected by §2, is amended to read:

100. Certain veterans' service organizations. Sales, leases or rentals to an
organization that provides services to veterans and their families that is chartered under
36 United States Code, Subtitle II, Part B, including posts or local offices of that
organization, and that is recognized as a veterans' service organization by the United
States Department of Veterans Affairs.

Sec. A-56. 36 MRSA §1811, as amended by PL 2015, c. 267, Pt. OOOO, §5 and
affected by §7 and amended by c. 300, Pt. A, §25, is repealed and the following enacted
in its place:

§1811. Sales tax

A tax is imposed on the value of all tangible personal property and taxable services
sold at retail in this State and on the lease or rental of tangible personal property in this
State. The value of tangible personal property and taxable services sold at retail and the
lease or rental of tangible personal property is measured by the sale price. The rate of tax
is:

1. Prepared food. On the value of prepared food, 8%;

2. Liquor sold in licensed establishments. On the value of liquor sold in licensed
establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title
28-A, chapter 43, 8%;

3. Rental of living quarters. On the value of rental of living quarters in any hotel,
rooming house or tourist or trailer camp, 9%;

4. Motor vehicle rental. On the value of rental for a period of less than one year of
an automobile, of a pickup truck or van with a gross vehicle weight of less than 26,000
pounds rented from a person primarily engaged in the business of renting automobiles or
of a loaner vehicle that is provided other than to a motor vehicle dealer's service
customers pursuant to a manufacturer's or dealer's warranty, 10%;

5. Other personal property and certain services. On the value of all other tangible
personal property and taxable services, 5.5%; and

6. Other leases and rentals. On the value of all other leases and rentals, 5.5%.

The tax imposed upon the sale and distribution of gas, water or electricity by any
public utility must be added to the rates for such sale and distribution as established by
the Public Utilities Commission.

Sec. A-57. 36 MRSA §1813, as amended by PL 1991, c. 546, §24, is further
amended to read:
§1813. Illegal collection of sales tax prohibited

Any retailer who knowingly charges or collects as the sales tax due on the sale price of any property or service any retail sale or any lease or rental an amount in excess of that provided by section 1812 commits a Class E crime.

Sec. A-58. 36 MRSA §1818 is enacted to read:

§1818. Sourcing for leases and rentals

1. Sourcing. The lease or rental of tangible personal property is sourced pursuant to this section.

A. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced to this State when the product is received in this State. Periodic payments made subsequent to the first payment are sourced in this State as long as the primary property location for the period covered by each payment is in this State. The primary property location is an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The primary property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

B. For a lease or rental that does not require recurring periodic payments, the payment is sourced in this State if the product is received in this State or the product is present in this State for more than 90 days during the term of the lease or rental. The location of property in this State at any time during a day is considered presence in this State for that entire day.

2. Effect on certain leases or rentals and property for lease. This section does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

3. Determination of timing of receipt. For purposes of this section, leased tangible personal property is received in this State when the lessee takes possession of the property in this State.

Sec. A-59. 36 MRSA §1861, as amended by PL 1995, c. 640, §6, is further amended to read:

§1861. Imposition

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

Sec. A-60. 36 MRSA §1951-A, sub-§1, as amended by PL 2011, c. 285, §7, is further amended to read:

1. Monthly report and payment. Every retailer shall file with the State Tax Assessor, on or before the 15th day of each month, a return made under the penalties of perjury on a form prescribed by the assessor. The return must report the total sale price of all sales made, and the full amount of all lease or rental payments paid or required to be paid, during the preceding calendar month and such other information as the assessor requires. The assessor may permit the filing of returns other than monthly. The assessor, by rule, may waive reporting of nontaxable sales and leases. The assessor may for good cause extend for not more than 30 days the time for filing returns required under this Part. Every person subject to the use tax shall file similar returns, at similar dates, and pay the tax or furnish a receipt for the tax from a registered retailer.

Sec. A-61. 36 MRSA §1952, as amended by PL 2003, c. 390, §12, is further amended to read:

§1952. Payment of tax

The taxes imposed by chapters 211 to 225 on sales of tangible personal property and taxable services are due and payable at the time of the sale. The tax imposed by section 1811 on the lease or rental of tangible personal property is due and payable at the time each payment under the lease or rental agreement is made or the time each payment is required to be made, whichever occurs first. The tax imposed by section 1861 is due and payable at the time the property or service is first used in this State. Upon such terms and conditions as the State Tax Assessor may prescribe, the assessor may permit a postponement of payment to a date not later than the date on which the sales, leases and rentals so taxed are required to be reported.

Sec. A-62. 36 MRSA §2551, sub-§1, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is repealed.

Sec. A-63. 36 MRSA §2551, sub-§4, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is repealed.

Sec. A-64. 36 MRSA §2551, sub-§21, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is repealed.

Sec. A-65. 36 MRSA §2552, sub-§1, ¶¶C and D, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, are repealed.

Sec. A-66. Application. This Part applies to sales occurring, and lease or rental agreements executed, on or after January 1, 2018.
PART B

Sec. B-1. 36 MRSA §1760, sub-§23-C, as amended by PL 2015, c. 300, Pt. A, §§16 and 17, is further amended to read:

23-C. Certain vehicles purchased or leased by nonresidents. Sales or leases of the following vehicles to a person that is not a resident of this State, if the vehicle is intended to be driven or transported outside the State immediately upon delivery:

A. Motor vehicles other than those that are being leased for a period of less than one year;
B. Semitrailers;
C. Aircraft, if the property is an aircraft not exempted under subsection 88-A; and
E. Camper trailers, including truck campers, other than those that are being leased for a period of less than one year.

If the vehicles are registered, the purchaser subsequently registers the vehicle or is required to register the vehicle for use in the State within 12 months of the date of purchase, the person seeking registration is liable for use tax on the basis of the original purchase price. Other subsequent use by the purchaser in the State of a vehicle other than an automobile is subject to use tax if the vehicle is present in the State for more than 90 days during the 12 months following its purchase, excluding any days that the property is located in the State for storage, repair, alteration, refitting, reconstruction, overhaul or restoration. The location of property in the State at any time during a day is considered presence in the State for that entire day.

Sec. B-2. 36 MRSA §1760, sub-§25, as amended by PL 2015, c. 300, Pt. A, §18, is repealed.

Sec. B-3. 36 MRSA §1760, sub-§25-D is enacted to read:

25-D. Watercraft purchased by nonresidents. Sales of watercraft and materials to a nonresident as provided in this subsection.

A. Sales of watercraft and materials to be incorporated under contract in the construction of a watercraft or materials under contract for the repair, alteration, refitting, reconstruction, overhaul or restoration of a watercraft to a person that is not a resident of the State when the watercraft is present in the State not more than 90 days, not including any time spent in the State for storage, during the 12 months following its purchase are exempt.

B. Sales of watercraft or materials to be incorporated under contract in the construction of a watercraft or materials under contract for the repair, alteration, refitting, reconstruction, overhaul or restoration of a watercraft to a person that is not a resident of the State when the watercraft is present in the State for more than 90 days, for a purpose other than storage, during the 12 months following its purchase are eligible for an exemption of 60% of the sale price of the watercraft or materials.
C. For purposes of this subsection, the location of the watercraft in the State at any time during a day is considered presence in the State for that entire day.

Sec. B-4. 36 MRSA §1760, sub-§45, as amended by PL 2013, c. 331, Pt. C, §8, is further amended to read:

45. Certain property purchased outside State. Sales of property purchased and used by the present owner outside the State:

A. If the property is an automobile, as defined in Title 29-A, section 101, subsection 7, and if the owner is an individual who was, at the time of purchase, a resident of the other state;

A-2. If the property is a snowmobile or all-terrain vehicle as defined in Title 12, section 13001 and the purchaser is an individual who is not a resident of the State;

A-3. If the property is an aircraft not exempted under subsection 88 or 88-A and the owner at the time of purchase was a resident of another state or tax jurisdiction and the aircraft is present in this State not more than 20 days during the 12 months following its purchase, exclusive of days during which the aircraft is in this State for the purpose of undergoing "major alterations," "major repairs" or "preventive maintenance" as those terms are described in 14 Code of Federal Regulations, Appendix A to Part 43, as in effect on January 1, 2005. For the purposes of this paragraph, the location of an aircraft on the ground in the State at any time during a day is considered presence in the State for that entire day, and a day must be disregarded if at any time during that day the aircraft is used to provide free emergency or compassionate air transportation arranged by an incorporated nonprofit organization providing free air transportation in private aircraft by volunteer pilots so children and adults may access life-saving medical care;

A-4. If the property is brought into this State solely to conduct activities directly related to a declared state disaster or emergency, at the request of the State, a county, city, town or political subdivision of the State or a registered business, the property is owned by a person not otherwise required to register as a seller under section 1754-B and the property is present in this State only during a disaster period. As used in this paragraph, "declared state disaster or emergency" has the same meaning as in Title 10, section 9902, subsection 1 and "disaster period" means the period of 60 days that begins with the date of the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or major emergency, whichever occurs first; or

B. For more than 12 months in all other cases property other than that included in paragraphs A, A-2, A-3 and A-4, if the property is not required to be registered and is present in the State for no more than 90 days during the 12 months following its purchase, excluding any days that the property is located in the State for storage, repair, alteration, refitting, reconstruction, overhaul or restoration. The location of property in the State at any time during a day is considered presence in the State for that entire day.

Property, other than automobiles, snowmobiles, all-terrain vehicles and aircraft, that is required to be registered for use in this State does not qualify for this exemption unless it
was registered by its present owner outside this State more than 12 months prior to its 
registration in this State. If property required to be registered for use in this State was not 
required to be registered for use outside this State, the owner must be able to document 
actual use of the property outside this State for more than 12 months prior to its 
registration in this State. For purposes of this subsection, “use” does not include storage 
but means actual use of the property for a purpose consistent with its design.

Sec. B-5. 36 MRSA §1760, sub-§82, as amended by PL 2007, c. 627, §49, is 
further amended to read:

82. Sales of property delivered outside this State. Sales of tangible personal 
property when the seller delivers the property to a location outside this State or to the 
United States Postal Service, a common carrier or a contract carrier hired by the seller for 
delivery to a location outside this State, regardless of whether the property is purchased 
F.O.B. shipping point or other point in this State and regardless of whether passage of 
title occurs in this State. This exemption does not apply to any subsequent use of the 
property in this State. If the property is subsequently registered or required to be 
registered for use in this State within 12 months of the date of purchase, the purchaser is 
liable for use tax on the basis of the original purchase price. Subsequent use in this State 
of other property is subject to use tax if the property is present in this State for more than 
90 days during the 12 months following its purchase, excluding any days that the 
property is located in this State for storage, repair, alteration, refitting, reconstruction, 
overhaul or restoration. The location of property in this State at any time during a day is 
considered presence in the State for that entire day.

Sec. B-6. Application. This Part applies to sales occurring, and lease or rental 
agreements executed, on or after January 1, 2018.

PART C

Sec. C-1. 36 MRSA §2015, as enacted by PL 1993, c. 701, §8 and affected by 
§10, is amended to read:

§2015. Rental vehicle excise tax reimbursement

1. Report. Annually, on or before September 1st, On or before March 1, 2018, a 
vehicle owner or rental company engaged in the business of renting automobiles for a 
period of less than one year, in order to claim an excise tax reimbursement, shall file a 
report with the State Tax Assessor. The report must include the information required by 
the State Tax Assessor to determine the taxpayer's excise tax reimbursement entitlement. 
The State Tax Assessor may extend the September 1st filing deadline for a period not to 
exceed one year for good cause.

2. Reimbursement. The State Tax Assessor shall determine the reimbursement to 
be paid to a taxpayer filing a return pursuant to subsection 1. The reimbursement is the 
amount that is the smaller of:

A. The amount determined by computing the total excise tax credit entitlement 
during the most recently completed period from July 1st, 2017 to June 30th
December 31, 2017 for which a taxpayer has filed a return pursuant to subsection 1. An excise tax credit accrues for each vehicle excise tax paid during this period for which the associated Maine registration was surrendered during this period for which the associated Maine registration was surrendered prior to the expiration of the associated 12-month excise tax period, unless the excise tax was credited to another registration, in which case the 12-month period continues to run in association with the replacement registration. The amount of the credit is equal to the amount of the excise tax paid in order to register the original vehicle multiplied by a fraction, the numerator of which is the number of complete months short of 12 months during which the registration was surrendered and the denominator of which is 12; or and

B. Three-tenths of the amount of tax paid to the State by the taxpayer resulting from the tax on the rental of automobiles for a period of less than one year during the most recently completed period from July 1st, 2017 to June 30th, December 31, 2017.

3. Treasurer of State; notification. Upon the determination of the reimbursement amount to be paid to a vehicle owner or rental company, the State Tax Assessor shall inform the Treasurer of State of the determination and the Treasurer of State shall make the reimbursement. These reimbursements must be accounted for and paid as sales and use tax refunds. Unless the reimbursement is paid before November 1st of the year in which the report required in subsection 1 is filed or within 60 days of the filing of that report, whichever is later May 1, 2017, interest at the rate provided in section 186 must be paid for the period of time that expires after the deadline before payment is made.

SUMMARY

Part A moves the point of taxation with respect to leases of tangible personal property from a use tax on the lessor to a sales tax on each lease payment, in order to simplify the law and provide consistency with the tax treatment of leases in other states that impose a sales tax.

It updates the Maine Revised Statutes, Title 36, Part 3 to include leases, rentals and lessors in many existing provisions regarding sales and sellers and to add new provisions regarding leases, rentals and lessors that correspond to existing provisions regarding sales and sellers. It also updates sales tax exemptions that currently exempt sales to certain entities to also exempt leases and rentals to those entities.

It sources the first lease or rental payment to this State for taxation when the property is received in this State. Subsequent payments are sourced to this State as long as the primary property location for the period covered by the payment is in this State.

It clarifies the exemption for historical societies, museums and incorporated nonprofit memorial foundations.

It applies to sales occurring, and lease or rental agreements executed, on or after January 1, 2018.
Part B clarifies when owners of property that has been used outside of Maine are liable for a use tax when the property is brought into Maine. The bill updates several provisions, enacting a clear 90-day standard for use in Maine to give rise to a use tax liability. It applies to sales occurring, and lease or rental agreements executed, on or after January 1, 2018.

Part C terminates, as of December 31, 2017, the ability to claim an excise tax reimbursement for rental vehicles.