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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 176

S.P. 62

In Senate, January 27, 2011

An Act Regarding Sales and Use Tax Audit Procedures and Enforcement

Reference to the Committee on Taxation suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.

Secretary of the Senate

Presented by Senator LANGLEY of Hancock.

Cosponsored by Senators: MARTIN of Kennebec, THIBODEAU of Waldo, Representatives:
FITTS of Pittsfield, FLEMINGS of Bar Harbor, McKANE of Newcastle, PILON of Saco.

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

2 **Sec. 1. 36 MRSA §141-A** is enacted to read:

3 **§141-A. Assessment procedures; enforcement**

4 Beginning October 1, 2011, if the State Tax Assessor determines after audit or
5 investigation that a taxpayer has failed to collect and pay sales tax or pay use tax with
6 regard to a transaction, the assessor may not make an assessment for that tax for any
7 period preceding the time when the taxpayer has reason to know that the sales or use tax
8 applies to that type of transaction.

9 **1. Standard.** A taxpayer has reason to know that a sales or use tax applies if:

10 A. The application of the sales or use tax to the sale could be determined by a
11 reasonable person from the laws of the State, rules adopted by the assessor or tax
12 bulletins or other guidance issued by the assessor;

13 B. The application of the sales or use tax to the type of transaction in question has
14 been determined by any court in the State or by any other adjudicatory body, when
15 the decision has been made public;

16 C. A communication has been made to the taxpayer directly, to an industry group or
17 in a public forum by the assessor or any person responsible for enforcement of the
18 laws of the State that the sales or use tax may apply to the type of transaction in
19 question;

20 D. The issue of the application of the sales tax to the type of transaction in question
21 has been the subject of discussion at any government-sponsored or industry-
22 sponsored education program; or

23 E. The obligation to collect and pay sales tax or pay use tax on transactions of the
24 type in question has been recognized by at least 10% of the taxpayers who are
25 involved in transactions of the type in question.

26 **SUMMARY**

27 This bill prohibits the retroactive assessment of sales and use tax when a taxpayer
28 who should have collected or paid the tax does not have reason to know that sales or use
29 tax applies to that type of transaction. The bill specifies situations in which a person has
30 reason to know that a sales or use tax applies.