



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1405

S.P. 483

In Senate, April 11, 2017

**An Act To Require Remote Sellers To Collect and Remit Sales and
Use Tax on Sales into Maine and To Provide Retailers a Collection
Allowance**

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator COLLINS of York.
Cosponsored by Representative PARRY of Arundel and
Senators: BREEN of Cumberland, CYRWAY of Kennebec, DESCHAMBAULT of York,
DIAMOND of Cumberland, HAMPER of Oxford, JACKSON of Aroostook, Representatives:
BRYANT of Windham, SCHNECK of Bangor.

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

2 **Sec. 1. 36 MRSA §1754-B, sub-§4** is enacted to read:

3 **4. Collection allowance.** A seller that is required to register pursuant to this section
4 and that collects and remits sales and use tax in accordance with the provisions of this
5 Part may deduct and retain 2% of that tax as a collection allowance. The collection
6 allowance does not apply to taxes collected by a state, county or municipal agency.

7 **Sec. 2. 36 MRSA §1951-B** is enacted to read:

8 **§1951-B. Collection of tax by remote sellers**

9 **1. Legislative findings.** The Legislature finds that:

10 A. The inability to effectively collect the sales or use tax from remote sellers that
11 deliver tangible personal property, a product transferred electronically or a service
12 directly to the citizens of this State is seriously eroding the sales tax base of this State,
13 causing revenue losses and imminent harm to this State through the loss of critical
14 funding for state and local services;

15 B. Despite the fact that a use tax is owed on tangible personal property, a product
16 transferred electronically or a service delivered for use in this State, many remote
17 sellers actively market sales as "tax free" or "no sales tax" transactions;

18 C. The structural advantages of remote sellers, including the absence of point-of-sale
19 tax collection, along with the general growth of online retail, could further erode this
20 State's sales tax base in the near future;

21 D. Remote sellers that make a substantial number of deliveries into or have large
22 gross revenues from Maine benefit extensively from this State's market, including the
23 economy generally and state infrastructure;

24 E. In contrast with increasing harm caused to the State from the exemption from
25 sales and use tax collection duties for remote sellers, the costs of that collection have
26 fallen. Given modern computing and software options, it is neither unusually difficult
27 nor burdensome for remote sellers to collect and remit sales and use taxes associated
28 with sales into Maine; and

29 F. The Legislature recognizes that the imposition of this requirement places remote
30 sellers in a complicated position, precisely because existing constitutional doctrine
31 calls the imposition of this requirement into question. Accordingly, the Legislature
32 intends to clarify that the obligations created by the imposition of this requirement
33 would be appropriately stayed by the courts until the constitutionality of this law has
34 been clearly established by a binding judgment, including, for example, a decision
35 from the Supreme Court of the United States abrogating its existing doctrine or a
36 final judgment applicable to a particular taxpayer.

37 **2. Legislative intent.** It is the intent of the Legislature to apply the sales and use tax
38 obligations imposed under the laws of this State to the limit of federal and state
39 constitutional doctrines and to thereby clarify that the laws of this State permit the State

1 to immediately argue in any litigation that such constitutional doctrine should be changed
2 to permit the tax collection obligations of this section.

3 **3. Collection of tax by remote seller.** Notwithstanding any provision of law to the
4 contrary, a person selling tangible personal property, products transferred electronically
5 or services for delivery into this State is subject to the provisions of this Part and shall
6 collect and remit the sales tax imposed pursuant to section 1811 in the same manner as a
7 retailer that has a physical presence in this State if:

8 A. The person's gross revenue from delivery of tangible personal property, products
9 transferred electronically or services that are taxable by this State into this State in the
10 previous calendar year or current calendar year exceeds \$100,000; or

11 B. The person sold tangible personal property, products transferred electronically or
12 services that are taxable by this State for delivery into this State in at least 200
13 separate transactions in the previous calendar year or the current calendar year.

14 **4. Declaratory judgment action.** Notwithstanding any other provision of law, and
15 regardless of whether the State initiates an audit or other tax collection procedure, the
16 State may bring a declaratory judgment action pursuant to Title 14, chapter 707 against
17 any person the State believes meets the criteria of subsection 3 to establish that the tax
18 collection obligation is applicable and valid under state and federal law. The court shall
19 act on this declaratory judgment action as expeditiously as possible, and the court shall
20 proceed with priority over any other action presenting the same question in any other
21 venue.

22 **5. Effect of court action on collection of tax; injunction.** During a pending action
23 pursuant to subsection 4, and upon determining that a question is presented regarding the
24 constitutionality of this law, the court, on the State's motion or the court's own initiative,
25 shall enjoin the State from enforcing the obligation in subsection 3 against any person
26 subject to subsection 3 that does not affirmatively consent or otherwise collect the sales
27 or use tax on a voluntary basis. The injunction does not apply if there is a previous
28 judgment from a court establishing the validity of the obligation in subsection 3 with
29 respect to the particular taxpayer.

30 **6. Appeal.** Any appeal from a decision with respect to the cause of action
31 established by this section may only be made to the Supreme Judicial Court sitting as the
32 Law Court. The Law Court shall hear and decide the appeal as expeditiously as possible.

33 **7. No retroactive application of tax.** The obligation to collect and remit the sales
34 and use tax required by this section may not be applied retroactively.

35 **8. Prospective application of tax following injunction.** If an injunction imposed
36 pursuant to subsection 5 is lifted, the State shall assess and apply the sales or use tax
37 collection obligation only from that date forward with respect to any person covered by
38 the injunction.

39 **Sec. 3. Effective date.** This Act takes effect October 1, 2017.

SUMMARY

1
2 This bill permits persons that are required to register under Maine's sales and use tax
3 laws to deduct and retain an amount equal to up to 2% of the sales and use taxes they
4 collect.

5 This bill also requires persons that sell for delivery into this State tangible personal
6 property, a product delivered electronically or a service that is taxable by this State to
7 collect and remit to the State the sales or use tax imposed by the State on that property,
8 product or service. This requirement applies to a person whose gross revenue from
9 delivery of taxable tangible personal property, a product transferred electronically or a
10 service into Maine in the previous calendar year or current calendar year exceeds
11 \$100,000 or to a person that sold taxable tangible personal property, a product transferred
12 electronically or a service into this State in at least 200 separate transactions in the
13 previous calendar year or the current calendar year.

14 If a lawsuit is brought challenging, on constitutional grounds, the requirement of a
15 person to collect and remit sales or use tax for items delivered into Maine, the court is
16 required to enjoin the State from enforcing the requirement to collect and remit the tax
17 against any person unless that person voluntarily agrees to collect and remit the tax or
18 against any person that has previously been adjudicated to be required to collect and remit
19 the tax. After the injunction against the State is lifted, the requirement to collect and
20 remit the sales or use tax may be applied only to prospective sales.