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Date: (Filing No. H- )

**TAXATION**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
129TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1064, L.D. 1452, Bill, “An Act Regarding the Collection of the Sales and Use Tax by Marketplace Facilitators”

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

**Sec. 1. 36 MRSA §1752, sub-§6-E, 6-F and 6-G** are enacted to read:

**6-E. Marketplace.** "Marketplace" means a physical or electronic location, including, but not limited to, a store, a booth, an Internet website, a catalog or a dedicated sales software application, where tangible personal property or taxable services are offered for sale, regardless of whether the marketplace, marketplace facilitator, marketplace seller or tangible personal property is physically present in this State.

**6-F. Marketplace facilitator.** "Marketplace facilitator" means any person that facilitates a retail sale by providing a marketplace that lists, advertises, stores, or processes orders for tangible personal property or taxable services for sale by marketplace sellers and directly, or indirectly through one or more agents, contractors or affiliated persons, does any of the following:

A. Transmits or otherwise communicates an offer by the marketplace seller or an acceptance between the customer and marketplace seller;

B. Collects payment from the customer and transmits that payment to the marketplace seller; or

C. Engages in any of the following activities with respect to the marketplace seller's products or taxable services:

- (1) Fulfillment or storage services;
- (2) Customer service; or
- (3) Accepting or assisting with returns or exchanges.

For the purposes of this subsection, "affiliated person" means a person that, with respect to another person, has a direct or indirect ownership interest of more than 5% in the other

**COMMITTEE AMENDMENT**

1 person or is related to the other person because a 3rd person, or group of 3rd persons who  
2 are affiliated persons, holds a direct or indirect ownership interest of more than 5% in the  
3 related person.

4 A marketplace facilitator does not include a public utility as defined in Title 35-A, section  
5 102.

6 **6-G. Marketplace seller.** "Marketplace seller" means any person that makes retail  
7 sales through a marketplace operated by a marketplace facilitator.

8 **Sec. 2. 36 MRSA §1754-B, sub-§1,** as amended by PL 2017, c. 375, Pt. A, §§4  
9 and 5, is repealed.

10 **Sec. 3. 36 MRSA §1754-B, sub-§1-A,** as amended by PL 2013, c. 546, §10, is  
11 further amended to read:

12 **1-A. Persons presumptively required to register.** This subsection defines the  
13 basis for and obligations associated with the rebuttable presumption created by this  
14 subsection that a seller not registered under subsection ~~1~~ **1-B** is engaged in the business of  
15 selling tangible personal property or taxable services for use in this State and is required  
16 to register as a retailer with the assessor.

17 A. As used in this subsection, unless the context otherwise indicates, the following  
18 terms have the following meanings.

19 (1) "Affiliated person" means a person that is a member of the same controlled  
20 group of corporations as the seller or any other entity that, notwithstanding its  
21 form of organization, bears the same ownership relationship to the seller as a  
22 corporation that is a member of the same controlled group of corporations. For  
23 purposes of this subparagraph, "controlled group of corporations" has the same  
24 meaning as in the Code, Section 1563(a).

25 (2) "Person" means an individual or entity that qualifies as a person under the  
26 Code, Section 7701(a)(1).

27 (3) "Seller" means a person that sells, other than in a casual sale, tangible  
28 personal property or taxable services.

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

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

36 (2) Maintains an office, distribution facility, warehouse or storage place or  
37 similar place of business in the State to facilitate the delivery of property or  
38 services sold by the seller to the seller's customers;

39 (3) Uses trademarks, service marks or trade names in the State that are the same  
40 as or substantially similar to those used by the seller;

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

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

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

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

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

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

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

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

28 A seller may rebut the presumption created in this paragraph by submitting proof that  
29 the person with whom the seller has an agreement did not engage in any activity  
30 within the State that was significantly associated with the seller's ability to establish  
31 or maintain the seller's market in the State during the preceding 12 months. Such  
32 proof may consist of sworn, written statements from all of the persons within this  
33 State with whom the seller has an agreement stating that they did not engage in any  
34 solicitation in the State on behalf of the seller during the preceding 12 months; these  
35 statements must be provided and obtained in good faith.

36 A person who enters into an agreement with a seller under this paragraph to refer  
37 customers by a link on an Internet website is not required to register or collect taxes  
38 under this Part solely because of the existence of the agreement.

39 **Sec. 4. 36 MRSA §1754-B, sub-§§1-B and 1-C** are enacted to read:

1 **1-B. Persons required to register.** Except as otherwise provided in this section and  
2 section 1951-C, the following persons, other than casual sellers, shall register with the  
3 assessor and collect and remit taxes in accordance with the provisions of this Part:

4 A. Every person that has a substantial physical presence in this State and that makes  
5 sales of tangible personal property or taxable services in this State, including, but not  
6 limited to:

7 (1) Every person that makes sales of tangible personal property or taxable  
8 services, whether or not at retail, that maintains in this State any office,  
9 manufacturing facility, distribution facility, warehouse or storage facility, sales or  
10 sample room or other place of business;

11 (2) Every person that makes sales of tangible personal property or taxable  
12 services that does not maintain a place of business in this State but makes retail  
13 sales in this State or solicits orders, by means of one or more salespeople within  
14 this State, for retail sales within this State; and

15 (3) Every lessor engaged in the leasing of tangible personal property located in  
16 this State that does not maintain a place of business in this State but makes retail  
17 sales to purchasers from this State;

18 B. Every person that makes sales of tangible personal property or taxable services for  
19 delivery into this State if:

20 (1) The person's gross revenue from delivery of tangible personal property or  
21 taxable services into this State in the previous calendar year or current calendar  
22 year exceeds \$100,000; or

23 (2) The person sold tangible personal property or taxable services for delivery  
24 into this State in at least 200 separate transactions in the previous calendar year or  
25 the current calendar year;

26 C. Every person that has a substantial physical presence in this State and that makes  
27 retail sales in this State of tangible personal property or taxable services on behalf of  
28 a principal that is outside of this State if the principal is not the holder of a valid  
29 registration certificate;

30 D. Every agent, representative, salesperson, solicitor or distributor that has a  
31 substantial physical presence in this State and that receives compensation by reason  
32 of sales of tangible personal property or taxable services made outside this State by a  
33 principal for use, storage or other consumption in this State;

34 E. Every person that manages or operates in the regular course of business or on a  
35 casual basis a hotel, rooming house or tourist or trailer camp in this State or that  
36 collects or receives rents on behalf of a hotel, rooming house or tourist or trailer camp  
37 in this State;

38 F. Every person that operates a transient rental platform and reserves, arranges for,  
39 offers, furnishes or collects or receives consideration for the rental of living quarters  
40 in this State;

41 G. Every room remarketer;

1 H. Every person that makes retail sales in this State of tangible personal property or  
2 taxable services on behalf of the owner of that property or the provider of those  
3 services;

4 I. Every person not otherwise required to be registered that sells tangible personal  
5 property to the State and is required to register as a condition of doing business with  
6 the State pursuant to Title 5, section 1825-B;

7 J. Every person that holds a wine direct shipper license under Title 28-A, section  
8 1403-A; and

9 K. A marketplace facilitator if:

10 (1) The marketplace facilitator's gross sales from delivery of tangible personal  
11 property or taxable services into this State in the previous calendar year or  
12 current calendar year exceeds \$100,000; or

13 (2) The marketplace facilitator sold or facilitated sales of tangible personal  
14 property or taxable services for delivery into this State in at least 200 separate  
15 transactions in the previous calendar year or the current calendar year.

16 For the purposes of this paragraph, the marketplace facilitator's gross sales and total  
17 number of transactions include sales facilitated on behalf of marketplace sellers and  
18 any sales of tangible personal property or taxable services made directly by the  
19 marketplace facilitator.

20 **1-C. Activities exempt.** For purposes of subsection 1-B, the following activities do  
21 not constitute substantial physical presence in this State:

22 A. Solicitation of business in this State through catalogs, flyers, telephone or  
23 electronic media when delivery of ordered goods is effected by the United States mail  
24 or by an interstate 3rd-party common carrier;

25 B. Attending trade shows, seminars or conventions in this State;

26 C. Holding a meeting of a corporate board of directors or shareholders or holding a  
27 company retreat or recreational event in this State;

28 D. Maintaining a bank account or banking relationship in this State; or

29 E. Using a vendor in this State for printing.

30 **Sec. 5. 36 MRSA §1759**, as amended by PL 2017, c. 375, Pt. H, §1, is further  
31 amended to read:

32 **§1759. Bonds**

33 Either as a condition for issuance or subsequent to the issuance of a registration  
34 certificate under section 1754-B; ~~or 1756 or 1951-B~~, the State Tax Assessor may require  
35 from a taxpayer a bond written by a surety company qualified to do business in this State,  
36 in an amount and upon conditions to be determined by the assessor. In lieu of a bond the  
37 assessor may accept a deposit of money or securities in an amount and of a kind  
38 acceptable to the assessor. The deposit must be delivered to the Treasurer of State, who  
39 shall safely keep it subject to the instructions of the assessor.

1           **Sec. 6. 36 MRSA §1861-A**, as amended by PL 2007, c. 240, Pt. W, §1 and  
2 affected by §2, is further amended to read:

3           **§1861-A. Reporting use tax on individual income tax returns**

4           The assessor shall provide that individuals report use tax on items with a sale price of  
5 \$5,000 or less on their Maine individual income tax returns. Taxpayers are required to  
6 attest to the amount of their use tax liability for the period of the tax return.  
7 Alternatively, they may elect to report an amount that is ~~.08%~~ .04% of their Maine  
8 adjusted gross income. A taxpayer electing to satisfy a use tax liability by estimating it  
9 shall calculate the liability in accordance with the use tax table. The estimated liability is  
10 applicable only to purchases of any individual items each having a sale price no greater  
11 than \$1,000. For each taxable item with a sale price greater than \$1,000 but no more than  
12 \$5,000, the actual use tax liability for each purchase must be added to the amount of the  
13 estimated liability derived from the use tax table. Upon subsequent review, if use tax  
14 liability for the period of the return exceeds the amount of use tax paid with the return, a  
15 credit of that amount paid relative to the item or items being supplementarily assessed is  
16 allowed. Use tax on any item with a sale price of more than \$5,000 must be reported in  
17 accordance with section 1951-A.

18           **Sec. 7. 36 MRSA §1951-B**, as enacted by PL 2017, c. 245, §1 and affected by §2,  
19 is repealed.

20           **Sec. 8. 36 MRSA §1951-C** is enacted to read:

21           **§1951-C. Collection of tax by marketplace facilitators and marketplace sellers**

22           This section governs the collection, reporting and remittance of sales and use tax by  
23 marketplace facilitators and marketplace sellers.

24           **1. Responsibilities of marketplace facilitator.** A marketplace facilitator is  
25 considered a retailer for each sale of tangible personal property or taxable services for  
26 delivery into this State that the marketplace facilitator facilitates on or through its  
27 marketplace.

28           **2. Written statement between marketplace facilitators and marketplace sellers.**  
29 A marketplace facilitator shall provide to a marketplace seller that sells tangible personal  
30 property or taxable services through the marketplace operated by the marketplace  
31 facilitator a written statement in which the marketplace facilitator explicitly provides that  
32 the marketplace facilitator will collect and remit the taxes imposed pursuant to this Part  
33 on all taxable sales the marketplace facilitator facilitates for the marketplace seller.

34           **3. Responsibilities of marketplace seller.** For sales facilitated by a marketplace  
35 facilitator, when the marketplace seller has received a written statement from the  
36 marketplace facilitator that satisfies the requirements of subsection 2:

37           A. The marketplace seller shall exclude sales under this section for the purposes of  
38 determining the registration requirements of the marketplace seller under section  
39 1754-B, subsection 1-B, paragraph B;

1 B. A marketplace seller required to register under section 1754-B, subsection 1-B,  
2 paragraph A may not include the receipts from sales under this section in its total of  
3 taxable sales for purposes of its return filed pursuant to section 1951-A; and

4 C. A marketplace seller that holds a registration certificate with the State, when the  
5 marketplace seller is not required to register under section 1754-B, subsection 1-B,  
6 paragraph A, may not report sales under this section for purposes of its return filed  
7 pursuant to section 1951-A.

8 **4. Room remarketers and transient rental platforms.** Subsections 1 to 3 do not  
9 apply to the rental of living quarters by a room remarketer or through a transient rental  
10 platform.

11 **Sec. 9. Application date.** This Act applies to sales occurring on or after October  
12 1, 2019, except that the section of this Act that amends the Maine Revised Statutes, Title  
13 36, section 1861-A applies to tax years beginning on or after January 1, 2019.'

14 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
15 section number to read consecutively.

16 **SUMMARY**

17 This amendment enacts definitions and other provisions to require a marketplace  
18 facilitator to collect and remit the sales tax on sales of tangible personal property and  
19 taxable services facilitated on the marketplace facilitator's marketplace that are delivered  
20 into the State. It consolidates the sales tax registration provisions by repealing the  
21 recently enacted Maine Revised Statutes, Title 36, section 1951-B and reformatting the  
22 provision of law requiring certain persons to register with the State Tax Assessor and  
23 collect and remit taxes, including the remote seller registration requirements in the new  
24 provision, harmonizing the merged provisions and removing obsolete language. It also  
25 adjusts the use tax calculation used on the income tax return to report unpaid use tax,  
26 lowering the default amount from .08% to .04% of Maine adjusted gross income to  
27 account for the increased tax collected by remote sellers and marketplace facilitators.

28 **FISCAL NOTE REQUIRED**

29 **(See attached)**