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Date: (Filing No. H-)

TAXATION

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1278, L.D. 2000, “An Act to Change the Taxation of Rental Tangible Personal Property to Make It Consistent with the Predominant Method in Other States' Rental Industry Laws for Sales and Use Tax”

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

Sec. 1. 23 MRSA §4210-B, sub-§7-A, as amended by PL 2023, c. 360, Pt. C, §1, is further amended to read:

7-A. Sales tax revenue. On July 1st of each year, the State Controller shall transfer to the Multimodal Transportation Fund an amount, as certified by the State Tax Assessor, that is equivalent to 100% of the revenue from the tax imposed on ~~the value of rental of a truck or van with a gross weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles~~ and the value of rental for a period of less than one year of an automobile pursuant to Title 36, section 1811 for the first 6 months of the prior fiscal year after the reduction for the transfer to the Local Government Fund as described by Title 30-A, section 5681, subsection 5 and the transfer to the ATV Recreational Management Fund pursuant to Title 36, section 1820. On October 1st of each year, the State Controller shall transfer to the Multimodal Transportation Fund an amount, as certified by the State Tax Assessor, that is equivalent to 100% of the revenue from the tax imposed on ~~the value of rental of a truck or van with a gross weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles~~ and the value of rental for a period of less than one year of an automobile pursuant to Title 36, section 1811 for the last 6 months of the prior fiscal year after the reduction for the transfer to the Local Government Fund as described by Title 30-A, section 5681, subsection 5 and the transfer to the ATV Recreational Management Fund pursuant to Title 36, section 1820. The tax amount must be based on actual sales for that fiscal year and may not consider any accruals that may be required by law.

Sec. 2. 36 MRSA §1752, sub-§5-D is enacted to read:

COMMITTEE AMENDMENT

1 **5-D. Lease or rental.** "Lease or rental," "lease" or "rental" means any transfer of
2 possession or control of tangible personal property for a fixed or indeterminate term for
3 consideration and may include future options to purchase the property or extend the lease
4 or rental. "Lease or rental" includes a sublease and subrental.

5 "Lease or rental" does not include:

6 A. Leases and contracts payable by rental or license fees for the right of possession
7 and use when such leases and contracts are determined by the assessor to be in lieu of
8 purchase;

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

12 C. Providing tangible personal property along with a person to operate that property,
13 for a fixed or indeterminate period of time, when that person is necessary for the
14 tangible personal property to perform as designed and the person does more than
15 maintain, inspect or set up the tangible personal property; or

16 D. The lease or rental of property that is subject to the provisions of the service provider
17 tax imposed pursuant to chapter 358.

18 The characterization of a transaction as a lease or rental under generally accepted
19 accounting principles, the Code, the Uniform Commercial Code or other provisions of
20 federal, state or local law does not affect a determination that a transaction is a lease or
21 rental under chapters 211 to 225.

22 **Sec. 3. 36 MRSA §1752, sub-§5-E** is enacted to read:

23 **5-E. Lessor.** "Lessor" means a person who leases or rents tangible personal property
24 located in this State to another person.

25 **Sec. 4. 36 MRSA §1752, sub-§10**, as amended by PL 2019, c. 401, Pt. B, §3, is
26 further amended to read:

27 **10. Retailer.** "Retailer" means a person who makes retail sales or who is required to
28 register by section 1754-B or who is registered under section 1756. "Retailer" includes a
29 lessor.

30 **Sec. 5. 36 MRSA §1752, sub-§11, ¶B**, as amended by PL 2021, c. 578, §1, is
31 further amended by repealing subparagraph (3).

32 **Sec. 6. 36 MRSA §1752, sub-§11, ¶B**, as amended by PL 2021, c. 578, §1, is
33 further amended by repealing subparagraph (3-A).

34 **Sec. 7. 36 MRSA §1752, sub-§11, ¶B**, as amended by PL 2021, c. 578, §1, is
35 further amended by repealing subparagraph (5).

36 **Sec. 8. 36 MRSA §1752, sub-§11, ¶B**, as amended by PL 2021, c. 578, §1, is
37 further amended by amending subparagraph (9) to read:

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

1 **Sec. 9. 36 MRSA §1752, sub-§11, ¶B**, as amended by PL 2021, c. 578, §1, is
2 further amended by amending subparagraph (16) to read:

3 (16) The sale, to a person engaged in the business of renting or leasing motor
4 homes, as defined in Title 29-A, section 101, subsection 40, or camper trailers, of
5 motor homes or camper trailers for rental as tangible personal property but not as
6 the rental of living quarters; ~~or~~

7 **Sec. 10. 36 MRSA §1752, sub-§11, ¶B**, as amended by PL 2021, c. 578, §1, is
8 further amended by amending subparagraph (17) to read:

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

12 **Sec. 11. 36 MRSA §1752, sub-§11, ¶B** as amended by PL 2021, c. 578, §1, is
13 further amended by enacting a new subparagraph (18) to read:

14 (18) The sale or lease or rental to a lessor that has been issued a resale certificate
15 pursuant to section 1754-B, subsection 2-B or 2-C of tangible personal property
16 for lease or rental.

17 **Sec. 12. 36 MRSA §1752, sub-§13**, as amended by PL 1981, c. 706, §20, is further
18 amended to read:

19 **13. Sale.** "Sale" means any transfer, exchange or barter, in any manner or by any
20 means whatsoever, for a consideration and includes leases and ~~contracts payable by rental~~
21 ~~or license fees for the right of possession and use, but only when such rentals, conditional~~
22 sale contracts and any contract under which possession of the property is given to the
23 purchaser but title is retained by the seller as security for the payment of the purchase price,
24 and leases and contracts that are deemed determined by the State Tax Assessor assessor to
25 be in lieu of purchase. Each time period for which a lease or rental payment is charged is
26 considered a separate sale.

27 **Sec. 13. 36 MRSA §1752, sub-§14, ¶A**, as amended by PL 2021, c. 578, §2, is
28 further amended by amending subparagraph (4) to read:

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

39 **Sec. 14. 36 MRSA §1752, sub-§14, ¶B**, as repealed and replaced by PL 2019, c.
40 501, §28, is amended by amending subparagraph (2) to read:

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

1 **Sec. 15. 36 MRSA §1752, sub-§14, ¶B**, as repealed and replaced by PL 2019, c.
2 501, §28, is amended by amending subparagraph (3) to read:

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

5 **Sec. 16. 36 MRSA §1752, sub-§14, ¶B**, as repealed and replaced by PL 2019, c.
6 501, §28, is amended by amending subparagraph (12) to read:

7 (12) Federal universal service support funds that are paid directly to the seller
8 pursuant to 47 Code of Federal Regulations, Part 54; ~~or~~

9 **Sec. 17. 36 MRSA §1752, sub-§14, ¶B**, as repealed and replaced by PL 2019, c.
10 501, §28, is amended by amending subparagraph (13) to read:

11 (13) A paint stewardship assessment imposed pursuant to Title 38, section 2144-~~;~~
12 or

13 **Sec. 18. 36 MRSA §1752, sub-§14, ¶B** as repealed and replaced by PL 2019, c.
14 501, §28, is amended by enacting a new subparagraph (14) to read:

15 (14) For lease or rental payments, separately stated charges for sales of optional
16 insurance coverage for the protection of the lessee or of the lessee's personal
17 property, such as liability insurance, personal accident insurance or personal
18 effects protection.

19 **Sec. 19. 36 MRSA §1752, sub-§17-B**, as amended by PL 2021, c. 578, §3, is
20 further amended to read:

21 **17-B. Taxable service.** "Taxable service" means the rental of living quarters in a
22 hotel, rooming house or tourist or trailer camp; the transmission and distribution of
23 electricity; ~~the rental or lease of an automobile, a camper trailer, or a motor home, as~~
24 ~~defined in Title 29-A, section 101, subsection 40; the rental or lease of a truck or van with~~
25 ~~a gross vehicle weight of less than 26,000 pounds from a person primarily engaged in the~~
26 ~~business of renting automobiles; the sale of an extended service contract on an automobile~~
27 ~~or truck that entitles the purchaser to specific benefits in the service of the automobile or~~
28 ~~truck for a specific duration; and the sale of prepaid calling service.~~

29 **Sec. 20. 36 MRSA §1754-B, sub-§1-B, ¶A**, as repealed and replaced by PL 2021,
30 c. 181, Pt. B, §5, is amended by amending subparagraph (3) to read:

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

34 **Sec. 21. 36 MRSA §1758**, as repealed and replaced by PL 1999, c. 708, §24, is
35 repealed.

36 **Sec. 22. 36 MRSA §1811, sub-§1, ¶D**, as amended by PL 2021, c. 578, §4; c. 658,
37 §286; and c. 669, §5, is further amended by amending subparagraph (4) to read:

38 (4) Ten percent on the value of rental for a period of less than one year of:
39 (a) An automobile; or

1 (b) ~~A truck or van with a gross vehicle weight of less than 26,000 pounds~~
2 ~~rented from a person primarily engaged in the business of renting automobiles;~~
3 ~~or~~

4 (c) A loaner vehicle that is provided other than to a motor vehicle dealer's
5 service customers pursuant to a manufacturer's or dealer's warranty; and

6 **Sec. 23. 36 MRSA §1819, sub-§2**, as amended by PL 2021, c. 181, Pt. B, §6, is
7 further amended to read:

8 **2. Sourcing for sales of tangible personal property and taxable services; generally.**
9 The sale of tangible personal property or a taxable service is sourced in this State pursuant
10 to this subsection. Except as provided in subsections 3 to 5, the provisions of this
11 subsection do not apply to the lease or rental of tangible personal property.

12 A. When the tangible personal property or taxable service is received by the purchaser
13 at a business location of the seller, the sale is sourced to that business location.

14 B. When the tangible personal property or taxable service is not received by the
15 purchaser at a business location of the seller, the sale is sourced to the location where
16 receipt by the purchaser or the purchaser's donee occurs, including the location
17 indicated by instructions for delivery to the purchaser or donee known to the seller.

18 C. For a sale when paragraphs A and B do not apply, the sale is sourced to the location
19 indicated by an address for the purchaser that is available from the business records of
20 the seller that are maintained in the ordinary course of the seller's business when use of
21 this address does not constitute bad faith.

22 D. For a sale when paragraphs A to C do not apply, the sale is sourced to the location
23 indicated by an address for the purchaser obtained during the consummation of the
24 sale, including the address of a purchaser's payment instrument, if no other address is
25 available, when use of this address does not constitute bad faith.

26 E. When paragraphs A to D do not apply, including the circumstance in which the
27 seller is without sufficient information to apply paragraphs A to D, the location is
28 determined by the address from which tangible personal property was shipped, from
29 which the tangible personal property or taxable service transferred electronically was
30 first available for transmission by the seller or from which the service was provided,
31 disregarding for these purposes any location that merely provided the digital transfer
32 of the tangible personal property or taxable service sold.

33 **Sec. 24. 36 MRSA §1819, sub-§3** is enacted to read:

34 **3. Sourcing for leases or rentals of tangible personal property.** The lease or rental
35 of tangible personal property, other than property identified in subsection 4 or 5, is sourced
36 pursuant to this subsection.

37 A. For a lease or rental that requires recurring periodic payments, the first periodic
38 payment is sourced to this State in the same manner as a sale of tangible personal
39 property in accordance with subsection 2. Periodic payments made subsequent to the
40 first payment are sourced to the primary property location for each time period covered
41 by the payment. For the purposes of this paragraph, "the primary property location" is
42 an address for the property provided by the lessee that is available to the lessor from
43 its records and maintained in the ordinary course of business, when use of this address

1 does not constitute bad faith. The primary property location is not altered by
2 intermittent use at different locations, such as use of business property that
3 accompanies employees on business trips and service calls.

4 B. For a lease or rental that does not require recurring periodic payments, the payment
5 is sourced to this State in the same manner as a sale of tangible personal property in
6 accordance with subsection 2.

7 This subsection does not affect the imposition or computation of sales or use tax on leases
8 or rentals, based on a lump sum payment or on the basis of accelerated payment, or on the
9 acquisition of property for lease.

10 **Sec. 25. 36 MRSA §1819, sub-§4** is enacted to read:

11 **4. Motor vehicles, trailers, semitrailers, truck campers or aircraft.** The lease or
12 rental of motor vehicles, trailers, semitrailers, truck campers or aircraft that do not qualify
13 as transportation equipment, as defined in subsection 5, is sourced pursuant to this
14 subsection.

15 A. For a lease or rental that requires recurring periodic payments, each periodic
16 payment is sourced to the primary property location. The primary property location is
17 as indicated by an address for the property provided by the lessee that is available to
18 the lessor from its records maintained in the ordinary course of business, when use of
19 this address does not constitute bad faith. This location is not altered by intermittent
20 use at different locations.

21 B. For a lease or rental that does not require recurring periodic payments, the payment
22 is sourced to the State in the same manner as a sale of tangible personal property in
23 accordance with the provisions of subsection 2.

24 This subsection does not affect the imposition or computation of sales or use tax on leases
25 or rentals, based on a lump sum payment or on the basis of accelerated payment, or on the
26 acquisition of property for lease.

27 **Sec. 26. 36 MRSA §1819, sub-§5** is enacted to read:

28 **5. Transportation equipment.** The sale, including lease or rental, of transportation
29 equipment is sourced to the State in the same manner as a sale of tangible personal property
30 in accordance with the provisions of subsection 2. For the purposes of this subsection,
31 "transportation equipment" means:

32 A. Locomotives and railcars that are used for the carriage of persons or property in
33 interstate commerce;

34 B. Trucks and truck tractors with a gross vehicle weight rating greater than 10,000
35 pounds and trailers, semitrailers or passenger buses that are:

36 (1) Registered through the International Registration Plan; and

37 (2) Operated under authority of a carrier authorized and certificated by the United
38 States Department of Transportation or another federal authority to engage in the
39 carriage of persons or property in interstate commerce;

40 C. Aircraft that are operated by air carriers authorized and certificated by the United
41 States Department of Transportation, another federal authority or a foreign authority to
42 engage in the carriage of persons or property in interstate or foreign commerce; or

1 D. Containers designed for use on and component parts attached to or secured on the
2 equipment described in paragraphs A to C.

3 **Sec. 27. 36 MRSA §2022** is enacted to read:

4 **§2022. Refund of sales and use tax on purchases of qualifying retail lease or rental**
5 **property**

6 **1. Definitions.** For purposes of this section, unless the context otherwise indicates,
7 the following terms have the following meanings.

8 **A. "Qualified lessor"** means a person who:

9 (1) Paid Maine sales or use tax on the purchase of qualifying lease or rental
10 property on or after January 1, 2023 and before January 1, 2025; and

11 (2) Collected and remitted Maine sales or use tax on the lease or rental of
12 qualifying lease or rental property on or after January 1, 2025.

13 **B. "Qualifying lease or rental property"** means tangible personal property:

14 (1) Upon the purchase of which a qualified lessor paid Maine sales or use tax on
15 or after January 1, 2023 and before January 1, 2025; and

16 (2) That was part of a taxable lease or rental transaction on or after January 1, 2025
17 for which the qualified lessor of the property collected and remitted Maine sales or
18 use tax to the State.

19 **2. Refund authorized.** The State Tax Assessor shall refund the tax imposed pursuant
20 to this Part and paid by a qualified lessor on the purchase of qualifying lease or rental
21 property on or after January 1, 2023 and before January 1, 2025. The amount of the refund
22 for qualifying lease or rental property is limited to the Maine sales or use tax collected and
23 remitted to the State by the qualified lessor on qualifying lease or rental property on or after
24 January 1, 2025 and before January 1, 2027.

25 **3. Procedure and limitation.** A qualified lessor may request a refund on qualifying
26 lease or rental property by submitting a claim for refund on a form prescribed by the
27 assessor. In order to qualify for a refund under this section, a qualified lessor must file one
28 claim for all qualifying lease or rental property and must file the claim on or after January
29 1, 2027 and before March 31, 2027.

30 **4. Audit.** The assessor may audit a claim for refund filed under this section. If the
31 assessor determines that the amount of refund is incorrect, the assessor may issue an
32 assessment within 3 years from the date the claim was filed or at any time if a fraudulent
33 claim was filed. The claimant may seek reconsideration of the assessment pursuant to
34 section 151.

35 **Sec. 28. Application.** This Act applies to sales, leases and rentals of tangible
36 personal property and sales of taxable services on or after January 1, 2025. For the purposes
37 of lease or rental payments, each time period for which a lease or rental payment is charged
38 is considered a separate sale.'

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

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SUMMARY

This amendment replaces the bill and is the majority report of the committee. The amendment changes the approach to the taxation of rental property from imposing sales and use tax on the lessor upfront on the purchase price of the rental property to instead imposing tax on lease or rental payments going forward, also known as the lease stream. Under lease stream taxation, the lessor is required to collect and remit sales or use tax from the lessee on each rental payment. The amendment provides a limited time period in which a lessor who has paid sales or use tax on the purchase of rental property that is now subject to lease stream taxation may claim a refund. The changes apply to sales, leases and rentals on or after January 1, 2025.

FISCAL NOTE REQUIRED

(See attached)