

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—
S.P. 483 - L.D. 1405

**An Act To Require Remote Sellers To Collect and Remit Sales and Use Tax
on Sales into Maine**

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

Sec. 1. 36 MRSA §1951-B is enacted to read:

§1951-B. Collection of tax by remote sellers

1. Legislative findings. The Legislature finds that:

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

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

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

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

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

F. The Legislature recognizes that the imposition of this requirement places remote sellers in a complicated position, precisely because existing constitutional doctrine

calls the imposition of this requirement into question. Accordingly, the Legislature intends to clarify that the obligations created by the imposition of this requirement would be appropriately stayed by the courts until the constitutionality of this law has been clearly established by a binding judgment, including, for example, a decision from the Supreme Court of the United States abrogating its existing doctrine or a final judgment applicable to a particular taxpayer.

2. Legislative intent. It is the intent of the Legislature to apply the sales and use tax obligations imposed under the laws of this State to the limit of federal and state constitutional doctrines and to thereby clarify that the laws of this State permit the State to immediately argue in any litigation that such constitutional doctrine should be changed to permit the tax collection obligations of this section.

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

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

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

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

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

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

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

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

Sec. 2. Effective date. This Act takes effect October 1, 2017.