

**TESTIMONY OF
MICHAEL J. ALLEN, ASSOCIATE COMMISSIONER FOR TAX POLICY
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Taxation
Hearing Date: *April 11, 2023, at 1:00 P.M.*

L.D. 1303 – *“An Act to Exempt Boats and All-terrain Vehicles Purchased for Qualified Commercial Fishing or Commercial Farming from State Sales Tax”*

Senator Grohoski, Representative Perry, and members of the Taxation Committee – good afternoon, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. I am here today at the request of the Administration to testify Neither For Nor Against L.D. 1303, *“An Act to Exempt Boats and All-terrain Vehicles Purchased for Qualified Commercial Fishing or Commercial Farming from State Sales Tax.”*

The Administration is generally supportive of proposals that would exempt business purchases from the sales and use tax. Extending the current sales tax exemption for certain depreciable machinery and equipment used in commercial activities to all-terrain vehicles, or ATVs, and boats used in these sectors of the natural resources industry would be consistent with existing sales and use tax exemptions on business inputs; however, it is uncertain whether the bill as drafted would truly achieve this goal.

Currently, the sales tax refund and exemption program for certain depreciable machinery and equipment is enumerated in Title 36, section 2013. In order to qualify for refund or exemption, the “depreciable machinery and equipment” must be used “directly and primarily” in either commercial agricultural production, commercial aquacultural production, commercial fishing, or commercial wood harvesting. Section 2013 also requires that if the equipment is

not fully depreciable under federal tax law, full exemptions are not allowed, and refunds must be prorated on equipment that is partially depreciable under federal tax law. There is not a similar requirement provided within the text of L.D. 1303.

In order to meet the “directly” requirement under current law and further described in Maine Revenue Services’ Rule 323, the machinery and equipment must be used in an activity or operation that constitutes an integral and essential part of the commercial activity, as contrasted with and distinguished from activities or operations that are incidental, convenient, or remote to those activities. Generally, products and equipment used in support operations, including storage activities, administration, or highway transportation, are not used “directly” in a commercial activity.

L.D. 1303 identifies that the purchase of a boat or an ATV must be used directly and *exclusively* in either commercial fishing or commercial agricultural production; “exclusively” being a more restrictive standard than “primarily,” which is defined by rule as “more than 50% of the time.” It is unclear whether the purchases of ATVs and boats as allowed under L.D. 1303 would still qualify for exemption, as the ATV or boat must be *exclusively* used directly in the integral and essential operations in their identified commercial activity, and not in supporting activities, such as storage or highway transportation.

Motor vehicles, including ATVs, and trailers are specifically excluded from the definition of depreciable machinery and equipment under the existing section 2013; however, those engaged in commercial fishing can currently request refund or exemption on the purchase of new and used watercraft used directly and primarily in commercial fishing; it’s unclear what the exemption for “boats used in commercial fishing” would provide that is not already covered under current law.

If the Committee wants to provide the exemption to ATVs used in commercial agricultural production, MRS instead recommends amending the definition of “depreciable machinery and equipment” under section 2013 to say that a motor vehicle does not include an all-terrain vehicle, which would achieve a similar result to L.D. 1303’s proposal without needing to enact a new, separate exemption under section 1760.

The Administration looks forward to working with the Committee on the bill; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee’s questions.