

**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: January 16, 2024

LD 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

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
testifying at the request of the Administration in Support of LD 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.”

This bill would amend Maine sales and use tax law, conforming with the approach
of nearly all other States with a sales tax, to move from the current Maine approach
of having sales and use tax imposed on the lessor upfront on the full value of its
rental property when purchased and used in Maine to instead under this bill
requiring the lessor to collect sales tax from the lessee on each periodic rental
payment. LD 2000 also includes a refund period and claim process for sales and
use tax previously paid by qualified lessors on its rental property stock.

Maine’s application of its sales tax to property purchased and used by leasing
businesses is for the most part contrary to the normal business practice of leasing
companies in much of the country in which the lessor buys its rental stock exempt
from sales tax and collects from the lessee sales tax on each rental payment due on

the rental transaction. From time to time, recurringly over the years, Maine's upfront full value sales tax trips up businesses, especially interstate businesses, which is not surprising because Maine remains only 1 of 2 States that impose sales tax "up front" on the full value of rental property rather than on an ongoing basis on the value of each periodic rental payment. The common description of the nationally widespread approach of taxation imposed on the periodic rental payments is referred to as "taxing the lease stream."

As noted, while Maine is still just 1 of 2 states with the upfront sales tax approach on leased items, there are a few exceptions where Maine's sales tax already applies the lease stream approach, namely sales tax on short-term auto rentals and interim rentals, and Service Provider Tax ("SPT") on certain rentals taxed as taxable services under SPT (rental of furniture, audio media and audio equipment pursuant to a qualifying rental-purchase agreement; and rental of video media and video equipment). The tax policy rationale for this hodgepodge of exceptions to the upfront approach is not clear. Moving more fully to the national norm of the "lease stream" sales tax approach will be clearer for all.

Finally, and a point which can be expanded on at Work Session, moving to the lease stream will sweep aside the difficult tax jurisdiction lines that can arise under the sales and use tax for property used across state borders on the sufficient amount of use of property in Maine necessary to support the application of Maine tax. This issue has resulted in several court cases that have increased the complexity of complying with and administering Maine's current approach to the taxation of leased property.

At present, the Administration is considering including in the forthcoming Supplemental Budget bill its own version of moving from up front leasing tax to lease stream taxation. There are likely important differences in the details of the

Administration's approach compared to LD 2000 – but the objective and overall result would be the same.

There are also various more technical issues with LD 2000 that should be considered, and those can be considered at the Work Session. Similar proposals have been made in prior Sessions, and it's likely the detail and time needed to consider the proposal has been an obstacle.

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.