

**TESTIMONY IN OPPOSITION TO LD 2198**

**Olga J. Goldberg, Esq.**

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Senator Grohoski, Representative Perry, Members of the Joint Standing Committee on Taxation, good afternoon.

My name is Olga Goldberg. I am a resident of South Portland and a partner with Pierce Atwood LLP. I have been practicing state and local tax law for more than a decade. I am here on behalf of our firm's client, Enterprise, but my testimony will focus on the significant tax policy concerns raised by LD 2198.

LD 2198 proposes to retroactively eliminate the exclusion from Maine sales tax for automobiles, and integral parts and accessories to automobiles, that are purchased by car rental companies for short-term rental to Maine customers.

LD 2198 violates the two fundamental tenets of sales tax policy and will result in significant economic distortion that will negatively impact Maine individuals and businesses.

- **TENET ONE:** The sales tax **is only** a tax on consumption of goods by the end consumer. Because LD 2198 would impose additional sales tax on automobiles, I will use cars as my example. In Maine (and other states) sales tax applies to all forms of household consumption. When I, as an individual, buy a car outright—I pay a sales tax. When I lease a car for two years—I pay a sales tax. When I rent a car for a few days—I pay a sales tax. I, as the consumer, get to choose how I want to consume a car based on my own needs and preferences, but every time I consume a car, I pay a sales tax on my consumption.
- **TENET TWO:** The sales tax **is not** a tax on business inventories. To carry out this fundamental tax policy, all states that impose a sales tax, including Maine (unless LD 2198 is enacted), exclude or exempt purchases made for resale or taxable rental. For this reason, under Maine law, a car dealer's purchase of a vehicle for sale or for long-term lease to consumers is a nontaxable sale for resale, and, likewise, a car rental company's purchase of a vehicle for rental must be a nontaxable sale for resale. (Maine may not currently label each exclusion as a "sale for resale," but each is unmistakably an exclusion from tax for business inventories.)

LD 2198 will result in Maine sales tax imposed on **both** consumers and on business inventories—a violation of sound tax policy that harms Maine, its businesses, and its residents.

- **DOUBLE TAXATION.** Most obviously, LD 2198 would tax each rental car purchased in Maine twice: once at 5.5% on the car rental company's purchase and again at 10% on the consumer rental. No other state imposes two layers of sales tax in this way.<sup>1</sup>
- **PYRAMIDING.** Pyramiding—or tax on tax—occurs when business inventories are taxed, forcing businesses to pass along their additional costs to consumers. Car rental companies will have to increase the cost to rent a car in Maine to cover the new tax. As a result, consumers will not only bear the burden of the new tax as part of the rental price, consumers will then pay sales tax on the price increase. If LD 2198 is enacted, this pyramiding will increase the effective sales tax rate on consumer car rentals to much more than 10%.
- **SINGLING OUT ONE INDUSTRY.** To the extent possible, tax policy dictates that taxes must be neutral and should not be used to pick winners and losers. LD 2198 is not neutral. It targets a single industry: car rental companies.

By singling out one industry, LD 2198 conflicts with good tax policy, with every other state sales tax, and with Governor Mills's Supplemental Budget. Part H of the Supplemental Budget seeks to bring Maine in line with the vast majority of states by imposing sales and use tax on the lease or rental of tangible personal property and by allowing a sale for resale exemption for any lessor's purchase of such property for lease or rental. The Governor's proposal is industry-neutral: For example, a company in the business of renting power tools and a company in the business of renting cars would each purchase its rental inventory free from sales tax. LD 2198 seeks to undo this neutrality by increasing business inventory costs only for car rental companies.

- **COMPETITIVE HARM.** LD 2198 increases business inventory costs only for car rental companies operating in Maine, resulting in a distinct competitive disadvantage for companies that choose to do business in Maine. Conversely, Maine's neighbors do not burden rental car companies by taxing their business inventory. LD 2198 therefore disincentivizes car rental companies from investing in their Maine operations and workforce, and incentivize them to move their economic contribution away from Maine.

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<sup>1</sup> In 2017, Oregon enacted a limited sales and use tax on certain motor vehicle purchases by motor vehicle dealers, which dealers are permitted to pass through to consumers. In a 2020 ruling, the Oregon Tax Court found that car rental companies were subject to the tax (which they could pass through to consumers). Importantly, because Oregon does not impose a state-level sales tax on consumer car rental transactions, this ruling did not result in double taxation of consumer car rentals.

- RECORDKEEPING HEADACHES & WORSE RENTAL CARS FOR MAINERS. If enacted, LD 2198 would require car rental companies to track every single rental car during its first 12 months of use. Companies that purchase rental cars tax-free outside of Maine—that is, cars purchase in any other state with a sales tax—would be subject to Maine use tax on any rental car a consumer drives into Maine in those first 12 months. The recordkeeping burden would be unprecedented. At the same time, LD 2198 incentivizes companies to wait to bring rental cars into Maine until they have been used at least 1 year, meaning that Maine residents who could find a car to rent would be stuck with older, less efficient vehicles.
- ECONOMIC BURDEN ON MAINERS. Importantly, LD 2198 does not outsource the harm to out-of-state consumers. Maine residents make up a significant percentage of rentals in the State. Maine residents will bear the burden of increased prices, higher taxes, fewer car rental options as companies decrease their economic presence in the State. Maine consumers and rental companies are starting to recover from the rental car shortage and resulting price spikes of the last several years; LD 2198 threatens to undo the positive trend.

In summary, LD 2198 violates the basic principles of sound sales tax policy—it taxes business inventories, pyramids costs for Maine consumers, and puts a single industry at a competitive disadvantage. LD 2198 should be voted ought not to pass.