Testimony of
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Before the Joint Standing Committees on
Appropriations and Financial Affairs
and Taxation

"An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2024 and June 30, 2025"

February 22, 2024

Good afternoon, Senator Rotundo, Representative Sachs, and members of the Joint Standing Committee on Appropriations and Financial Affairs; Senator Grohoski, Representative Perry and members of the Joint Standing Committee on Taxation. I am Kirsten Figueroa, the Commissioner of the Department of Administrative and Financial Services. I am here today to testify in favor of the fiscal year 2024-2025 supplemental budget bill, LD 2214.

The supplemental budget is a balanced, prudent, and responsible proposal that advances the Governor's long-held belief that we must continue to invest in the people of Maine, our greatest asset.

That is why the Governor's proposal strikes the balance between making timely investments to address urgent needs – like public safety, mental health, housing, education, and health care – and saving money to ensure that our state continues to stand on strong fiscal footing in the future.

We look forward to working with the Legislature in the coming weeks to arrive at a budget that protects our fiscal health and that makes prudent and timely investments to support the health, safety, and welfare of Maine people.

Department of Administrative and Financial Services

The Department of Administrative and Financial Services (DAFS) consists of ten bureaus, a handful of boards and commissions, and more than 1,200 employees serving the public and all three branches of state government.

The Department has a broad range of responsibilities. We serve as the principal fiscal advisor to Governor Mills, prepare the state budget, coordinate the financial planning and programing activities of state agencies, prepare the financial records of the state, and advise the Maine Legislature on the economic status of the state and financial statutes of state government.

Additionally, DAFS oversees all aspects of: human resources, including employee benefits, contract negotiations, recruiting, retaining, training and performance; information technology services, including cyber security, data management, application development, project management, technology infrastructure, accessibility, and network services; maintenance, repairs and capital improvements of state-owned buildings and grounds; leased space; procurement, contracting and vendor management; state postal services; surplus property; tax collection, tax law and tax policy; and fleet management.

Various internal services for state agencies are provided by the Department, including review of accounting transactions and procedures and the implementation of account controls. We oversee three state-owned landfills. We also administer the state's lottery operations, medical and adult use cannabis programs, and the sale of distilled spirits within Maine's borders.

DAFS employees are respected as conscientious stewards of the State's assets: fiscal, human, physical and technical. We are valued for the professional expertise we provide that ensures State departments and agencies efficiently, effectively, and economically fulfill their important missions for the people of Maine. We lead and collaborate with open doors, open minds, and open hearts.

DAFS has six committees of jurisdiction – plus significant interaction with the Joint Standing Committee on Appropriations and Financial Affairs.

Beginning on **page A-5**, you've already heard as LD 646 our first two initiatives. The first provides a one-time allocation of $15 million in fiscal year 2024 for reimbursements of lost revenues to the municipalities to close out the **Property Tax Stabilization** program. The law requires the State to reimburse municipalities for the difference between the eligible tax filer's stabilized property tax amount and the amount that would otherwise be due. The program, as amended by Public Law 2023, chapter 412, applies only to the property tax year beginning April 1, 2023.

The other initiative provides a one-time allocation of $50,000 in fiscal year 2024 in the **Property Tax Stabilization Fund Mandate** program for the mandated reimbursement of costs to municipalities administering the program.

The enacted budget currently includes $15 million for the Property Tax Stabilization program and $500,000 for the Mandate costs. This estimate was based on a sample of 142 municipalities in December 2022. Based on the sample and using an average property tax growth rate of 4 percent, our Office of Tax Policy estimated that 95,000 applicants would receive an average benefit of $161 for a total state reimbursement of $15 million.

Through mid-January 2024, 416 of 483 municipalities (86%) have reported to the State Tax Assessor on the Property Tax Stabilization Program for Seniors. The total reimbursement request is $26.5 million for 86,688 qualified applicants, and average tax savings of $305.50, an average tax growth rate nearly double the estimate.

As of early February, $412,111 of the original $500,000 appropriated for Mandate costs has been expended to 369 municipalities. MRS estimates an additional $50,000 is needed to fully reimburse all municipalities for the mandate.

These two initiatives are supported by the transfer of unappropriated surplus included in **Part E** on **pages 10 and 11** of the language document.

The **Renewable Energy Facilities Property Tax Exemption** program is on page **A-5**. The purpose of the program is to reimburse municipalities for the effect on local property tax revenue arising from the exemption of certain solar and wind energy equipment from municipal property tax as required by the Maine Revised Statutes, Title 36, chapter 105, subchapter 4. Reimbursement of at least 50 percent of the tax revenue lost by municipalities as a result of new property tax exemption is mandated by Article IV, Part Third, Section 23 of the Maine Constitution. The currently enacted budget includes $2.25 million in fiscal year 2025.

There is one initiative in this program that provides an additional appropriation of $1,500,000 in fiscal year 2025 to account for an increase in the number of new renewable energy projects being planned or currently under construction.

We now move to the language pieces.

Part H, on **page 12** of the language document, modernizes and simplifies Maine's sales and use tax law in limited but important ways:

- It makes a shift to taxing rental of tangible personal property on a "lease stream" basis instead of taxing the full value of the property upfront when purchased by the lessor;
- It brings parts of the 6 percent service provider tax back into the sales tax law in a modestly broader but more equitable manner, and at the lower 5.5 percent sales tax rate;
- It repeals the whole of the service provider tax; and,
- It broadens existing partial sales tax exemptions for medical equipment and purchases by qualified non-profit entities – providing a more equitable and efficient sales tax.

I will expand on those interrelated proposals in sequential order now, and as I do so I invite the committee to review at the same time the attachments to my testimony, where further background and comparative data is provided.

The leading component of Part H is the shift to "lease stream" sales taxation of rentals of tangible personal property. This overdue shift changes the way sales tax is imposed on such leased property, joining the method of nearly all other 45 states that have a sales tax. The change would move from the current system, where sales and use tax is imposed upfront on the full value of the property purchased by a lessor for use in its rental business, to imposition of the tax on the lessee on a fraction of the full property value, that is, the value of each periodic separate rental payment. As with other sales tax on retail sales, the lessor would collect and remit that sales tax due.

Maine's current "upfront" method of taxing such rentals is not the national norm and has long and repeatedly tripped up businesses in the way they pay, collect, and remit sales and use tax. In this current Legislative Session businesses have voiced their support for a similar, although not identical, proposal – L.D. 2000 – pending before the Legislature's Joint Standing Committee on Taxation. As part of the proposed transition to the norm of taxing "lease stream" rental payments instead of taxing rental stock upfront, the Administration is proposing a limited refund period and claim process for sales and use tax previously paid by qualified lessors. See Appendix A for more details.

The second sales tax modernization and simplification component in Part H picks up where the Legislature left off last Session with narrowing the service provider tax. P.L. 2023, c. 412, Pt. XXX, repealed all the medical services subject to the service provider tax (SPT), effective January 1, 2025. That change removed 5 of the 12 listed taxable services. Appendix B lists the remaining General Fund taxable services. While the service provider tax was originally constructed such that it played an important role in federal reimbursements to institutions regarding medical service transactions, the tax as amended last Session no longer does. What remains now is unneeded bifurcation of similar taxable transactions under the sales tax and the service provider tax. This bifurcation trips up businesses and adds administrative burden and cost to their operations. Consequently, Part H relocates the General Fund taxable services and related provisions under the 6 percent service provider tax to the sales tax and its accompanying 5.5 percent rate, and repeals the remainder of the service provider tax entirely.

The third component of Part H simplifies and brings more equitable taxation of consumer purchases of digital media as part of the relocation of similar services under the service provider tax to the sales tax, as just discussed. Specifically, it adds "digital audio-visual and digital audio services" to taxable services under the sales tax, broadening and merging the digital services and products previously taxed under the service provider tax, and harmonizing existing sales taxation of related services and products with the shift to lease stream taxation of rental payments.

This change is more equitable – equalizing taxation of similar content across delivery modes, industry providers, and connected vs. rural underserved areas. It reduces compliance confusion – not collecting when required and collecting when not required – that can befall streaming and subscription providers. It addresses sales tax base erosion as technology markets continually change over time. Further, the proposed simplified sales taxation of digital streaming, cable and satellite television, radio, and other traditional forms of audio and video media consumption is quite mainstream nationally. It is important to note, this is *not* on the frontier of sales tax digital taxation issues that are in active discussion in some other states – such as sales taxation of digital advertising or software as a service. The chart in Appendix C shows the current fragmented taxation of digital products and services, which this proposal aims to rectify.

The fourth modernization and simplification proposal is to provide a broader and simpler sales and use tax exemption for durable medical equipment (DME) and mobility enhancing equipment for home use. A Taxation Committee public hearing and work sessions on a bill introduced last Session and carried over to the current Session – L.D. 1184, An Act to Exempt Certain Prescribed Home Medical Supplies from Sales Tax – made clear that the ongoing work of administration, education, compliance, and legislative revision of the four current medical products exemptions has been considerable in terms of cost, confusion, and burden for all parties involved.

There are two components to this proposal: 1) The shift to lease stream taxation addressed above meshes practically with how purchases and rentals are commonly structured in the durable medical equipment field. 2) Proposing two new broad exemptions of durable medical equipment and mobility enhancing equipment as defined in sections H-4 and H-8. Appendix D lists the current partial exemptions, and the broader exemption approach used by many other states. The language for the two exemptions proposed here is not created from scratch, but instead adopts language used by member states of the Streamlined Sales and Use Tax Agreement ("SSUTA"). Of the 23 Full Member SSUTA states, 21 exempt DME sold on a prescription for home use from their sales tax base.

Finally, Part H provides a sales and use tax exemption for purchases by nonprofit entities that have been determined by the United States Internal Revenue Service to be exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. Appendix "E" provides helpful background for seeing the significant simplification and clarification that a blanket 501(c)(3) exemption will bring to the sales tax and qualifying non-profit organizations. Appendix E also refers readers to the extensive background on this topic in the recently completed legislative report filed this Session by DAFS with the Taxation Committee.

Office of the State Treasurer

There is one initiative across two programs within the Office of the State Treasurer of **page A-130**. Municipal revenue sharing is outlined in Title 30-A, section 5681. This initiative increases the allocations within the **Disproportionate Tax Burden Fund (0472),** commonly referred to as Revenue Sharing II, and **State – Municipal Revenue Sharing Fund (0020),** commonly referred to as Revenue Sharing I, to align the allocations with revenues as recommended in the December 1, 2023 Revenue Forecasting Committee report.

The adjustment in the **Disproportionate Tax Burden Fund (0472),** increases the allocation by $1,705,618 in fiscal year 2024 and $558,445 in fiscal year 2025. The adjustment in the **State – Municipal Revenue Sharing Fund (0020),** increases the allocation by $6,822,474 in fiscal year 2024 and $2,233,785 in fiscal year 2025. Based on that forecast, revenue sharing is projected to be $261.4 million in this fiscal year and $263.5 million in fiscal year 2025.

Municipal revenue sharing has increased steadily under Governor Mills, buoyed by both strong revenues and the return to the statutorily required 5 percent of revenue sharing. Municipalities will receive approximately $155 million more in revenue sharing in fiscal year 2025 as a result of receiving the full 5 percent each month over the 2 percent that was in place in fiscal year 2019.

Fiscal Year	%	$
2019 actual	2.00%	$74,095,532
2020 actual	3.00%	$113,613,360
2021 actual	3.75%	$156,047,730
2022 actual	4.50%	$232,362,929
2023 actual	5.00%	$263,395,959
2024 RFC	5.00%	$261,429,468
2025 RFC	5.00%	$263,499,338

This concludes my testimony. Thank you.

ATTACHED ADDITIONAL BACKGROUND DOCUMENTS:

1. Appendix "A" – Moving to "Lease Stream" Taxation
2. Appendix "B" – Repeal Service Provider Tax; Relocate Selected Provisions
3. Appendix "C" – "Digital Streaming" – Simplify and Equalize Taxation of Consumer Purchases of Digital Media and Services
4. Appendix "D" – Broad Durable Medical Equipment Exemption
5. Appendix "E" – Blanket "501(c)(3) Nonprofits Exemption

ATTACHED ADDITIONAL BACKGROUND DOCUMENTS

Appendix "A"

Moving to "Lease Stream" Taxation

Part H of the Supplemental Budget 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 requiring the lessor to collect sales tax from the lessee on each periodic rental payment. To address the tax cost effect in transitioning over to the lease stream method, the bill includes a limited 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."

While Maine is still just 1 of 2 states with the upfront sales tax approach on leased items, it is equally important to note that Maine already applies the lease stream approach for sales tax on short-term auto rentals and interim rentals, and for service provider tax ("SPT") on certain rentals taxed as taxable services (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, 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 and what constitutes sufficient amount of use of property in Maine necessary to support the application of Maine tax. This issue has resulted in several court cases over the years that have increased the complexity of complying with and administering Maine's current approach to the taxation of leased property. Litigation of sales tax issues is often a sign that statutory or regulatory simplification and clarity would benefit all; the proposal here brings such simplification and modernization.

The fiscal estimate is approximately +$13 million per year when fully phased-in.

<u>Appendix "B"</u>
Repeal Service Provider Tax (SPT); Relocate Selected Provisions

The service provider tax, as narrowed last Session in P.L. 2023, c. 412, Pt. XXX, is comprised of the following taxable services effective 1/1/2025:

Service Provider Tax: A. Cable and satellite television or radio services; B. Fabrication services; C. Rental of video media and video equipment; D. Rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement as defined in Title 9A, section 11-105; E. Telecommunications services; F. The installation, maintenance or repair of telecommunications equipment; L. Ancillary services.

The Supplemental Budget language document simply brings paragraphs A, B, E, F, and L back over to the sales tax wholesale, listing them as taxable services under the sales tax at Section H-18 of the bill and similarly bringing over the definitions of those terms.

Paragraphs C and D above are dropped as superfluous because of the shift to taxing the lease stream on such rentals.

The new taxable service is listed in Section H-18 of the bill at paragraph J:

<u>J. Digital audio-visual and digital audio services.</u>

This new section harmonizes the current inequitable mix of taxation of digital goods and services, as more fully explained in Appendix "C."

The SPT, enacted in 2003, was constructed in a manner such that the cost of the tax on medical services paid by private nonmedical institutions (PNMIs) tax would be recognized as a federally reimbursable cost. There were federal statutory and regulatory parameters for a state tax to be recognized as valid for such reimbursement, and the Maine SPT was constructed accordingly, bringing over to the new tax various services that at the time, were taxable under the sales tax. This federal reimbursement reason for the SPT no longer exists as of January 1, 2025, because of the enactment last Session, of

P.L. 2023, c. 412, Pt. XXX repealing the medical services[1] portion of the SPT. Following January 1, 2025, only the nonmedical services will be subject to the SPT.

Other than ancillary services[2], which is a service that is associated with or incidental to the provision of telecommunications services already taxable under the SPT, no other nonmedical services were added to the SPT since its enactment in 2003.

The language document for the Supplemental Budget proposes to move these remaining services back to the sales tax effective on January 1, 2025. No operative provisions would remain under the SPT, and hence the language document repeals the SPT effective January 1, 2025.

The repeal of the SPT brings the following additional benefits:

- Lessens reporting burden on taxpayers
- Lessens taxpayer and customer confusion and inadvertent compliance error
- Eliminates the administration costs of a separate tax type
- Mitigates possible ITFA[3] concerns regarding claims of impermissible differential taxation

The fiscal estimate is approximately -$4 million per year when fully phased-in.

Appendix "C"

"Digital Streaming" – Simplify and Equalize Taxation of Consumer Purchases of Digital Media and Services

Under current Maine law, sales or service provider tax is imposed on the following:

- cable TV
- satellite TV
- cable and satellite radio
- online sale of music, books, movies and other audio and video content
- both sale *and* rental of DVDs, cassette tapes and other physical forms of video and audio content

Competing delivery platforms delivering the same content – e.g., the same movie, song, game, etc. – by rental and subscription streaming services are *not* currently taxable.

[1] Private nonmedical institution services; community support services for persons with mental health diagnoses; community support services for persons with intellectual disabilities or autism; home support services; and group residential services for persons with brain injuries.
[2] Enacted by P.L. 2007, c. 627, §69.
[3] ITFA is the acronym for the federal Internet Tax Freedom Act. See 47 U.S.C. §151, note, and Pub. L. 105-277.

The table below compares the various ways digital and audio content are consumed and the way they are currently taxed in split fashion in Maine under the sales and service provider taxes. As you can see, Maine taxes the purchase and rental of video content in a variety of forms, but not in its latest iteration – digital streaming. Likewise, Maine taxes the purchase of audio content in a variety of forms (and the rental in limited situations), but not in its latest iteration – digital streaming. In other words, the tax code is treating the new streaming platforms more favorably than similar older distribution models.

	Physical Sale	**Online Sale** (Permanent rights)	**Cable & Satellite Industries**	**Physical Rental**	**Online Digital Streaming**	
					Rental (available once)	**Subscription**
Video Content	**Taxable** (Sales Tax) (DVDs)	**Taxable** (Sales Tax)	**Taxable** (SPT) (cable or satellite TV)	**Taxable** (SPT) (DVDs)	**Not Taxable**	**Not Taxable**
Audio Content	**Taxable** (Sales Tax) (CDs)	**Taxable** (Sales Tax)	**Taxable** (SPT) (satellite radio)	**Taxable** (SPT) (cassette tapes in some scenarios)	**Not Taxable**	**Not Taxable**

Part H of the Supplemental Budget proposal would align the taxation of these various forms of consumption of essentially the same content by taxing digital audio and video content, regardless of the method in which it is consumed, by applying the sales tax to the sale of digital audio-visual and digital audio services.

The new taxable service is listed in Section H-18 of the bill at paragraph J:

J. Digital audio-visual and digital audio services.

This new section harmonizes the current inequitable mix of taxation of digital goods and services by equalizing the tax treatment across the different forms of audio, video, and digital media consumption, including cable and satellite television and radio, DVD sales and rentals, etc. Further, it addresses sales tax base erosion as technology markets continually change over time. This category of taxable services is used by many other states – using common definitions and sourcing provisions, which is efficient for businesses and tax administration alike. Because there is still some variation from state to state in the specifics of how sales tax is imposed on such transactions, an exact comparison count is not possible. But in broad terms, among states with a sales tax, the comparison count as of 2023 is as follows:

> 25 states apply sales tax (or equivalent) to such digital services; and
> 20 states do not.

This proposal is quite mainstream nationally. It is important to note that the proposal here is not the kind of sales tax digital taxation issues that are in active discussion in some other states – such as sales taxation of digital advertising or software as a service.

Not only is the proposed addition a mainstream sales tax modernization proposal, it is in terms of tax policy more importantly a more equitable application of sales tax, not favoring particular industry sectors, modes of sale, and served vs. underserved broadband connection areas.

The fiscal estimate is approximately +$10 million per year when fully phased in.

Appendix "D"
Broad Durable Medical Equipment ("DME") Exemption

Section H-26 of Part H would enact two broad exemptions related to medical equipment, as follows:

> **115. Durable medical equipment.** Beginning January 1, 2025, sales of durable medical equipment that is sold or leased for home use.

> **116. Mobility enhancing equipment.** Beginning January 1, 2025, sales of mobility enhancing equipment that is sold or leased for home use.

Definitions for these terms are provided at Section H-4 and Section H-8 of Part H.

Maine currently has four sales tax exemptions applicable to some categories of medical equipment:

- §1760, sub-§5-A. Prosthetic or orthotic devices
- §1760, sub-§33. Diabetic supplies
- §1760, sub-§94. Positive airway pressure and oxygen delivery equipment and supplies
- §1760, sub-§95. Sales of certain adaptive equipment

In contrast to these four narrow exemptions for medical equipment, any human medicine sold on a doctor's prescription is exempt from sales tax.[4]

The ongoing work of administration, education, compliance, and legislative revision of the four medical products exemptions has been considerable in terms of cost, confusion, and burden for all parties involved. Taxation Committee public hearing and work sessions on a bill introduced last Session and carried over to the current Session – L.D. 1184, An Act to Exempt Certain Prescribed Home Medical Supplies from Sales Tax – delved into the application of the current medical equipment sales tax exemptions, and considerations of broadening the exemptions in various ways: home use, or not; insurance paid, or not; Medicare or Medicaid reimbursed, or not. DAFS brought to the Committee's attention the various approaches used in other States of a broad medical equipment exemption.

The Supplemental Budget proposes to broaden and simplify the current exemption by enacting a broad exemption for sales and rentals of "durable medical equipment," and to do so in the manner used by many other states – lessening the cost, confusion, and burden for all parties involved. The language for the two exemptions proposed here is not created from scratch, but instead adopts language used by member states of the Streamlined Sales and Use Tax Agreement ("SSUTA"). Of the 23 Full Member SSUTA states, 21 exempt DME sold on a prescription for home use from their sales tax base.

Finally, the shift to lease stream taxation addressed in Appendix "A" above meshes practically with how purchases and rentals are commonly structured in this field.

The fiscal estimate is approximately -$0.65 million when fully phased in.

<u>Appendix "E"</u>
Blanket "501(c)(3) Nonprofits Exemption

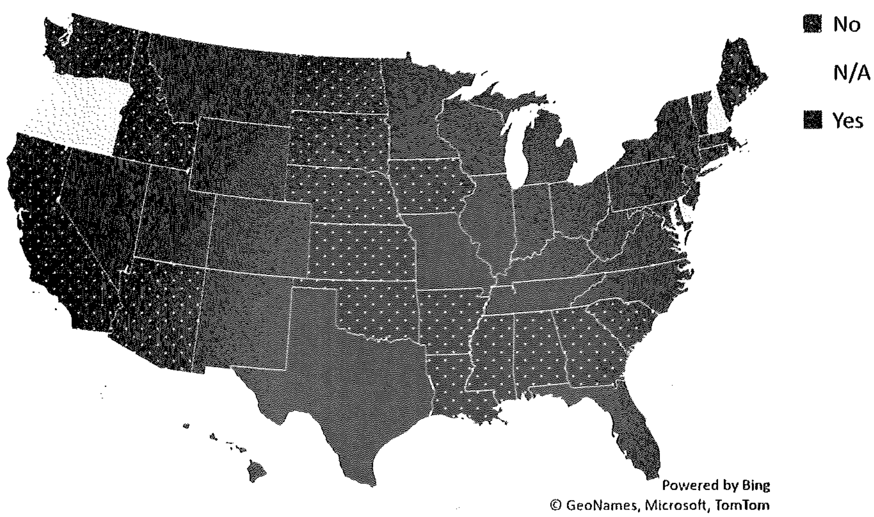
There are currently 56 separate sales tax exemptions for different types of organizations, ¾ of which require the entity to be a "nonprofit." Maine sales tax began in 1951. The accumulation of more than seventy years of non-profit exemptions – and many more bills proposing additional exemptions year after year – has come at considerable institutional cost in terms of legislative consideration, drafting, hearings, etc., and considerable administrative cost in terms of tax administration, education, and compliance. Moreover, and more significantly in terms of good tax policy, the ongoing enactment and revision of non-profit exemptions has left a patchwork of narrowly crafted exemptions creating inequities between similar organizations.

[4] 36 M.R.S. § 1760(5).

The legislative study report[5] ("Study Report") recently filed with the Joint Standing Committee on Taxation on this topic provides a thorough and comprehensive survey of non-profit sales tax exemptions here in Maine and elsewhere across the States. The report notes that of the 45 states with sales taxes, 30 provide a "blanket" exemption for nonprofit or charitable organizations. Further, Maine is also the only state with a sales tax in the Northeast that does not have such an exemption.

The following table is reproduced from the Study Report:

Blanket Exemption for 501(c)(3) or Charitable Organizations



The Supplemental Budget proposes a "blanket" sales tax exemption for nonprofit entities exempt from federal income tax under Section 501(c)(3). This method is common and widely used among other states, readily understood by all types of non-profit organizations, and leverages the administrative work already being done by the IRS and qualifying entities. The Study Report noted above provides a detailed analysis of the "blanket IRC 501(c)(3)" sales tax exemption.

The fiscal estimate is approximately -$10 million per year when fully phased-in.

[5] Study of the Impact of Exempting Certain Nonprofit Organizations from the Sales and Use Tax and the Service Provider Tax (January 15, 2024).