

**TESTIMONY OF  
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DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Taxation  
Hearing Date: *April 9, 2025, Wednesday at 1:00 P.M.*

LD 1056 – *“An Act to Clarify the Tax Treatment of Prepaid Wireless  
Telecommunications Service in Maine”*

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Senator Grohoski, Representative Cloutier, 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 Neither For Nor Against LD 1056, *“An Act to Clarify the Tax Treatment of Prepaid Wireless Telecommunications Service in Maine.”*

Under current law, the Service Provider Tax (SPT) imposes a 6% tax on the value of various specified services sold in the State, including the sale of “telecommunications services” and “ancillary services” associated with or incidental to the provision of telecommunications services. LD 1056 would carve out a subset of telecommunications services from the SPT, define those services as “prepaid wireless telecommunications services,” and move them over to be part of taxable “prepaid calling service” under the 5.5% sales tax. Although the bill’s summary and title suggest that this change would be a “clarification,” the result would be both a substantive and retroactive tax change. While this testimony is Neither For Nor Against the bill as a whole, the Administration’s position is that there are important technical issues with the bill, the retroactive application is unwarranted and inequitably structured, and more importantly, rather than a confusing piecemeal approach reflected by LD 1056, the Administration is in

support of moving *all* services taxed under the service provider tax (SPT) to the sales tax, as proposed in Part G of the Governor's Biennial Budget proposal.

An important backdrop to evaluating LD 1056 is first to note that although the service provider tax has various provisions that on first look may seem to overlap with the sales tax, having pulled various pieces from the sales tax when the SPT was established, the two statutes are drafted and implemented separately. The second important reference point for LD 1056 is the recent Maine Law Court decision in *State Tax Assessor v. TracFone Wireless, Inc.*, 2022 ME 36, decided June 23, 2022. In that case, the Law Court stated that the service provider tax unambiguously applied to telecommunications services sold in Maine, and further, held that under the facts of the case taxpayer's SafeLink service was sold in Maine and therefore taxable under the SPT. That service at issue in the case was a federally subsidized communications service for low-income individuals sold by TracFone.

LD 1056 would define "prepaid wireless telecommunications services" to mean "a cellular or wireless telecommunications service that must be paid for in advance and is sold in predetermined units or dollars, the number of which declines with use in a known amount." The bill would then include "prepaid wireless telecommunications services" as part of "prepaid calling service," taxable under the sales tax, and remove that service from the broader "telecommunications services" subject to the SPT. Again, while the bill's summary states the proposed changes would provide "clarification," the result sought by the bill would be a substantive change in the scope of the SPT.

The Governor's Biennial Budget, Part G proposal would repeal the SPT *entirely* and reenact SPT services, including all telecommunications services, as taxable services under sales tax. On March 5, 2025, the Taxation Committee

unanimously voted to include the SPT repeal in its report back to the Appropriations and Financial Affairs Committee ([legislature.maine.gov/doc/11650](https://legislature.maine.gov/doc/11650)). If the SPT repeal becomes law, both “prepaid calling services” and all SPT telecommunications services, including prepaid wireless telecommunications services, would be subject to sales tax at the 5.5% rate. In other words, putting aside the unwarranted retroactivity, LD 1056 would become moot and unnecessary. The Administration continues to support the approach taken in Part G of the Governor’s Biennial Budget.

If the Committee nevertheless decides to move forward with LD 1056, we recommend addressing the following concerns. First, if the bill is intended to subject prepaid wireless telecommunications services to the same tax rate as that of prepaid calling service, the bill should instead add prepaid wireless telecommunications services to the list of enumerated taxable services under 36 M.R.S. § 1752(17-B) and exclude prepaid wireless telecommunications services from the relevant SPT definitions. Prepaid wireless telecommunications services is a much broader category of services than prepaid calling service and therefore should not be included as part of prepaid calling service.

Additionally, the definition of “prepaid wireless telecommunications services” should be amended to align with the definition found in 25 M.R.S. § 2921(13) for the purposes of the prepaid wireless E-9-1-1 surcharge.

Finally, the retroactivity provided under section 4 of the bill raises concerns of fairness and stability. The bill would retroactively apply to sales occurring on or after July 1, 2022, but provides that SPT paid on prepaid wireless telecommunications services before the effective date of the Act is not eligible for refund or credit based on the retroactive SPT exemption. Consequently, this section would provide a tax benefit only to those taxpayers who had not reported

and paid SPT on sales of prepaid wireless telecommunications services during the retroactive application period.

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.