

**TESTIMONY OF
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Before the Joint Standing Committee on Taxation
Hearing Date: *Wednesday, April 9, 2025*

LD 1291 – “*Resolve, to Establish the Commission to Study the Apportionment of Service Revenue*”

Senator Grohoski, Representative Cloutier, and members of the Taxation Committee – good morning, my name is Daniel D’Alessandro, Deputy Tax Policy Counsel in the Department of Administrative and Financial Services. I am testifying at the request of the Administration Against LD 1291 “*Resolve, to Establish the Commission to Study the Apportionment of Service Revenue.*”

This resolve establishes the Commission to Study the Apportionment of Service Revenue, which is directed to study the apportionment of service revenue for Maine corporate income tax purposes. The Commission is required to submit a report with suggested legislation by December 3, 2025, to the Joint Standing Committee on Taxation, which is authorized to report out legislation based on the report to the Second Regular Session of the 132nd Legislature. The Administration opposes this Resolve because it is premature, unnecessary, and mismatches the proposed Commission membership with the technical topic at hand.

Apportionment is a key feature of multi-state corporate income tax systems and is required by the U.S. Constitution. Generally, the Maine apportionment factor is a percentage determined by dividing the taxpayer’s sales attributed to Maine by the total sales of the taxpayer everywhere. This approach is often referred to as “single sales factor apportionment” and is commonly used by combined reporting states across the country.

The attribution of gross receipts to Maine from sales of services is required under Title 36 MRS §5211 and the Maine Law Court has recently applied these provisions in *Express Scripts v. State Tax Assessor* (granting judgment in favor of the State Tax Assessor and holding that the claims-processing services were received by members at retail pharmacies in Maine).

MRS has proposed amendments to Rule 801- Apportionment which were published on December 4, 2024. The public comment period, with extension, went from the date published to March 3, 2025. Written comments were provided by stakeholders during the public comment period and a public hearing was held on February 19, 2025 to receive in-person testimony. MRS is currently reviewing the comments on the proposed Rule amendments, and, if MRS adopts a final Rule, MRS must publicly respond to those comments no later than July 1, 2025.

The proposed revisions to the Rule related to sourcing receipts from services provided additional clarifications on the application of Title 36, §5211 and added several examples of the application of the law related to different fact patterns. The proposed changes are intended to clarify MRS's historic interpretation of the statute and apply the relevant judicial and Maine Board of Tax Appeals decisions.

The rulemaking process is governed by the Maine Administrative Procedures Act (MAPA) which provides a framework for allowing fair and even access to agency rulemaking to all stakeholders, and for making sure their concerns are heard and considered. MAPA requires an agency to notify the public of intended rulemaking, publish proposed rules, accept comments written and, as was requested in this case, in a hearing setting, and importantly requires the agency to consider and respond to those comments, to receive approval of the rule from the Attorney General's Office, and allows for judicial review of the rule – among other procedural safeguards.

Rulemaking is routinely used across the country by state revenue agencies to provide necessary details on the intricacies of apportionment. The Administration believes that Maine's rulemaking process, governed by MAPA, is not just sufficient to that task but is well designed to ensure a fair process that harnesses the tax expertise of the agency and stakeholders. At this preliminary point in that process, where MRS is considering the comments of stakeholders, it would be premature to create a Commission that would alter this well understood and long-used framework.

If, after further revisions of the rule or the release of the final rule, there remains concerns about how the statute is being applied by MRS, then legislation can be introduced to change the law or create a commission or study group on the issue. At that point, any issues will be more focused and so too would the role of any commission or study group. If such a Commission is formed, the Legislature should ensure the Commission's membership has the necessary tax expertise.

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.