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Presenting LD 1330

An Act to Clarify That a Business’s License or Subscription to Use Software is Not Considered a Lease for the Purposes of Sales and Use Tax. April 9, 2025

Senator Grohowski, Representative Cloutier, and the honorable members of the Joint Standing Committee on Taxation. My name is Jack Ducharme. I proudly represent the people of Cornville, Madison, and Norridgewock in the Maine House of Representatives. I come before you today to present LD 1330, An Act to Clarify That a Business’s License or Subscription to Use Software is Not Considered a Lease for the Purposes of Sales and Use Tax.

In the 131st Legislature, the Supplemental budget LD 2214 which ultimately became PL 2023, Chapter 643, Part H as passed by the majority, contains language that changes the taxation of leased property, specifically software. Prior and current tax law exempts “custom computer software programs from taxation if they are purchased or leased. It further exempts a pre-written program that has been modified to meet a particular customer’s needs, provided the cost of the modification can be separately stated. “Custom computer software programs” do not include a prewritten or canned program that is held or exists for a general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. However, tangible personal property including pre-written software was taxed when purchased but not taxed when “leased” by electronic download.

Chapter 643 changed that calculus for many Maine businesses. Under the new rules, effective January 1, 2025, the purchase of tangible personal property, including pre-written electronically downloaded software will be subject to 5.5% sales and use tax. The tangible personal property designation at the time of enactment seemed to be directed at physical items such as golf clubs, bowling shoes, skis etc. However, Maine Revenue Services has determined that pre-written software that is downloadable for a fee should be taxable to Maine businesses. This means that if a business has a Microsoft 365 “subscription” for use in their office, that subscription or lease is taxable. A Microsoft 365 Business Standard subscription costs \$12.50 per user/month, payable annually. That means a business with 10 employees pays \$1,500 per year for the software. The tax adds an additional \$82.50 per year. QuickBooks for business is a subscription software that fits this category. A standard subscription to QuickBooks for one user is \$17.50 per month, payable annually. That is \$221.55 annually including the new tax...for ONE user.

District 71
Cornville, Madison, and Norridgewock

Other enterprise programs are downloaded at purchase and will require annual updates to continue to run that will also be taxed at 5.5% under this interpretation of the language in Chapter 643. Some of these programs are thousands of dollars per year to download and the subsequent updates can run a few thousand as well.

This seems to be an unintended consequence that was dropped on Maine businesses in a budget document passed by the majority. If it was intentional, it should have been debated in an LD rather than as part of a budget document. I would ask you to please consider repealing this additional tax on our business community. We need businesses to come to Maine so that we can have good, well-paid jobs.

Some will say that this change merely puts Maine in alignment with “most of the other states” relative to the treatment of leased or rented software. I would ask you to consider that perhaps we do not need to be aligned with “other states” for purposes of taxation. If that is a consideration, I would definitely ask if we might consider aligning with Florida or New Hampshire where taxes are much more favorable for all.

Thank you for your time and I am willing to answer questions to the extent that I am able.

Cordially,

Jack Ducharme