

**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 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”*

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 Against 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.”*

This bill would amend the definition of “lease or rental” to provide that leases, licenses, subscriptions or similar rights to use or access software are not considered “leases or rentals” subject to sales or use tax if the user “is a business.” This bill is likely in response to the shift enacted last Session modernizing the sales tax to move to the national norm of lease stream taxation. Although the bill summary states that the proposal is to “clarify” current law, it would be a substantive change to revert to the prior sales tax approach to such leases. The shift to lease stream taxation was carefully considered by this Committee last Session, and the reasons for that modernization continue to apply.

I will turn next to several important technical considerations. The bill’s amendment would rely on the Sales and Use Tax Law’s current definition of “business,” which means “any activity engaged in with the object of gain, benefit or advantage, either direct or indirect.” 36 M.R.S. § 1752(1-C). This definition is

broad and arguably could be interpreted to include, for example, hobbies. Further, should this bill be enacted in this form, Maine Revenue Services or a retailer would arguably be required to determine on a case-by-case basis whether each person purchasing a software license “is a business.” As such, the bill should further clarify the category of a qualifying “business.”

Next, the bill would exclude from sales tax any “leases, licenses, subscriptions or similar rights to use or *access* software” (emphasis added). The bill should be amended to delete the phrase “or access.” The adoption of MRS Proposed Rule 326, “Leases and Rentals of Tangible Personal Property” (MAPA public comments due April 21, 2025) would most likely address the sponsor’s concern regarding software that is “accessed” in terms of the commonly and generally phrased category of “software as a service” – as opposed to downloadable software. Section 9.3.B of the Proposed Rule identifies that “prewritten computer software that is sold, rented, leased, or licensed for consideration where the computer software is remotely accessed over the Internet from an out-of-state server, over private or public networks, or through wireless media, and no software is downloadable onto the licensee’s computer or device, is not considered a retail sale of a product transferred electronically and is not subject to Maine sales and use tax.” A related technical information point is that in addition to software downloaded over the internet, the bill would also exclude from “lease or rental” the sale to a business of licensed software on physical media.

It is also unclear whether the bill would cause the sale of a perpetual software license to be tax-free, or if it instead would be treated as a sale; under current law, licenses to use software in perpetuity are deemed leases “in lieu of purchase” and treated as sales.

In sum, the policy basis for the shift to that national norm of lease stream taxation enacted last Session is sound, and in any event there are important technical concerns with the bill as drafted. For these reasons the Administration opposes LD 1330.

The revenue impact is estimated to be an annual revenue loss of approximately \$5 million.

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.