

## STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

—  
H.P. 251 - L.D. 346

**An Act Concerning the Collection of Sales Tax by Any Businesses Making  
Sales to Persons in Maine**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 36 MRSA §1754-B, sub-§1, ¶D**, as amended by PL 2005, c. 218, §18, is further amended to read:

D. Every person that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution and that makes retail sales in this State of tangible personal property or taxable services on behalf of a principal that is outside of this State if the principal is not the holder of a valid registration certificate; For purposes of this paragraph, paragraph E and paragraph G, the following activities do not constitute a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution:

- (1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the United States mail or by an interstate 3rd-party common carrier;
- (2) Attending trade shows, seminars or conventions in this State;
- (3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;
- (4) Maintaining a bank account or banking relationship in this State; or
- (5) Using a vendor in this State for printing;

**Sec. 2. 36 MRSA §1754-B, sub-§1, ¶E**, as enacted by PL 1995, c. 640, §3, is amended to read:

E. Every agent, representative, salesperson, solicitor or distributor that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution and that receives compensation by reason of sales of tangible personal property or taxable services

made outside this State by a principal for use, storage or other consumption in this State;

**Sec. 3. 36 MRSA §1754-B, sub-§1, ¶G**, as amended by PL 2007, c. 328, §5, is further amended to read:

G. Every seller of tangible personal property or taxable services that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. ~~The following activities do not constitute a substantial physical presence for the purpose of this paragraph:~~

- ~~(1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the United States mail or by an interstate 3rd party common carrier;~~
- ~~(2) Attending trade shows, seminars or conventions in this State;~~
- ~~(3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;~~
- ~~(4) Maintaining a bank account or banking relationship in this State; or~~
- ~~(5) Using a vendor in this State for printing, drop shipping or telemarketing services;~~

**Sec. 4. 36 MRSA §1754-B, sub-§1-A** is enacted to read:

**1-A. Persons presumptively required to register.** This subsection creates a rebuttable presumption that a seller not subject to subsection 1 is engaged in the business of selling tangible personal property or taxable services for use in this State and is required to register as a retailer with the assessor.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

- (1) "Affiliated person" means a person that is a member of the same controlled group of corporations as the seller or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations. For purposes of this subparagraph, "controlled group of corporations" has the same meaning as in the Code, Section 1563(a).
- (2) "Person" means an individual or entity that qualifies as a person under the Code, Section 7701(a)(1).
- (3) "Seller" means a person that sells, other than in a casual sale, tangible personal property or taxable services.

B. A seller is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State if an affiliated person has a substantial physical presence in this State or if any person, other than a person acting in its capacity as a common carrier, that has a substantial physical presence in this State:

(1) Sells a similar line of products as the seller and does so under a business name that is the same or similar to that of the seller;

(2) Maintains an office, distribution facility, warehouse or storage place or similar place of business in the State to facilitate the delivery of property or services sold by the seller to the seller's customers;

(3) Uses trademarks, service marks or trade names in the State that are the same or substantially similar to those used by the seller;

(4) Delivers, installs, assembles or performs maintenance services for the seller's customers within the State;

(5) Facilitates the seller's delivery of property to customers in the State by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the State; or

(6) Conducts any activities in the State that are significantly associated with the seller's ability to establish and maintain a market in the State for the seller's sales.

A seller who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part. A seller may rebut the presumption created in this paragraph by demonstrating that the person's activities in the State are not significantly associated with the seller's ability to establish or maintain a market in this State for the seller's sales.

C. A seller that does not otherwise meet the requirements of paragraph B is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State if the seller enters into an agreement with a person under which the person, for a commission or other consideration, while within this State:

(1) Directly or indirectly refers potential customers, whether by a link on an Internet website, by telemarketing, by an in-person presentation or otherwise, to the seller; and

(2) The cumulative gross receipts from retail sales by the seller to customers in the State who are referred to the seller by all persons with this type of an agreement with the seller are in excess of \$10,000 during the preceding 12 months.

A seller who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part.

A seller may rebut the presumption created in this paragraph by submitting proof that the person with whom the seller has an agreement did not engage in any activity within the State that was significantly associated with the seller's ability to establish or maintain the seller's market in the State during the preceding 12 months. Such proof may consist of sworn, written statements from all of the persons within this State with whom the seller has an agreement stating that they did not engage in any solicitation in the State on behalf of the seller during the preceding 12 months; these statements must be provided and obtained in good faith.

A person who enters into an agreement with a seller under this paragraph to refer customers by a link on an Internet website is not required to register or collect taxes under this Part solely because of the existence of the agreement.

**Sec. 5. Report and legislation regarding the Streamlined Sales and Use Tax Agreement.** The Office of Fiscal and Program Review shall prepare a report concerning the Streamlined Sales and Use Tax Agreement, referred to in this section as "the agreement," which is an effort of state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The report must:

1. Provide information regarding any pending or recently enacted federal legislation that provides states with the authority to compel remote sellers, such as online and catalogue retailers, to collect and remit sales tax imposed on purchases made by residents of another state;

2. Identify the options available to Maine under the federal legislation referred to in subsection 1 and the steps needed in order to compel remote sellers to collect sales tax and remit the tax to Maine;

3. Identify any changes to the Maine Revised Statutes that are needed to conform the State's laws to the agreement and the options available to provide conformity;

4. Identify the impact of each option identified pursuant to subsection 3; and

5. Identify and explain any fiscal and policy issues associated with conformity with the agreement.

The Office of Fiscal and Program Review may enlist the assistance of an entity outside of the Legislature to aid the office in completion of the report. The office shall submit its report, along with different proposals for legislation to conform the State's sales and use tax laws with the agreement, to the Joint Standing Committee on Taxation no later than January 15, 2014. The Joint Standing Committee on Taxation may submit a bill relating to the subject matter of the report to the Second Regular Session of the 126th Legislature.

**Sec. 6. Application.** The provisions of the Maine Revised Statutes, Title 36, section 1754-B, subsection 1-A, paragraph C apply to sales made, uses occurring and services rendered on or after the effective date of this Act regardless of the date on which the seller and the person entered into the agreement described in that paragraph; except that, when calculating the 12-month period for purposes of determining whether the threshold amount specified in Title 36, section 1754-B, subsection 1-A, paragraph C, subparagraph (2) has been met, the 12-month period begins one year immediately preceding the seller's registering as a retailer pursuant to this Act.