

Memo

To: Joint Standing Committee on Taxation
From: Peter B. Beaulieu, Director, Sales, Fuel and Special Tax Division
Date: August 12, 2009
Re: Material for August 12th meeting

As required by PL 2009, c. 382, “the State Tax Assessor shall provide monthly reports to the Joint Standing Committee on Taxation through April 1, 2010 regarding the State’s activities in implementing the provisions of [Part B] that broaden the sales tax base and increase the sales tax on prepared meals, lodging and rentals of automobiles for less than on year.”

The following is the first of such reports and contains a comprehensive review that will serve as core information for a number of statewide sales tax seminars this September and October. This review provides the statute references and identifies issues that are contemplated or have been brought to our attention. Bullet points identified with a ☑ represent conclusions that MRS is confident meet the intent of the legislation. Bullet points identified with a ► represent conclusions that MRS seeks confirmation from the committee. Lastly, bullet points identified with a △ represent issues where MRS seeks the committee’s advice on implementation.

Chapter 382 also requires that the assessor provide 1) a plan for providing information to taxpayers, 2) progress reports on implementation of the plan and 3) copies of taxpayer guidance materials and proposed bulletins. Following is the information requested:

Information developed for taxpayers (completed)

- June 29, 2009 - Schedule of tax seminars to be held statewide posted to homepage on MRS’ website
- July 1, 2009 - General information posted to homepage on MRS’ website
- July 9, 2009 - Emailed schedule of tax seminars to retail associations also asking for their assistance in promoting seminars
- July 16, 2009 - Schedule of tax seminars mailed to all registered accounts
- July 17, 2009 - Schedule of tax seminars mailed to all Representatives and Senators
- August 5, 2009 - General Informational Bulletin #99 sent to print

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Implementation progress (yet to be completed)

- Meet/report monthly to Tax Committee to update
- Issue press release announcing tax seminars – by August 14th
- Provide tax seminars to explain tax reform – from Aug 31st through Oct 22nd
- Create any necessary rules by October 1, 2009
- Amend approx 37 sales tax bulletins and post to web by November 1, 2009
- Create at least 4 new bulletins on Amusements, Personal Property Services, Repairs and Transportation Services and post to web by November 1, 2009
- Identify need for industry specific notices and create and mail directly to those registered in that industry code by November 1, 2009

Materials published

- Webpage
- Schedule of tax seminars
- GIB 99

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Recap of Changes

Sales tax applies to the following services effective January 1, 2010

- *Amusement, entertainment and recreation services;*
- *Installation, repair and maintenance services;*
- *Personal property services; and*
- *Transportation and courier services.*

Tax rates increase as follows:

- *Effective January 1, 2010, tax increases from 7% to 8.5% on liquor served on-premises; store sales of beer and wine remain at 5%*
- *Effective January 1, 2010, tax increases from 7% to 8.5% on hotel and motel room rentals. It keeps campground rentals at 7%*
- *Effective January 1, 2010, tax increases from 7% to 8.5% on prepared food. Candy would be taxed at 8.5%*
- *Effective October 1, 2009, tax of 10% increases to 12.5% on short term (less than 12 months) rentals of automobiles*

Taxation of rentals changes to the lease stream effective April 1, 2010.

- *With the exception of products located at a manufacturing or fabrication facility*

Candy and soft drink is now defined effective January 1, 2010

- *“Candy” both expands and excludes items previously considered candy*
- *“Soft drink” expands to other items not previously considered soft drinks*

Meals served at retirement facilities will be exempt effective January 1, 2010

Sales of prepared food, lodging or short-term auto rentals to exempt nonprofits will become taxable effective January 1, 2010.

Long distance telecom service for residential customers becomes taxable effective January 1, 2010

A new fee is imposed on taxicab fares from/to airports effective January 1, 2010

Taxable Services Generally

(Sales Tax)

36 MRSA §1752 - Definitions

17-B. Taxable service. “Taxable service” means:

- A. Rental of living quarters in a hotel, rooming house or tourist or trailer camp;
- B. Transmission and distribution of electricity;
- C. Rental or lease of tangible personal property;
- D. Sale of prepaid calling service;
- E. Amusement, entertainment and recreation services;
- F. Installation, repair and maintenance services;
- G. Personal property services; and
- H. Transportation and courier services.

Summary: Taxable services are expanded to include amusement, entertainment and recreation services; installation, repair and maintenance services; personal property services; and transportation and courier services (items E-H). In addition, the rental of automobiles has been replaced with the global rental or lease of tangible personal property (item C).

Where does a service get taxed? How are services sourced?

- **Services are sourced to Maine when:**
 - **Service is provided and used in Maine;**
 - *(clothing is dry cleaned at a business in Portland)*
 - *(boat mooring fees at a marina on Sebago Lake)*
 - *(pet grooming at a pet store in Augusta)*
 - *(Admissions to an amusement park in Maine)*
 - **Service commences in Maine; or**
 - *(hot air balloon ride starts in Maine and lands in NH)*
 - *(Moving services from Bangor to Boston)*
 - *(Leaf-peepers bus tour begins in Portland and travels to points in Maine and well as NH)*
 - **Service is first used in Maine.**
 - *(Electronic equipment is sent to manufacture for repair and is mailed back to Maine)*

36 MRSA §1760 – Exemptions

32-A. Services to certain machinery and equipment. Sales of taxable services performed on machinery and equipment exempt from sales tax under subsections 29 to 32 or subsection 87 or that is eligible for refund or exemption under section 2013.

Summary: All of the taxable services in the list above (items A-H) are exempt if performed upon machinery and equipment that is exempt as:

- *water pollution control facility,*
- *air pollution control facility,*
- *machinery and equipment used in production,*
- *machinery and equipment used in research,*
- *machinery and equipment exempt under Pine Tree Zones and*
- *depreciable machinery and equipment used in commercial farming, commercial fishing and commercial aquaculture.*

82-A. Sales of taxable services delivered outside this State. Sales of taxable services performed on or with respect to tangible personal property located outside this State or when the property is brought into this State for performance of the services, and, following the performance of the services, the seller delivers the property to a location outside this State or to the United States Postal Service, a common carrier or a contract carrier hired by the seller for delivery to a location outside this State for use solely outside this State.

Summary: All of the taxable services in the list above (items A-H) are exempt if performed upon

- *property located out-of-state or*
- *property brought into Maine when the seller returns the property to a location out-of-state.*

- ▶ *MRS believes that the intent of the first phrase of this subsection is to confirm that services occurring on property that is not only located outside the State but remains outside the State is not taxable. Services that are performed on property “brought” to an out-of-state location and returned to Maine are not exempted under this subsection.*

This document is a work in progress and is subject to change.

Amusement, Entertainment and Recreation Services

36 MRSA §1752 - Definitions

1-J. Amusement, entertainment and recreation services. "Amusement, entertainment and recreation services" is defined pursuant to this subsection.

A. "Amusement, entertainment and recreation services" means the following:

(1) Admission fees to entertainment venues and performances, including theaters, movies, lectures, concerts, festivals, amusement parks, water parks, fairgrounds, except for licensed agricultural fairs, race tracks, carnivals, circuses, sports activities, stadiums, amphitheaters, museums, planetariums, animal parks, petting zoos, aquariums, historical sites and convention centers;

Summary: This paragraph addresses all admission fees to entertainment venues and performances.

▶ *This list of examples of entertainment venues and performances IS NOT an all-inclusive list*

With regards to advance ticket sales, the sale of the ticket is the taxable service and the date when the ticket is sold is the taxable moment. If sold prior to January 1, 2010, no tax even if event is in 2010

Admissions include cover charges to bars, clubs, etc. if entertainment is being provided

▶ *MRS believes that the intent was to only tax amusements in Maine.*

(2) Fees charged for participation in or entry to miniature golf courses, billiard parlors, go-cart courses and paintball;

Summary: This paragraph addresses fees charged to participate in specifically mentioned recreational activities. It IS an all-inclusive list.

NOT included, for instance, are such activities as ski lift tickets, bowling alleys, golf courses, swimming pools, skating rinks, tennis or racquetball courts

Fee for dart tournament at local bar is exempt as it is not one of listed participatory sports. Fee for billiard tournament is taxable. If spectators are charged to watch, taxable admission fee

(3) Admission fees charged for exhibition shows such as auto, boat, camping, home, garden, animal and antique shows;

▶ *This list of examples of exhibition shows IS NOT an all-inclusive list allowing other exhibition shows to be taxed as well, such as collector and hobby shows (coins, stamps, guns, trains, etc.)*

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(4) Fees charged for scenic and sight-seeing excursions including aircraft, helicopter, balloon, blimp, watercraft, railroad, bus, trolley and wagon rides, whitewater rafting and guided recreation, but excluding scenic and sight-seeing excursions on federally navigable waters; and

▶ *This list of examples of scenic and sight-seeing excursions IS NOT all-inclusive allowing other scenic and sightseeing excursions to be taxed as well.*

☑ *A haunted hay ride is a wagon ride and is a scenic or sight-seeing excursion*

☑ *“Federally navigable waters” are the tidal waters, the Kennebec River to Moosehead Lake, the Penobscot River to Medway and Lake Umbagog*

△ *Whitewater rafting on the Kennebec is exempt, but taxable on the Allagash*

(5) Entertainment services such as those provided by bands, orchestras, disc jockeys, comedians, clowns, jugglers, children's entertainers and ventriloquists.

▶ *This list of examples of entertainment services IS NOT all-inclusive allowing other entertainment services to be taxed as well, such as exotic dancers, adult entertainment, bachelor parties, private dances, magicians and hypnotists.*

▶ *MRS believes the intent is not to tax both the admissions to a concert and the band's fee for performing. Purchase of entertainment services when an admission fee is charged to see the performance would be exempt as a sale for resale*

☑ *Purchase for resale still applies even if admission fees are exempt: theatrical troupe's fees to a theater or a band at an agricultural fair*

B. "Amusement, entertainment and recreation services" does not include:

(1) Fees charged for admission to a licensed agricultural fair or charges for participation in any events or activities occurring at the fair organized by a school or incorporated nonprofit organization if all the proceeds from the event or activity are used for the charitable purposes of the school or organization;

Summary: By exclusion, this paragraph exempts from tax gate fees to an agricultural fair as well as any event at the fair that is organized by a school or nonprofit org.

☑ *Only gate fees to an agricultural fair are exempt. Other events taking place during the year at the fairgrounds are not excluded.*

☑ *If gate fee includes fees for carnival rides (such as an all-day pass), only the gate fee portion is exempt.*

(2) Fees charged by health clubs and fitness centers;

Summary: By exclusion, this paragraph exempts fees or charges by health clubs and fitness centers.

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(3) Fees charged for lessons or training in dance, music, theater, arts and gymnastics, martial arts and other athletic pursuits; or

Summary: By exclusion, this paragraph exempts charges for certain lessons or training.

▶ ***MRS believes the intent of the term “other athletic pursuits” includes other athletic instruction such as yoga, pilates, golf, basketball, soccer, etc.***

(4) Fees charged for admission to:

(a) Museums and aquariums operated by a governmental entity or incorporated, nonprofit organization;

Summary: By exclusion, this exempts admissions to a museum or aquarium operated by the Federal Government, the State, a county government, a municipality, an agency of government or a 501(c) organization.

(b) Concerts, dance productions, theatrical productions, sports activities or similar events or activities organized and performed by a school or incorporated, nonprofit organization, if all proceeds of the event or activity are used for the charitable purposes of that school or organization; or

Summary: By exclusion, this exempts admissions to a school play, a school band concert, or a dance production or play performed by a nonprofit organization.

△ ***This would not exempt admissions to see a traveling string quartet or a traveling basketball team at a local school as they are not organized and performed by the school nor a dance recital of a local dance school as it is not a 501(c) organization. Was this the intent?***

▶ ***“Proceeds” means net income. Example; what if all ticket sales were by any agent and the agent keeps a percentage of the sales? MRS does not believe the intent was to only address ticket sales by the organization. Percentage kept by the agent is an expense to the organization.***

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(c) Festivals and special events organized by governmental entities, schools or incorporated, nonprofit organizations if all the proceeds of the festival or special event are directed to support a charitable purpose.

Summary: By exclusion, this exempts festivals and special events organized by any governmental entity or agency, schools or 501(c) organizations provided all the proceeds are directed to support the charitable purpose.

△ *What is a “special event”? Any event organized by a government agency, school or nonprofit could be regarded as a “special event”. Since it is combined with “festivals” was the intent to address events similar to festivals? Maybe “special” should be replaced with “similar” as it is in (b).*

△ *Admissions to exhibition shows are taxable, but if the association is a nonprofit, and the show could be regarded as a “special event,” none of the fees in A(3) would be taxable as most if not all of the associations are nonprofits.*

Miscellaneous Issues

- ☑ *Tanning salons and facilities that offer use of a hot tub or spa are personal services and not taxable*
- ☑ *When a ticket sale includes a free t-shirt or a cover charge includes free food or drink, the transaction is considered a sale of both a taxable amusement and a taxable product with a retailer’s discount being applied for the value of the product. The net amount is taxable.*
- ☑ *Booking agents are treated like brokers. Agent is responsible for registration and collection of tax if he/she negotiates the transaction; not responsible if only bringing parties together.*
- ☑ *Sales of tickets by agents are taxable unless proof that fees meet exclusion under B(4)(b).*
- ▶ *Registration requirements of ticket agents and resellers follow nexus standards. If there is nexus, agent/reseller is responsible for collecting sales tax. If no nexus, purchaser is responsible for use tax. As this may be a difficult area to enforce, MRS will examine this further.*

Installation, Repair or Maintenance Services

36 MRSA §1752 - Definitions

14. Sale Price.

B. "Sale price" does not include:

- (1) Discounts allowed and taken on sales;
- (2) Allowances in cash or by credit made upon the return of merchandise pursuant to warranty;
- (3) The price of property returned by customers, when the full price is refunded either in cash or by credit;
- (4) ~~The price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated;~~

Summary: This removes the exclusion from the definition of sale price for separately stated installation or repair labor effectively applying tax to all such charges when part of the sale of tangible personal property.

Was the intent to tax all repair and installation labor charges or only that labor associated with the items listed in 1752(4-A)?

Retreading of tires is a service that is part of the sale of the repair parts (rubber). The entire amount would be taxable rather than 50% exempt under prior law.

36 MRSA §1752 - Definitions

4-A. Installation, repair or maintenance services. "Installation, repair or maintenance services" is defined pursuant to this subsection.

A. "Installation, repair or maintenance services" means:

- (1) All services involved in the installation, repair or maintenance of jewelry, cameras, guns, musical instruments, electronic and mechanical equipment, lawn and garden equipment, computer hardware and office equipment, vehicles and appliances;

Summary: This taxable service is all about labor charges. The above is an all-inclusive list. Installation, repair or maintenance labor applied to any other tangible personal property not listed would be exempt, such as sharpening services on a saw blade or ice skates.

If parts are involved, repair labor would be taxable as a service that is part of the sale.

"Electronic and mechanical equipment" is a broad category and includes TVs, VCRs and audio equipment, to pumps, generators and stationary engines.

Office equipment includes office furniture.

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Inspection sticker fee, although associated with a labor charge for the time to do the inspection, is not taxable as “repair” labor.

Repair labor on snowmobiles is exempt, but taxable on ATVs because of the word “vehicle” that is defined in 1752(7-A) and points to Title 29-A definition. Intent may have been to use “motor vehicle” rather than “vehicle” which, by definition, would include both snowmobiles and ATVs.

(2) Service and maintenance contracts with regard to personal property identified in subparagraph (1):

Summary: This section effectively applies tax to service and maintenance contracts, but only those associated with the items listed in subparagraph 1, such as those sold by vehicle dealers, department stores and electronics stores in conjunction with a sale of recreational vehicles, appliances, electronics, etc. or those sold over the telephone by a warranty company to extend the contract that is about to expire.

Purchase of “damage coverage” as part of a musical instrument sale or rental is a sale of a “service or maintenance contract.”

The taxation of repair labor with respect to warranty work depends on when the warranty was sold. If warranty was taxed, no tax on labor nor parts. If warranty was not taxed, tax on labor charge and parts from repairer to warranty company.

Service or maintenance contracts on snowmobiles are exempt, but taxable on ATVs because of the word “vehicle” that is defined in 1752(7-A) and points to Title 29-A definition. Intent may have been to use “motor vehicle” rather than “vehicle” which, by definition, would include both snowmobiles and ATVs.

(3) Tailoring and clothing and shoe repair; and

Summary: This section effectively applies tax on labor to hem a skirt, take in a pair of trousers or re-sole a pair of shoes.

(4) Furniture repair and restoration.

Summary: This section effectively applies tax on labor to strip a chest of drawers, repair a broken chair, or reupholster a couch.

B. "Installation, repair or maintenance services" does not include:

(1) Services performed on tangible personal property used or held for use at or located at a manufacturing facility or fabrication facility, other than tangible personal property used in administrative support operations; or

Summary: By exclusion, this exempts installation and repair services performed on all machinery located at a manufacturing or fabrication facility as defined, except for property used in admin support operations. Definition of fabrication facility, fabrication services and administrative support operations can be seen below. Definition of manufacturing facility already exists in current statute.

It provides exemption for labor services performed on certain machinery even

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though the machinery itself and repair parts may be taxable. For instance repairs to a forklift would be exempt but repairs to a photo copier are taxable.

- ☑ *Mobile vehicles/equipment if not solely “used or held for use at or located at” a manufacturing or fabrication facility would be taxable even if the repairs are conducted at the facility.*

(2) Services involved in the installation, repair or maintenance of computer software, special mobile equipment, aircraft, watercraft or a truck or truck tractor registered in the name of a business as a commercial motor vehicle under Title 29-A, section 504.

Summary: By exclusion, any installation, repair or maintenance labor on these specific items would be exempt. “Special mobile equipment,” “aircraft” and “watercraft” are currently defined in the sales tax law.

- ☑ *Although repair/maintenance of computer software is excluded, any software service contract that contains updates is considered a bundled transaction containing both taxable components (the update) and non-taxable components (repair labor). Unless the components are separately stated, the entire amount is taxable.*
- ☑ *Repairs to component parts are not excluded if separated from the vehicle such as a boat motor.*
- ☑ *With regards to truck or truck tractors, the truck must be registered in the name of a business and be registered as a commercial motor vehicle. A sole proprietor is a business. If truck or truck tractor has a commercial plate but registration only shows an individual’s name, repairer will have difficulty in documenting an exemption. MRS will need to develop an affidavit for this situation.*

36 MRSA §1752- Definitions

11-A. Retail Sale.

B. “Retail sale” does not include:

(4) The sale of labor and parts used in the performance of repair services under a service or maintenance contract sold on or after January 1, 2010;

Summary: For purposes of installation, repair and maintenance services, subparagraph (4) excludes labor and parts performed and used under a service contract if the contract was taxed to avoid double taxation.

1-I. Administrative support operations. “Administrative support operations” means secretarial activities and supervision of administrative support staff; bookkeeping and accounting services; customer assistance activities; purchasing and receiving activities; human resources activities; and executive, tax compliance and legal support activities.

2-F. Fabrication facility. “Fabrication facility” means a site consisting of at least 35 acres at which the primary business is the performance of fabrication services and any

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activities associated with or in support of fabrication services.

2-G. Fabrication services. "Fabrication services" means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production.

36 MRSA §1760 - Exemptions

94. Services to affiliates. Sales of installation, repair or maintenance services made between affiliated taxpayers that are engaged in a unitary business as defined in section 5102, subsection 10-A.

Summary: This exemption is only on installation, repair or maintenance services and exempts services provided by inter-company employees, for instance, computer repair labor performed by employees of the parent company for one of the subs.

Miscellaneous issues

- Internal repairs to recondition a vehicle for resale becomes part of the selling price of the reconditioned vehicle.*
- If a company performs its own repair work, no use tax on the labor of the employees.*
- Installation and repair to solar panels, furnace, hot water heater, HVAC, plumbing, electrical, ovens, etc. are all repairs to realty, not tangible personal property, and exempt from tax. However some contractors operate as retailers and their labor would be taxable.*

Personal property services

36 MRSA §1752 - Definitions

8-C. "Personal property services" means the following services related to personal property:

Summary: This IS an all-inclusive list. This taxable service is all about labor charges related to personal property.

dry cleaning;

laundry and diaper services not including self-service laundry services;

embroidery and monogramming;

Embroidery and monogramming does not include screen printing or engraving car washing;

▶ *Car washing does not include interior cleaning.*

pressure cleaning and washing;

pet services such as exercising, sitting, training, grooming and boarding for nonmedical purposes;

Pet is now defined to exclude livestock such as horses, so there is no tax on boarding of horses.

Taxable services for seeing-eye dogs are currently exempt under 1760(35), thus pet services for seeing-eye dogs would be exempt.

picture framing;

▶ *MRS believes the intent is to include framing of any tangible personal property such as a certificate, art, poster, jersey, etc. not just literally a "picture."*

domestic services, including house cleaning and furniture and rug cleaning;

▶ *MRS believes the intent of domestic services is only to tax residential service and not business. Thus it would include house cleaning services for a home but not janitorial services for a business.*

△ *What are domestic services? Do they include all services performed in a home to care for the home or to perform activities within the home, not only housekeeping or rug/furniture/drapery cleaning, but also the purchase of an agency's service such as maid, nanny, babysitting, butler, etc.? Do they include services for the exterior of the home such as lawn/gardening services and pool services.*

interior decoration;

▶ *MRS believes the intent of interior decorating is to not only tax the plan or design but also the services associated with implementing the plan, such as staging a home, wallpapering and interior painting*

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meal preparation;

- ☑ *Meal preparation, if only providing the labor, is taxable at 5%. If the ingredients are provided by the chef, the chef is engaged in creating prepared food which is taxable at 8.5%.*

butchering;

art restoration;

► *MRS believes the scope of this service includes photographic restoration warehousing and storage, including rental of storage units and warehouse space, but not including warehousing and storage services provided to a business;*

Summary: Includes self storage, PODS, boat, camper and RV winter storage, and warehouse space but intended only to tax non-commercial storage.

- ☑ *With regard to warehousing and storage, if the invoice is to a business and paid for by that business, it is exempt. This could be an enforcement issue as rental storage units for an individual could easily be exempted simply by funneling the cost through the business.*

moving services;

- ☑ *Moving services from a point in Maine to another point in Maine is taxable. Moving services from a point in Maine to outside of Maine is taxable. Moving services from a point outside of Maine to a point in Maine is exempt.*

vehicle towing; and

- ☑ *Taxable whether paid by the owner of the vehicle or by a third party insurer*

boat mooring.

"Personal property services" does not include

fabrication services;

installation, repair or maintenance services;

Summary: This excludes fabrication services and installation, repair or maintenance services from the term "personal property services" to avoid them being taxed under two different services.

services performed on tangible personal property used or held for use at or located at a manufacturing facility or fabrication facility, other than tangible personal property used in administrative support functions; or

Summary: It also provides an exception for services performed on all machinery located at a manufacturing or fabrication facility as defined, except for property used in admin support operations also defined. It exempts labor services performed on certain machinery even though the machinery itself and repair parts are taxable.

services performed on aircraft including refurbishing of aircraft.

8-C. Pet. "Pet" has the same meaning as under Title 7, section 3907, subsection 22-B.'

Transportation and courier services

36 MRSA §1752 - Definitions

20-B. Transportation and courier services. “Transportation and courier services” means in-state transportation of persons or property by limousine and courier services. For the purposes of this Part, “limousine service” means livery service hired for a specific event.

Summary: This taxable service is limited to limousine and courier services. Limousine service that is otherwise akin to a taxi service is not taxable, such as a limousine service from Rockland to Portland Jetport. “Hired for a specific event” would be a wedding, prom, anniversary, etc.

- The wording “in-state transportation of persons or property” modifies both “courier services” and “limousine”*
- Only “in-state” transportation is taxable. A limousine service that brings the bride from Kittery to the wedding ceremony in Portsmouth would be exempt.*
- Fee charged by funeral home for use of limousine would qualify under the current exemption in 1760(24) for” sales of funeral services.”*
- Services by CAP are not included; more like a taxi service.*
- “Courier services” provide intercity and/or local delivery of parcels providing point-to-point pickup and delivery to serve their customers’ needs. “Courier services” do not include postal services such as USPS, UPS, DHL, and FedEx.*

Lease and Rentals

In summary:

- *Each lease/rental would become taxable*
- *No use tax would be paid when the lessor purchases such equipment for rental.*
- *To transition into this new approach, no refunds will be provided for use tax previously paid by lessor on the purchase, no matter how recent the equipment was purchased. (the main reason why this is effective on April 1, 2010.)*
- *Tax payment is accelerated to the first month. For instance, a 36 month lease for \$200/mo would have a tax liability of \$360 that would be due in the first month of the lease.*
- *Statute also addresses those situations when leased equipment enters the State or leaves the State during a lease term and when a lease is terminated.*
- *The only exception to this new approach is with respect to leases of equipment located at a manufacturing or fabrication facility. In such cases, the status quo is maintained, meaning the lessor continues to pay use tax and no sales tax on lease payments.*

36 MRSA §1752 - Definitions

5-D. Lease or rental. "Lease" or "rental" includes sublease or subrental and means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

Summary: This provides a definition of what a lease or rental is. It not only includes the original lease but also renewals and extensions.

- Right to use (of photograph, art, software) is a lease/rental. Right to use custom software is not since it is not tangible personal property.*
- A charge to use computer/internet at an internet café is not a rental of tangible personal property.*
- Lease/rental examples: recreational equipment such as golf clubs, golf carts, ski equipment, bicycles, ice and roller skates, and bowling shoes; equipment such as construction equipment, dumpsters, porta-potties, lawn and garden equipment, office equipment, rug shampooers and tools; vehicles such as boats, paddle boats, canoes, kayaks, RVs, motorcycles, moving vans, snowmobiles, ATVs, scooters and mopeds; clothing, jewelry and accessories such as tuxedos, gowns, necklaces, purses and wedding dresses; party equipment such as cotton candy machine, popcorn machine, tables, chairs, linens, place settings, tents, and inflatable bounce rooms; and function room rentals (not the room itself) such as microphones, podium, screens, and AV equipment.*

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A. "Lease" or "rental" includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in Section 7701(h)(1) of the Code.

Summary: Specifically, a lease or rental includes what is commonly referred to as a TRAC lease.

B. "Lease" or "rental" does not include:

(1) Any transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(2) Any transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 and 1% of the total required payments; or

(3) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this paragraph, an operator must do more than maintain, inspect or set up the tangible personal property.

Summary: By exclusion, leases and rentals do not include installment contracts, a lease in lieu, and providing tangible personal property along with an operator, such as the use of an excavator and operator for \$100/hr.

36 MRSA §1752 - Definitions

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes ~~leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase~~ lease or rental of tangible personal property.

11-A. Retail sale. "Retail sale" means any sale, lease or rental of tangible personal property or a taxable service in the ordinary course of business.

△ *A lease or rental is identified in the statute as both a sale and a taxable service? MRS recommends that the lease or rental of tangible personal property be categorized only as a taxable service. Changes to 1752(11-A) and (13) are needed.*

This document is a work in progress and is subject to change.

11-A. Retail sale.

B. "Retail sale" does not include:

(9) The sale, to a person engaged in the business of renting or leasing tangible personal property, of tangible personal property for lease or rental except for property located at a manufacturing or fabrication facility.

Summary: With regard to leases and rentals, subparagraph (9) excludes the purchase of property that will be rented/leased in order to avoid double taxation. It does not exclude property purchased for lease/rental if the property is located at a manufacturing or fabrication facility.

▶ *Repair parts for the leased property are taxable as they are not excluded.*

21. Use. "Use" includes the exercise in this State of any right or power over tangible personal property incident to its ownership, including the derivation of income, whether received in money or in the form of other benefits, by a lessor from the rental of ~~tangible personal property~~ property located at a manufacturing or fabrication facility located in this State.

☑ *The definition of "use" still includes deriving rental income but only with regard to rentals of property located at a manufacturing or fabrication facility. This supports the status quo in this area.*

△ *Problems will occur when a manufacturing or fabrication facility is renting equipment on a short term basis. Such renters may not be able to distinguish inventory for this purpose. Although status quo may be adequate for long term leases, it will be difficult to administer for most short-term rentals.*

36 MRSA §1754-B - Registration

C. Every lessor engaged in the leasing of tangible personal property located in this State ~~that does not maintain a place of business in this State but makes retail sales to purchasers from this State;~~

Summary: Requires that every lessor of property in Maine must register.

36 MRSA §1758 is repealed.

Summary: "Interim rentals" is repealed since all rentals are taxable.

36 MRSA §1760 - Exemptions

45. Certain property purchased outside State. Sales of property purchased and used by the present owner outside the State:

A. If the property is an automobile, as defined in Title 29-A, section 101, subsection 7, and if the owner is an individual who was, at the time of purchase, a resident of the other state and either employed or registered to vote there;

A-1. If the property is a watercraft that is registered outside the State by an owner who is an individual who was a resident of another state at the time of purchase and the watercraft is present in the State not more than 30 days during the 12 months following its purchase for a purpose other than temporary storage;

A-2. If the property is a snowmobile or all-terrain vehicle as defined in Title 12, section 13001 and the purchaser is an individual who is not a resident of the State;

A-3. If the property is an aircraft not exempted under subsection 88 and the owner at the time of purchase was a resident of another state or tax jurisdiction and the aircraft is present in this State not more than 20 days during the 12 months following its purchase, exclusive of days during which the aircraft is in this State for the purpose of undergoing "major alterations," "major repairs" or "preventive maintenance" as those terms are described in 14 Code of Federal Regulations, Appendix A to Part 43, as in effect on January 1, 2005. For the purposes of this paragraph, the location of an aircraft on the ground in the State at any time during a day is considered presence in the State for that entire day, and a day must be disregarded if at any time during that day the aircraft is used to provide free emergency or compassionate air transportation arranged by an incorporated nonprofit organization providing free air transportation in private aircraft by volunteer pilots so children and adults may access life-saving medical care; or

B. For more than 12 months in all other cases.

Property, other than automobiles, watercraft, snowmobiles, all-terrain vehicles and aircraft, that is required to be registered for use in this State does not qualify for this exemption unless it was registered by its present owner outside this State more than 12 months prior to its registration in this State. If property required to be registered for use in this State was not required to be registered for use outside this State, the owner must be able to document actual use of the property outside this State for more than 12 months prior to its registration in this State. For purposes of this subsection, "use" does not include storage but means actual use of the property for a purpose consistent with its design. This exemption does not apply to leased property.

Summary: The exemption for property purchased out-of-state doesn't apply to leased property. If leased property enters Maine, the lease payments start being taxable in Maine regardless of how long the property has been out of state.

36 MRSA §1817 – Sales Tax Imposition

§ 1817. Accelerated payment of tax on leases and rentals

Except as provided in section 1818, the tax imposed by this Part on the rental or lease of tangible personal property must be collected by the lessor at the time the property that is the subject of the lease is delivered to the lessee or at the time the initial payment under the lease is required to be made by the lessee, whichever is earlier, on the basis of the total amount of the consideration to be paid by the lessee under the terms of the lease agreement. If the total amount of the consideration for the lease includes amounts that are not calculated at the time the lease is executed, the tax attributable to those amounts must be collected by the lessor at the time those amounts are billed to the lessee. In the case of an open-end lease, the tax must be collected by the lessor on the basis of the total amount to be paid during the initial fixed term of the lease, and then for each subsequent renewal period as it comes due. For purposes of this section, "consideration" includes, without limitation, the amount of any down payment, trade-in credit or 3rd-party rebate that is applied to reduce the cost of the leased property upon which the lease payments are computed. This section does not apply to a lease associated with a sale and leaseback transaction when that sale and leaseback occurs within 90 days of the lessee's original purchase of the equipment.

Summary: This section accelerates the payment of tax to the first month of the lease. The tax is based on the total amount of consideration including down payments, trade-in credits or rebates that reduce the cost of the leased property. A sale/leaseback that occurs within 90 days of the lessee's original purchase is not subject to an additional tax on the leaseback.

§ 1818. Leases and rentals of manufacturing or fabrication facility property

With regard to property located at a manufacturing or fabrication facility, the tax imposed by this Part must be paid by the lessor based on the acquisition cost of the machinery or equipment. Lease or rental payments by the lessee or renter are not subject to tax under this Part.

Summary: This maintains the status quo for leases of products at a manufacturing or fabrication facility.

36 MRSA §1861 – Use Tax Imposition

§ 1861.Imposition

A tax is imposed, at the respective rate provided in section 1811, on the storage, use or other consumption in this State of tangible personal property or a taxable service, the sale of which would be subject to tax under section 1764 or 1811. Every person so storing, using or otherwise consuming is liable for the tax until the person has paid the tax or has taken a receipt from the seller, as duly authorized by the assessor, showing that the seller has collected the sales or use tax, in which case the seller is liable for it. Retailers registered under section 1754-B or 1756 shall collect the tax and make

This document is a work in progress and is subject to change.

remittance to the assessor. The amount of the tax payable by the purchaser is that provided in the case of sales taxes by section 1812. When tangible personal property is leased outside the State and subsequently brought into the State, the tax due under this section is the proportion of the tax otherwise due under this Part that the remaining portion of the lease bears to the entire term of the lease. When tangible personal property purchased for resale is withdrawn from inventory by the retailer for the retailer's own use, use tax liability accrues at the date of withdrawal.

Summary: This section addresses the use tax on leased property coming into Maine. Tax applies to the remaining lease payments.

§ 1862. Taxes paid in other jurisdictions

~~The use tax provisions of chapters 211 to 225 shall imposed by this Part does not apply with respect to the use, storage or other consumption in this State of purchases outside the State where the purchaser has paid a sales or use tax equal to or greater than the amount imposed by chapters 211 to 225 this Part in another taxing jurisdiction, the proof of payment of the tax to be according to rules made by the State Tax Assessor. If the amount of sales or use tax paid in another taxing jurisdiction is not equal to or greater than the amount of tax imposed by chapters 211 to 225 this Part, then the purchaser shall pay to the State Tax Assessor an amount sufficient to make the total amount of tax paid in the other taxing jurisdiction and in this State equal to the amount imposed by chapters 211 to 225 this Part. When tangible personal property is leased outside the State and subsequently brought into the State, the credit allowed under this section may not exceed the proportion of the tax otherwise due under this Part that the period for which the property was leased in the other taxing jurisdiction bears to the entire term of the lease.~~

Summary: Credit would be allowed for tax paid in another state, for instance, in those states that accelerate their lease payments.

36 MRSA §2020 - Refunds

§ 2020. Removal from the State of leased property

If leased property with respect to which the tax imposed by this Part has been paid on an accelerated basis is permanently removed from the State, the lessee is entitled to a refund of the tax allocable to that portion of the lease that remains in effect after the property has been removed from the State. A refund may not be issued unless the taxing jurisdiction to which the property is removed allows a corresponding refund or does not impose tax on any portion of the lease of property that remains after the property is removed from that taxing jurisdiction. A refund may not be issued if the other taxing jurisdiction allows a credit to the lessee for the sales or use tax paid in this State on the lease transaction. The refund must be requested in accordance with the provisions of section 2011.

Summary: This section allows refunds for tax paid when the leased property leaves Maine. No refund unless the other state reciprocates or does not impose a tax on the remaining payments in the other state.

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§ 2021. Early termination of lease

If a lease on property with respect to which the tax imposed by this Part has been paid on an accelerated basis is terminated by the lessee before the expiration of the lease term, the lessee is entitled to a refund of the tax allocable to that portion of the remaining lease payments. A refund may not be issued if the early termination is the result of an option to purchase the leased property or the lease has been terminated due to nonpayment.

Summary: Allows a refund for early termination of leases. No refund if the early termination is part of a purchase option or the lease was terminated by the lessor because of default.

Application date. Those portions of this Part that affect the taxation of leases and rentals of tangible personal property apply to leases entered into, extended or renewed on or after April 1, 2010.

Summary: Effective date for the change in taxation of leases is April 1, 2010. Main reason why this differs from the January 1, 2010 effective date for the rest of this legislation is so that lessors and lessees can plan accordingly.

Miscellaneous Issues

- If lessee's use of the leased property is outside of Maine (located in another state), the lease is exempt even though lease document is executed in Maine.*
- Rental of uniforms/carpets/etc where the items are periodically picked up by the lessor for laundering is not a taxable rental when the lessee is using the property outside of Maine. Laundering services are considered a service that is part of the sale (the rental of the uniforms) and are likewise exempt if the rental is exempt.*
- Cell phone contracts are a telecommunications services issue and not a lease/rental issue. Early termination fees, for instance, are taxable as telecom services.*
- The rental of a bucket of golf balls at a driving range is a taxable rental.*
- Entity exemptions in 1760 include lease/rental to exempt organizations.*
- Product or use exemptions in 1760 do not necessarily include leases of product. ("Sales of machinery and equipment" as distinguished from "Sales or leases of the following vehicles to a person that is not a resident of this State.")*

Candy

36 MRSA §1752 - Definitions

1-K. Candy. "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces and that does not contain flour or require refrigeration.

Summary: Provides a definition of "candy." This definition comes from the Streamlined Sales and Use Tax Agreement and is now a common definition in at least 24 states.

- This definition would expand the sales tax to items such as fruit roll-ups, marshmallows, confectionery baking ingredients such as chocolate chips, caramel corn, caramel apples, and trail mix containing candy.*
- This definition would exempt currently taxable items such as Twix® and Whoppers® as they would not be considered candy because they contain flour.*
- If an item is not candy, it is then exempt as a grocery staple.*

8-A. Prepared food. "Prepared food" means:

- A. Meals served on or off the premises of the retailer;
- B. Food and drinks that are prepared by the retailer and ready for consumption without further preparation; ~~and~~
- C. All food and drinks sold from an establishment whose sales of food and drinks that are prepared by the retailer account for more than 75% of the establishment's gross receipts; and
- D. Candy.

"Prepared food" does not include bulk sales of grocery staples.

Summary: This adds "candy" to the definition of prepared food.

36 MRSA §1811 – Sales Tax Imposition

A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is ~~7%~~8.5% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; ~~7%~~8.5% on the value of rental of living quarters in any hotel, rooming house or tourist ~~or trailer~~ camp; 7% on the value of rental of living quarters in a trailer camp; ~~10%~~12.5% on the value of rental for a period of less than one year of an automobile, including a loaner vehicle that is provided other than to a motor vehicle dealer's service customers pursuant to a manufacturer's or dealer's warranty; ~~7%~~8.5% on the value of prepared food; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided. The value of rental for a period of less than one year of an automobile is the total rental charged to the lessee and includes, but is not limited to, maintenance and service contracts, drop-off or pick-up fees, airport surcharges, mileage fees and any separately itemized charges on the rental agreement to recover the owner's estimated costs of the charges imposed by government authority for title fees, inspection fees, local excise tax and agent fees on all vehicles in its rental fleet registered in the State. All fees must be disclosed when an estimated quote is provided to the lessee.

Summary: This increases the tax on prepared food from 7% to 8.5%. Since candy is prepared food by definition, the tax on candy increases from 5% to 8.5% (or in some situations from 7% to 8.5%).

Soft Drink

36 MRSA §1752 - Definitions

14-F. Soft drink. “Soft drink” means any nonalcoholic beverage that contains natural or artificial sweeteners. “Soft drink” does not include any beverage that contains milk or milk products, greater than 50% of vegetable or fruit juice by volume or flavored or unflavored soy milk, rice milk, almond milk, grain milk and similar milk substitutes.

Summary: Provides a definition of “soft drink.” This definition comes from the Streamlined Sales and Use Tax Agreement and is a common definition in at least 24 states.

- In addition to continuing the sales tax on carbonated soda, the definition expands the sales tax to all beverages containing less than 51% vegetable or fruit juice, such as Gatorade, fruit punch drinks, and juice drinks/cocktails.*
- Beverages containing any milk product are exempt.*

Exemptions

36 MRSA §1752 - Definitions

11-B. Retirement facility. “Retirement facility” means a facility that includes residential dwelling units where, on an average monthly basis, at least 80% of the residents of the facility are persons 62 years of age or older.

36 MRSA §1760 - Exemptions

6. Certain Meals. Sales of meals:

E. Served by colleges to employees of the college when the meals are purchased with debit cards issued by the colleges; ~~and~~

F. Served by youth camps licensed by the Department of Health and Human Services and defined in Title 22, section 2491, subsection 16.; ~~and~~

G. Served by a retirement facility to its residents when the cost of the meals is included in a comprehensive fee that includes the right to reside in a residential dwelling unit and meals or other services, whether that fee is charged annually, monthly, weekly or daily.

Summary: Meals served at a retirement facility will be exempt prospectively.

92. Certain services. Sales of services that are subject to taxation under chapter 358.

Summary: This exemption from sales tax avoids applying double taxes to services already taxed under the service provider tax statute; video rentals, fabrication services, rental of furniture, and repairs to telecommunications equipment.

93. Certain taxable services. The sale of a taxable service sold by a person that has made sales taxable under this Part during the most recent calendar year of no more than \$5,000.

Summary: This exemption is intended to exempt from tax any small service provider, such as teenager performing clown acts at children’s birthday parties during the summer months or a homemaker providing house cleaning services to an elderly neighbor.

△ *The phrase “during the most recent calendar year” begs the question “what happens to a new account just starting up with no sales in the prior year?”*

△ *If a person had under \$5,000 in the prior year, this would exempt current year sales no matter what the volume of sales are.*

△ *If a new account is to consider what its expected sales will be this year and that amount exceeds the \$5,000 threshold, what happens to the first \$5,000?*

△ *Casual rentals in §1764 allows for the rentals of less than 15 days to be exempt. What happens if they have 15 or more days but is still less than \$5,000. Is this exemption to apply?*

This document is a work in progress and is subject to change.

A possible solution is the following:

93. Certain taxable services. Except as provided in section 1764, the sale of a taxable service sold by a person that annually makes no more than \$5,000 of sales taxable under this Part.

△ *Although not a complete fix, it:*

- *Excludes this exemption from the casual renter issue. Thus 15 days or more would be taxable regardless of the sales volume.*
- *Establishes the threshold as an annual amount.*

△ *MRS would administer this exemption as follows:*

- *If a person does not intend to exceed \$5,000, they would not need to register nor would the person collect tax (if sales remained under \$5,000).*
- *However, if during the year the person exceeds \$5,000, they would need to register and would be responsible for tax even on the first \$5,000 of sales.*
- *This approach is currently used in the casual renter situation. If they haven't registered nor collected and they exceed 14 days of rentals, tax applies to the first 14 days of rentals.*

36 MRSA §1760-C - Exemptions

§ 1760-C. Exempt activities

The tax exemptions provided by section 1760 to a person based upon its charitable, nonprofit or other public purposes apply only if the property or service purchased is intended to be used by the person primarily in the activity identified by the particular exemption. The tax exemptions provided by section 1760 to a person based upon its charitable, nonprofit or other public purposes do not apply where title is held or taken by the person as security for any financing arrangement. Exemption certificates issued by the State Tax Assessor pursuant to section 1760 must identify the exempt activity and must state that the certificate may be used by the holder only when purchasing property or services intended to be used by the holder primarily in the exempt activity. If the holder of an exemption certificate furnishes that certificate to a person for use in purchasing tangible personal property or taxable services that are physically incorporated in, and become a permanent part of, real property that is not used by the holder of the certificate primarily in the exempt activity, the State Tax Assessor may assess the unpaid tax against the holder of the certificate as provided in section 141. When an otherwise qualifying person is engaged in both exempt and nonexempt activities, an exemption certificate may be issued to the person only if the person has established to the satisfaction of the assessor that the applicant has adequate accounting controls to limit the use of the certificate to exempt purchases. The tax exemptions provided by section 1760 to a person based upon its charitable, nonprofit or other public purposes, except for those exemptions provided in section 1760, subsection 6, do not apply to the sale of meals or lodging or the rental of automobiles.

This document is a work in progress and is subject to change.

Summary: Restricts the exemption that sales tax exempt non-profits have for purchases they make. Imposes sales tax on the exempt organization when it purchases meals, hotel rooms or rentals of automobiles. Allows the exemptions found in 1760(6) to continue to apply, such as meals sold by a youth camp to a hospital, church or school group.

- ▶ ***Sales of prepared food, lodging or short term rentals to the Federal Government, State Government, county or local governments remain exempt. MRS suggests adding subsection 1 and 2 to the exception for clarity.***

Tax Rates

36 MRSA §1811 – Sales Tax Imposition

A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is ~~7%~~8.5% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; ~~7%~~8.5% on the value of rental of living quarters in any hotel, rooming house or tourist ~~or trailer~~ camp; 7% on the value of rental of living quarters in a trailer camp; ~~10%~~12.5% on the value of rental for a period of less than one year of an automobile, including a loaner vehicle that is provided other than to a motor vehicle dealer's service customers pursuant to a manufacturer's or dealer's warranty; ~~7%~~8.5% on the value of prepared food; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided. The value of rental for a period of less than one year of an automobile is the total rental charged to the lessee and includes, but is not limited to, maintenance and service contracts, drop-off or pick-up fees, airport surcharges, mileage fees and any separately itemized charges on the rental agreement to recover the owner's estimated costs of the charges imposed by government authority for title fees, inspection fees, local excise tax and agent fees on all vehicles in its rental fleet registered in the State. All fees must be disclosed when an estimated quote is provided to the lessee.

- Tax increases from 7% to 8.5% on liquor served on-premises; store sales of beer and wine remain at 5%*
- Tax increases from 7% to 8.5% on hotel and motel room rentals. It keeps campground rentals at 7%.*
- Rental of camper on a site by a campground is 7% rental of living quarters*
- Rental of a camper by an RV dealer is 5% rental of tangible personal property.*
- Rental of a cabin, park model and other RVs at a campground is taxable at 7%.*
- If a motel also has a campground, motel rentals are subject to 8.5% tax while the campground rentals are subject to a 7% tax.*
- Tax increases from 7% to 8.5% on prepared food. Candy would be taxed at 8.5%.*
- The tax of 10% increases to 12.5% on short term (less than 12 months) rentals of automobiles.*

36 MRSA §1812

1. Computation. Every retailer must add the sales tax imposed by section 1811 to the sale price on all sales of tangible personal property and taxable services that are subject to tax under this Part. The tax when so added is a debt of the purchaser to the retailer until it is paid and is recoverable at law by the retailer from the purchaser in the same manner as the sale price. When the sale price involves a fraction of a dollar, the tax computation must be carried to the 3rd decimal place, then rounded down to the next whole cent whenever the 3rd decimal place is one, 2, 3 or 4 and rounded up to the next whole cent whenever the 3rd decimal place is 5, 6, 7, 8 or 9.

2. Several items. When several purchases are made together and at the same time, the tax ~~must~~may be computed on each item individually or on the total amount of the several items, ~~except that purchases taxed at different rates must be separately totaled as~~ the retailer may elect.

Summary: Removes our bracket system and replaces it with a conventional rounding algorithm.

Service Provider Tax

36 MRSA §2557 - Exemptions

33. International telecommunications service. Sales of international telecommunications service to a business; and

34. Interstate telecommunications service. Sales of interstate telecommunications service to a business.

Summary: These two exemptions found in the service provider tax statute are restricted to only the long distance telephone service sold to a business. Residential service of long distance calls will become taxable.

△ *What is a business? This exemption could be misapplied simply in a coding change.*

△ *At the end of the first regular session of the 124th, MRS' minor substantive bill was amended in the Senate to add the following:*

For the purposes of subsections 33 and 34, in determining whether a particular customer is a business or nonbusiness customer, a telecommunications company may rely upon existing customer classifications maintained in its books and records, such as "individual," "consumer," "enterprise," "business," "corporate" or "government." A telecommunications company is not required to change the customer classifications the telecommunications company maintains in its books and records. If as a result of an audit a telecommunications company is required to change a customer's status to that of a business customer or to a nonbusiness customer for purposes of applying the tax, the change applies prospectively only.

If a customer is incorrectly classified as a business, on January 1, 2010 they will be treated as exempt on their long distance service. The above does not require the telecom provider to verify the accuracy of their records and also holds them harmless if, on audit, these errors are found.

△ *Due to pending federal court cases, providers will not allow MRS to review names and addresses of telecom customers. If this continues, we will have no ability to verify the accuracy of customer classifications.*

Airport transportation fee

36 MRSA

CHAPTER 720

AIRPORT TRANSPORTATION FEE

§ 4851. Airport transportation fee imposed

A fee of \$1 per passenger is imposed on a taxicab operator or a limousine operator, not subject to sales tax under Part 3, for each conveyance originating from or terminating at a commercial airport.

§ 4852. Administration

The fee imposed by this chapter is administered as provided in chapter 7 and Part 3, with the fee imposed pursuant to this chapter to be considered as imposed under Part 3.

Summary: A new fee will be imposed on taxicab/limousine operators at the rate of \$1 per passenger and is only on fares that originate or terminate at a commercial airport. The fee is to be administered the same way as sales tax. A new line will be added to the sales tax return.

- “At a commercial airport” means the entire facility; BIA includes General Aviation*
- Commercial airport means any airport with regularly scheduled commercial passenger service.*
- MRS believes the intent is only conveyances to/from a commercial airport in Maine.*
- A hotel or car rental company providing a free shuttle service to/from the airport is operating as a “taxicab or limousine operator” and is subject to the \$1 fee per passenger.*
- An airport shuttle to/from parking areas is not subject to this fee.*