

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 1064 - L.D. 1452

An Act Regarding the Collection of the Sales and Use Tax by Marketplace Facilitators

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

Sec. 1. 36 MRSA §1752, sub-§6-E, 6-F and 6-G are enacted to read:

6-E. Marketplace. "Marketplace" means a physical or electronic location, including, but not limited to, a store, a booth, an Internet website, a catalog or a dedicated sales software application, where tangible personal property or taxable services are offered for sale, regardless of whether the marketplace, marketplace facilitator, marketplace seller or tangible personal property is physically present in this State.

6-F. Marketplace facilitator. "Marketplace facilitator" means any person that facilitates a retail sale by providing a marketplace that lists, advertises, stores, or processes orders for tangible personal property or taxable services for sale by marketplace sellers and directly, or indirectly through one or more agents, contractors or affiliated persons, does any of the following:

A. Transmits or otherwise communicates an offer by the marketplace seller or an acceptance between the customer and marketplace seller;

B. Collects payment from the customer and transmits that payment to the marketplace seller; or

C. Engages in any of the following activities with respect to the marketplace seller's products or taxable services:

(1) Fulfillment or storage services;

(2) Customer service; or

(3) Accepting or assisting with returns or exchanges.

For the purposes of this subsection, "affiliated person" means a person that, with respect to another person, has a direct or indirect ownership interest of more than 5% in the other person or is related to the other person because a 3rd person, or group of 3rd persons who

are affiliated persons, holds a direct or indirect ownership interest of more than 5% in the related person.

A marketplace facilitator does not include a public utility as defined in Title 35-A, section 102.

6-G. Marketplace seller. "Marketplace seller" means any person that makes retail sales through a marketplace operated by a marketplace facilitator.

Sec. 2. 36 MRSA §1754-B, sub-§1, as amended by PL 2017, c. 375, Pt. A, §§4 and 5, is repealed.

Sec. 3. 36 MRSA §1754-B, sub-§1-A, as amended by PL 2013, c. 546, §10, is further amended to read:

1-A. Persons presumptively required to register. This subsection defines the basis for and obligations associated with the rebuttable presumption created by this subsection that a seller not registered under subsection ~~1~~ 1-B 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 as 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 as 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. 4. 36 MRSA §1754-B, sub-§§1-B and 1-C are enacted to read:

1-B. Persons required to register. Except as otherwise provided in this section and section 1951-C, the following persons, other than casual sellers, shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part:

A. Every person that has a substantial physical presence in this State and that makes sales of tangible personal property or taxable services in this State, including, but not limited to:

(1) Every person that makes sales of tangible personal property or taxable services, whether or not at retail, that maintains in this State any office, manufacturing facility, distribution facility, warehouse or storage facility, sales or sample room or other place of business;

(2) Every person that makes sales of tangible personal property or taxable services that does not maintain a place of business in this State but makes retail sales in this State or solicits orders, by means of one or more salespeople within this State, for retail sales within this State; and

(3) 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;

B. Every person that makes sales of tangible personal property or taxable services for delivery into this State if:

(1) The person's gross sales from delivery of tangible personal property or taxable services into this State in the previous calendar year or current calendar year exceeds \$100,000; or

(2) The person sold tangible personal property or taxable services for delivery into this State in at least 200 separate transactions in the previous calendar year or the current calendar year;

C. Every person that has a substantial physical presence in this State 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;

D. Every agent, representative, salesperson, solicitor or distributor that has a substantial physical presence in this State 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;

E. Every person that manages or operates in the regular course of business or on a casual basis a hotel, rooming house or tourist or trailer camp in this State or that collects or receives rents on behalf of a hotel, rooming house or tourist or trailer camp in this State;

F. Every person that operates a transient rental platform and reserves, arranges for, offers, furnishes or collects or receives consideration for the rental of living quarters in this State;

G. Every room remarketer;

H. Every person that makes retail sales in this State of tangible personal property or taxable services on behalf of the owner of that property or the provider of those services;

I. Every person not otherwise required to be registered that sells tangible personal property to the State and is required to register as a condition of doing business with the State pursuant to Title 5, section 1825-B;

J. Every person that holds a wine direct shipper license under Title 28-A, section 1403-A; and

K. A marketplace facilitator if:

(1) The marketplace facilitator's gross sales from delivery of tangible personal property or taxable services into this State in the previous calendar year or current calendar year exceeds \$100,000; or

(2) The marketplace facilitator sold or facilitated sales of tangible personal property or taxable services for delivery into this State in at least 200 separate transactions in the previous calendar year or the current calendar year.

For the purposes of this paragraph, the marketplace facilitator's gross sales and total number of transactions include sales facilitated on behalf of marketplace sellers and any sales of tangible personal property or taxable services made directly by the marketplace facilitator.

1-C. Certain activities. For purposes of subsection 1-B, the following activities do not constitute substantial physical presence in this State:

A. 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;

B. Attending trade shows, seminars or conventions in this State;

C. Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;

D. Maintaining a bank account or banking relationship in this State; or

E. Using a vendor in this State for printing.

Sec. 5. 36 MRSA §1759, as amended by PL 2017, c. 375, Pt. H, §1, is further amended to read:

§1759. Bonds

Either as a condition for issuance or subsequent to the issuance of a registration certificate under section 1754-B; ~~or 1756 or 1951-B~~, the State Tax Assessor may require from a taxpayer a bond written by a surety company qualified to do business in this State, in an amount and upon conditions to be determined by the assessor. In lieu of a bond the assessor may accept a deposit of money or securities in an amount and of a kind acceptable to the assessor. The deposit must be delivered to the Treasurer of State, who shall safely keep it subject to the instructions of the assessor.

Sec. 6. 36 MRSA §1861-A, as amended by PL 2007, c. 240, Pt. W, §1 and affected by §2, is further amended to read:

§1861-A. Reporting use tax on individual income tax returns

The assessor shall provide that individuals report use tax on items with a sale price of \$5,000 or less on their Maine individual income tax returns. Taxpayers are required to attest to the amount of their use tax liability for the period of the tax return. Alternatively, they may elect to report an amount that is ~~.08%~~ .04% of their Maine adjusted gross income. A taxpayer electing to satisfy a use tax liability by estimating it shall calculate the liability in accordance with the use tax table. The estimated liability is applicable only to purchases of any individual items each having a sale price no greater than \$1,000. For each taxable item with a sale price greater than \$1,000 but no more than \$5,000, the actual use tax liability for each purchase must be added to the amount of the estimated liability derived from the use tax table. Upon subsequent review, if use tax liability for the period of the return exceeds the amount of use tax paid with the return, a credit of that amount paid relative to the item or items being supplementarily assessed is allowed. Use tax on any item with a sale price of more than \$5,000 must be reported in accordance with section 1951-A.

Sec. 7. 36 MRSA §1951-B, as enacted by PL 2017, c. 245, §1 and affected by §2, is repealed.

Sec. 8. 36 MRSA §1951-C is enacted to read:

§1951-C. Collection of tax by marketplace facilitators and marketplace sellers

This section governs the collection, reporting and remittance of sales and use tax by marketplace facilitators and marketplace sellers.

1. Responsibilities of marketplace facilitator. A marketplace facilitator is considered a retailer for each sale of tangible personal property or taxable services for delivery in this State that the marketplace facilitator facilitates on or through its marketplace.

2. Written statement between marketplace facilitators and marketplace sellers. A marketplace facilitator shall provide to a marketplace seller that sells tangible personal property or taxable services through the marketplace operated by the marketplace facilitator a written statement in which the marketplace facilitator explicitly provides that the marketplace facilitator will collect and remit the taxes imposed pursuant to this Part on all taxable sales the marketplace facilitator facilitates for the marketplace seller.

3. Responsibilities of marketplace seller. For sales facilitated by a marketplace facilitator, when the marketplace seller has received a written statement from the marketplace facilitator that satisfies the requirements of subsection 2:

A. The marketplace seller shall exclude sales under this section for the purposes of determining the registration requirements of the marketplace seller under section 1754-B, subsection 1-B, paragraph B;

B. A marketplace seller required to register under section 1754-B, subsection 1-B, paragraph A may not include the receipts from sales under this section in its total of taxable sales for purposes of its return filed pursuant to section 1951-A; and

C. A marketplace seller that holds a registration certificate with the State, when the marketplace seller is not required to register under section 1754-B, subsection 1-B, paragraph A, may not report sales under this section for purposes of its return filed pursuant to section 1951-A.

4. Room remarketers and transient rental platforms. Subsections 1 to 3 do not apply to the rental of living quarters by a room remarketer or through a transient rental platform.

Sec. 9. Application date. This Act applies to sales occurring on or after October 1, 2019, except that the section of this Act that amends the Maine Revised Statutes, Title 36, section 1861-A applies to tax years beginning on or after January 1, 2019.