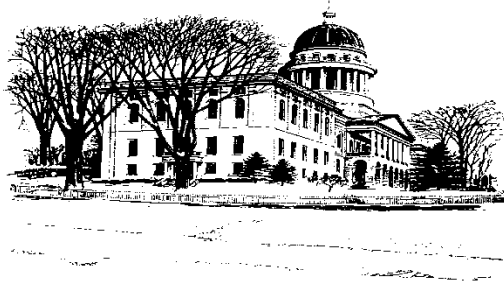


STATE OF MAINE



STAFF REPORT TO THE JOINT STANDING COMMITTEE ON TAXATION

STATE SALES TAX AUTHORITY OVER REMOTE SELLERS

January 15, 2014

Pursuant to Public Law 2013, chapter 200

Staff:
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Office of Fiscal and
Program Review



**STAFF REPORT
STATE SALES TAX AUTHORITY OVER
REMOTE SELLERS**

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STATE SALES TAX AUTHORITY OVER REMOTE SELLERS

EXECUTIVE SUMMARY

I. Background

Public Law 2013, chapter 200 directed the Office of Fiscal and Program Review (OFPR) to prepare a report for the Joint Standing Committee on Taxation concerning the Streamlined Sales and Use Tax Agreement (SSUTA) and any pending or recently enacted federal legislation that provides states with the authority to compel remote sellers to collect and remit sales tax on purchases made by residents of those states. The office was directed to:

1. Provide information regarding federal legislative activity authorizing states to require remote sellers to collect and remit sales tax;
2. Identify options available to Maine under federal legislation and the steps necessary to compel remote sellers to collect and remit tax to Maine;
3. Identify changes that are needed in Maine statutes to implement participation in the SSUTA and other options available to provide conformity with federal options;
4. Identify the impact of each option identified; and
5. Explain any fiscal and policy issues associated with conformity with the Streamlined Sales and Use Tax Agreement (SSUTA).

Forty-five states and the District of Columbia impose a sales and use tax. Sales tax is collected by the retailer from the purchaser and remitted to the State. According to decisions of the United States Supreme Court, a state does not have the authority to require remote sellers (sellers located outside the state) to collect sales tax on sales to purchasers in the state unless the seller has nexus with the state. Use taxes are the corollary of the sales tax and are imposed directly on purchasers in instances where the retailer is not required to collect the tax; however, collecting the tax from purchasers has proved to be difficult for states and much use tax remains uncollected.

The Streamlined Sales and Use Tax Project was organized in March 2000 by the National Governors' Association, the National Conference of State Legislatures, the Federation of Tax Administrators and the Multistate Tax Commission to address concerns regarding the burden imposed on remote sellers to administer a system to collect taxes for over 1,000 state and local taxing jurisdictions with varying tax rates and different tax bases. The SSUTA was developed by members of the project to provide a framework to reduce

the burden on remote sellers by establishing a voluntary system for states that choose to participate by providing for a more uniform tax base and a centralized collection and remittance process. The SSUTA took effect October 1, 2005 and currently has 24 full conforming member states and many advisory states such as Maine who participate in SSUTP discussions but are not voting members. Although the SSUTA is currently operational and some remote sellers have voluntarily begun to collect and remit sales taxes for member states, action by Congress is still necessary to authorize states to require remote sellers to collect and remit sales tax. In 2001, the Maine Legislature authorized the State Tax Assessor to enter the SSUTA; however, entering the agreement would require the amendment of Maine tax's laws to be in conformity with the agreement. Legislation has been presented in the Maine Legislature several times over the last 12 years to provide that conformity, but none have been enacted.

As part of PL 2013, chapter 200, the Legislature enacted changes to the sales tax law, based on New York law, expanding the concept of “substantial physical presence” for purposes of nexus to include remote sellers that contract with an affiliated person with substantial physical presence in the state that provides that the affiliated person will refer potential customers to the seller by a link on an Internet website, by telemarketing or by an in-person presentation or otherwise and the cumulative gross receipts from referrals exceed \$10,000 in the preceding 12 months unless the seller can demonstrate that the affiliate did not engage in any activity in the State that was significantly associated with the sellers ability to establish or maintain a market in the State. The United States Supreme Court has recently declined to hear an appeal of a New York Court of Appeals decision upholding the New York law. The adoption of affiliate nexus in chapter 200 was estimated to increase sales tax revenue by \$250,000 in fiscal year 2013-14, \$400,000 in fiscal year and \$500,000 in fiscal years 2015-16 and 2016-17.

II. Duties assigned by Public Law 2013, chapter 200

A. 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;

Bills have been introduced in Congress periodically to permit states to require remote sellers to collect and remit state and local sales taxes. Most recently, on May 6, 2013 the Senate passed S. 743, the Marketplace Fairness Act. The House version of the bill, H.R. 684 has been referred to the House Judiciary Committee and may be scheduled for hearings this coming Spring. Analysts from national organizations following the issue in Congress indicate that, as of December 2013,

it is uncertain whether the House of Representatives will take action in 2014. Other federal legislation on this issue is not anticipated.

B. 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 in Maine;

The Marketplace Fairness Act provides that a state may require remote sellers to collect and remit sales tax if the State becomes a member of the SSUTA or the State pursues an alternative approach specified under the Marketplace Fairness Act.

C. Identify changes that are needed in Maine statutes to implement participation in the SSUTP and other options identified

Please see Appendix C for an analysis by Maine Revenue Services identifying the changes in Maine law that would be required to conform to the SSUTA and the estimated fiscal impact of those changes.

D. Identify the impact of each option identified; and

1. SSUTA. The Legislature will need to make choices with regard to uniformity with the SSUTA. The agreement remains a voluntary agreement, however. The agreement still imposes no binding requirement on remote sellers, although many larger remote sellers are participating.

2. Marketplace Fairness Act. The impact will depend on the final language of the Act and may contain ambiguous or provisions that would need to be challenged through the court system as no other dispute resolution system is provided by the Act.

E. Explain any fiscal and policy issues associated with conformity with the agreement under the SSUTA.

1. Policy issues. Maine Revenue Services has provided an in depth analysis of the relationship between the SSUTA and Maine Statutes. The

Legislature would need to decide which options were preferred before legislation could be drafted. The options available are identified in Appendix C.

2. Fiscal issues. The fiscal impact of SSUTA changes is identified in Appendix D.

I. Background

A. Public Law 2013, chapter 200

Public Law 2013, chapter 200¹ directed the Office of Fiscal and Program Review (OFPR) to prepare a report for the Joint Standing Committee on Taxation concerning the Streamlined Sales and Use Tax Agreement (SSUTA) and any pending or recently enacted federal legislation that provides states with the authority to compel remote sellers to collect and remit sales tax on purchases made by residents of those states. The office was directed to:

6. Provide information regarding federal legislative activity authorizing states to require remote sellers to collect and remit sales tax;
7. Identify options available to Maine under federal legislation and the steps necessary to compel remote sellers to collect and remit tax to Maine;
8. Identify changes that are needed in Maine statutes to implement participation in the SSUTA and other options available to provide conformity with federal options;
9. Identify the impact of each option identified; and
10. Explain any fiscal and policy issues associated with conformity with the agreement under the SSUTA.

OFPR has received much appreciated information and analysis from Maine Revenue Services regarding the status of the SSUTA and the steps that would be necessary for Maine to participate. The report required by Chapter 200 report, along with different proposals for legislation to conform to the SSUTA, must be submitted to the Taxation Committee by January 15, 2014. The Committee is authorized to submit a bill on the subject matter to the Second Regular Session of the 126th Legislature.

B. State sales and use tax authority

Forty-five states and the District of Columbia impose a sales and use tax. The taxes generally apply to retail sales of tangible personal property and specified services. Sales tax is collected by the retailer from the purchaser and remitted to

¹ See Appendix A.

the State. According to decisions of the United States Supreme Court,² a state does not have the authority to require remote sellers (sellers located outside the state) to collect sales tax on sales to purchasers in the state unless the seller has nexus with the state.³ Use taxes are the corollary of the sales tax and are imposed directly on purchasers in instances where the retailer is not required to collect the tax; however, collecting the tax from purchasers has proved to be difficult for states and much use tax remains uncollected. A University of Tennessee study estimates that uncollected revenue from remote sales subject to use tax in Maine was \$65,430,824.⁴

C. Streamlined Sales and Use Tax Project

The Streamlined Sales and Use Tax Project was organized in March 2000 by the National Governors' Association, the National Conference of State Legislatures, the Federation of Tax Administrators and the Multistate Tax Commission to address concerns regarding state taxation of remote sales. In the *National Belles Hess* and *Quill* cases the Supreme Court placed emphasis on the burden imposed on remote sellers to administer a system to collect taxes for over 1,000 state and local taxing jurisdictions with varying tax rates and different tax bases. The SSUTA was developed by members of the project to provide a framework to reduce the burden on remote sellers by establishing a voluntary system for states that choose to participate by providing for a more uniform tax base and a centralized collection and remittance process.

The SSUTA took effect October 1, 2005 and currently has 24 full conforming member states and many advisory states such as Maine who participate in SSUTP discussions but are not voting members. The SSUTA is overseen by a governing board of member states that certify tax technology systems and certified service providers and make decisions with regard to state compliance with the

² *National Belles Hess, Inc. v. Illinois* 386 U.S. 753 (1967); *Quill v. North Dakota* 504 U.S. 298 (1992). The Court indicated in *Quill* that remote sales, as interstate commerce, are subject to regulation by Congress and that Congress has the power to authorize the States to require remote sellers to collect and remit sales tax.

³ "Nexus" means a substantial presence in the state. The substantial presence test may be met by having a physical location in the state, employing agents to procure or service sales made in the state or similar relationships.

⁴ Study results for all are states reported on the website of the National Conference of State Legislatures: <http://www.ncsl.org/research/telecommunications-and-information-technology/2012-uncollected-use-tax.aspx>

requirements of the project⁵. Although the SSUTA is currently operational and some remote sellers have voluntarily begun to collect and remit sales taxes for member states, action by Congress is still necessary to authorize states to require remote sellers to collect and remit sales tax.

In 2001, the Maine Legislature enacted 36 MRSA chapter 921 authorizing the State Tax Assessor to enter the SSUTA⁶; however, entering the agreement would require the amendment of Maine tax's laws to be in conformity with the agreement. Legislation has been presented in the Maine Legislature several times over the last 12 years to provide that conformity, but none have been enacted.

D. Enhanced nexus

As part of PL 2013, chapter 200, the Legislature enacted changes to the sales tax law, based on New York law, expanding the concept of “substantial physical presence” for purposes of nexus to include remote sellers that contract with an affiliated person with substantial physical presence in the state that provides that the affiliated person will refer potential customers to the seller by a link on an Internet website, by telemarketing or by an in-person presentation or otherwise and the cumulative gross receipts from referrals exceed \$10,000 in the preceding 12 months unless the seller can demonstrate that the affiliate did not engage in any activity in the State that was significantly associated with the sellers ability to establish or maintain a market in the State. The United States Supreme Court has recently declined to hear an appeal of a New York Court of Appeals decision upholding the New York law.⁷ The adoption of affiliate nexus in chapter 200 was estimated to increase sales tax revenue by \$250,000 in fiscal year 2013-14, \$400,000 in fiscal year and \$500,000 in fiscal years 2015-16 and 2016-17.

II. Duties assigned by Public Law 2013, chapter 200

A. 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;

⁵ There are currently six certified service providers that have been approved by the SSUTA governing board to receive payments from remote sellers and transfer them to the appropriate state and local jurisdictions.

⁶ PL 2001, c. 496.

⁷ *Overstock.com v New York Taxation Department*, No. 13-252; *Amazon.com v. New York Taxation Department*, 13-259.

1. Marketplace Fairness Act

Bills have been introduced in Congress periodically to permit states to require remote sellers to collect and remit state and local sales taxes. Most recently, on May 6, 2013 the Senate passed S. 743, the Marketplace Fairness Act⁸. The House version of the bill, H.R. 684 has been referred to the House Judiciary Committee and may be scheduled for hearings this coming Spring. Analysts from national organizations following the issue in Congress indicate that, as of December 2013, it is uncertain whether the House of Representatives will take action in 2014. Other federal legislation on this issue is not anticipated.

B. 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 in Maine;

The Marketplace Fairness Act provides that a state may require remote sellers to collect and remit sales tax if 1) the state is a member of the SSUTA or 2) the state pursues an alternate approach.

1. Becoming a member of the SSUTA. Maine could amend its law to conform to the Streamlined Sales and Use Tax Agreement. If Maine is to become a member of the SSUTA, some changes would be required in the state's sales and use tax laws in order to meet the requirements of the project. The state would need to enact conforming legislation and apply to the SSUTA governing board for a determination that the state meets the requirements of the Act. The legislative changes necessary to conform Maine's sales and use tax laws and the fiscal impact of those changes are identified in Appendix C.

2. Pursuing an alternative approach. Maine could make changes in the sales and use tax law to meet the alternative requirements of the Marketplace Fairness Act. Under the S. 743 version of Marketplace Fairness Act, states pursuing an alternative approach must take steps identified in the following section to ease the burden of remote sellers over whom the state proposes to exercise jurisdiction.

⁸ See Appendix B for text of S. 743.

It should be noted that the Marketplace Fairness Act does not permit states to impose collection obligations on remote sellers with \$1 million or less in gross annual receipts from remote sales in the prior calendar year.

Analysts familiar with the consideration of the Marketplace Fairness Act on the federal level indicate that it is likely that any version of the Act that might be adopted by the House will be different from the Senate version enacted in 2013⁹. They also indicate that there are ambiguities in the law that would need to be resolved to facilitate implementation, maximize uniformity amongst the states and protect against legal challenges to state implementation. Under the Act, the major actions that a State must take to qualify for authority are the following.

Steps needed to compel remote retailers to collect tax. The State must enact legislation to exercise authority over remote sellers that:

- a. Specifies the tax or taxes to which the authority applies and any products or services to which the authority does not apply;
- b. Implements minimum simplification requirements including
 - i. A single state entity for administration, including centralized registration of seller, for state and local sales and use tax sourced to the State
Steps to comply. Maine currently has a single state entity administering sales and use tax.
 - ii. A single audit of a remote seller for all jurisdictions in the State;
Steps to comply. Maine has a single sales tax audit.
 - iii. A single sales and use tax return to be used by remote sellers;
Steps to comply. Maine has a single sales and use tax return.
 - iv. Provide a uniform statewide sales and use tax base;
Steps to comply. Maine's sales and use tax base is uniform.

⁹ Meeting with Maine Revenue Services and SSUTP certified software providers, Augusta, Maine , December 17, 2013.

- v. Use destination sourcing;
Steps to comply. *Maine currently uses destination sourcing.*

- vi. Provide information regarding taxability and exemption of products and services and a rates and boundary database;
Steps to comply. *Maine would need to prepare this information for remote sellers. The absence of a local sales tax in Maine makes this information uniform statewide.*

- vii. Provide to remote retailers free software that calculates sales and use tax owed and files sales and use tax returns
Steps to comply. *Software products will need to be developed. The State would need to contract with a provider or develop its own materials. Certified service providers under the SSUTP are preparing to provide this function under contract with states.*

If Maine were to adopt a local sales tax, the Streamlined sales tax would require uniformity with regard to many aspects of the local tax.

C. Identify changes that are needed in Maine statutes to implement participation in the SSUTP and other options identified

Please see Appendix C for an analysis by Maine Revenue Services identifying the changes in Maine law that would be required to conform to the SSUTA and the estimated fiscal impact of those changes.

D. Identify the impact of each option identified; and

1. SSUTA. The Streamlined Sales and Use Tax Agreement has been in place for more than 10 years. Although it provides a much more complicated process for compliance, it also has had most of the ambiguities and concerns worked out and provides an established process for states to receive answers to questions about compliance. The SSUTA remains a voluntary agreement, however. The agreement still imposes no binding requirement on remote sellers, although many larger remote sellers are participating.

2. Marketplace Fairness Act. The Marketplace Fairness Act would legally authorize states to require remote sellers to collect sales tax subject to the conditions of the Act; however, observers note that the final language of the Act is not yet known and may contain ambiguous or objectionable provisions that would need to be challenged through the court system as no other dispute resolution system is provided by the Act.

E. Explain any fiscal and policy issues associated with conformity with the agreement under the SSUTA.

1. Policy issues. Maine Revenue Services has provided an in depth analysis of the relationship between the SSUTA and Maine Statutes. This analysis is contained in Appendix C. In many instances, the SSUTA provisions provide options for the State to choose to achieve compliance. The Legislature would need to decide which options were preferred before legislation could be drafted. The options available are identified in Appendix C. Major areas that would need to be addressed in legislation include the following.

a) The SSUTA provides that a state may not have more than one sales tax rate. Maine has 3: the general rate, currently 5.5 %, the 8% rate on meals and lodging and the 10% rate on short-term auto rentals. The SSUTA provides an exception for auto rentals; however, some change would need to be made with regard to meals and lodging. Several options are available. Please see the discussion under “Section 308” in Appendix C.

b) Although Maine has traditionally applied destination based sourcing rules, statutory changes would be needed to formalize that treatment, including the treatment of “other direct mail” and certain telecommunications.

c) Several of Maine’s definitions covering exemptions and other terms are not in compliance with the SSUTA. Statutory changes would be needed. These changes require the Legislature to decide whether to expand or restrict the scope of several exemptions. Please see Appendix C for further detail.

d) The SSUTA does not permit caps or thresholds on the application of sales tax unless the state assumes the administrative responsibility in a manner that places no additional burden on the retail. Maine has several

thresholds that would need to be addressed. Please see Appendix C for a listing.

e) Numerous administrative and technical changes would be needed to ensure full compliance with the SSUTA.

2. Fiscal issues. The fiscal impact of SSUTA changes is identified in Appendix D.

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Appendix A

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.

Appendix B

113TH CONGRESS
1ST SESSION

S. 743

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2013

Referred to the Committee on the Judiciary

AN ACT

To restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Marketplace Fairness
3 Act of 2013”.

4 **SEC. 2. AUTHORIZATION TO REQUIRE COLLECTION OF**
5 **SALES AND USE TAXES.**

6 (a) STREAMLINED SALES AND USE TAX AGREE-
7 MENT.—Each Member State under the Streamlined Sales
8 and Use Tax Agreement is authorized to require all sellers
9 not qualifying for the small seller exception described in
10 subsection (c) to collect and remit sales and use taxes with
11 respect to remote sales sourced to that Member State pur-
12 suant to the provisions of the Streamlined Sales and Use
13 Tax Agreement, but only if any changes to the Stream-
14 lined Sales and Use Tax Agreement made after the date
15 of the enactment of this Act are not in conflict with the
16 minimum simplification requirements in subsection (b)(2).
17 A State may exercise authority under this Act beginning
18 180 days after the State publishes notice of the State’s
19 intent to exercise the authority under this Act, but no ear-
20 lier than the first day of the calendar quarter that is at
21 least 180 days after the date of the enactment of this Act.

22 (b) ALTERNATIVE.—A State that is not a Member
23 State under the Streamlined Sales and Use Tax Agree-
24 ment is authorized notwithstanding any other provision of
25 law to require all sellers not qualifying for the small seller
26 exception described in subsection (c) to collect and remit

1 sales and use taxes with respect to remote sales sourced
2 to that State, but only if the State adopts and implements
3 the minimum simplification requirements in paragraph
4 (2). Such authority shall commence beginning no earlier
5 than the first day of the calendar quarter that is at least
6 6 months after the date that the State—

7 (1) enacts legislation to exercise the authority
8 granted by this Act—

9 (A) specifying the tax or taxes to which
10 such authority and the minimum simplification
11 requirements in paragraph (2) shall apply; and

12 (B) specifying the products and services
13 otherwise subject to the tax or taxes identified
14 by the State under subparagraph (A) to which
15 the authority of this Act shall not apply; and

16 (2) implements each of the following minimum
17 simplification requirements:

18 (A) Provide—

19 (i) a single entity within the State re-
20 sponsible for all State and local sales and
21 use tax administration, return processing,
22 and audits for remote sales sourced to the
23 State;

1 (ii) a single audit of a remote seller
2 for all State and local taxing jurisdictions
3 within that State; and

4 (iii) a single sales and use tax return
5 to be used by remote sellers to be filed
6 with the single entity responsible for tax
7 administration.

8 A State may not require a remote seller to file
9 sales and use tax returns any more frequently
10 than returns are required for nonremote sellers
11 or impose requirements on remote sellers that
12 the State does not impose on nonremote sellers
13 with respect to the collection of sales and use
14 taxes under this Act. No local jurisdiction may
15 require a remote seller to submit a sales and
16 use tax return or to collect sales and use taxes
17 other than as provided by this paragraph.

18 (B) Provide a uniform sales and use tax
19 base among the State and the local taxing juris-
20 dictions within the State pursuant to paragraph
21 (1).

22 (C) Source all remote sales in compliance
23 with the sourcing definition set forth in section
24 4(7).

25 (D) Provide—

1 (i) information indicating the tax-
2 ability of products and services along with
3 any product and service exemptions from
4 sales and use tax in the State and a rates
5 and boundary database;

6 (ii) software free of charge for remote
7 sellers that calculates sales and use taxes
8 due on each transaction at the time the
9 transaction is completed, that files sales
10 and use tax returns, and that is updated to
11 reflect rate changes as described in sub-
12 paragraph (H); and

13 (iii) certification procedures for per-
14 sons to be approved as certified software
15 providers.

16 For purposes of clause (iii), the software pro-
17 vided by certified software providers shall be ca-
18 pable of calculating and filing sales and use
19 taxes in all States qualified under this Act.

20 (E) Relieve remote sellers from liability to
21 the State or locality for the incorrect collection,
22 remittance, or noncollection of sales and use
23 taxes, including any penalties or interest, if the
24 liability is the result of an error or omission
25 made by a certified software provider.

1 (F) Relieve certified software providers
2 from liability to the State or locality for the in-
3 correct collection, remittance, or noncollection
4 of sales and use taxes, including any penalties
5 or interest, if the liability is the result of mis-
6 leading or inaccurate information provided by a
7 remote seller.

8 (G) Relieve remote sellers and certified
9 software providers from liability to the State or
10 locality for incorrect collection, remittance, or
11 noncollection of sales and use taxes, including
12 any penalties or interest, if the liability is the
13 result of incorrect information or software pro-
14 vided by the State.

15 (H) Provide remote sellers and certified
16 software providers with 90 days notice of a rate
17 change by the State or any locality in the State
18 and update the information described in sub-
19 paragraph (D)(i) accordingly and relieve any re-
20 mote seller or certified software provider from
21 liability for collecting sales and use taxes at the
22 immediately preceding effective rate during the
23 90-day notice period if the required notice is
24 not provided.

1 (c) SMALL SELLER EXCEPTION.—A State is author-
2 ized to require a remote seller to collect sales and use taxes
3 under this Act only if the remote seller has gross annual
4 receipts in total remote sales in the United States in the
5 preceding calendar year exceeding \$1,000,000. For pur-
6 poses of determining whether the threshold in this section
7 is met, the gross annual receipts from remote sales of 2
8 or more persons shall be aggregated if—

9 (1) such persons are related to the remote seller
10 within the meaning of subsections (b) and (c) of sec-
11 tion 267 or section 707(b)(1) of the Internal Rev-
12 enue Code of 1986; or

13 (2) such persons have 1 or more ownership re-
14 lationships and such relationships were designed
15 with a principal purpose of avoiding the application
16 of these rules.

17 **SEC. 3. LIMITATIONS.**

18 (a) IN GENERAL.—Nothing in this Act shall be con-
19 strued as—

20 (1) subjecting a seller or any other person to
21 franchise, income, occupation, or any other type of
22 taxes, other than sales and use taxes;

23 (2) affecting the application of such taxes; or

24 (3) enlarging or reducing State authority to im-
25 pose such taxes.

1 (b) NO EFFECT ON NEXUS.—This Act shall not be
2 construed to create any nexus or alter the standards for
3 determining nexus between a person and a State or local-
4 ity.

5 (c) NO EFFECT ON SELLER CHOICE.—Nothing in
6 this Act shall be construed to deny the ability of a remote
7 seller to deploy and utilize a certified software provider
8 of the seller’s choice.

9 (d) LICENSING AND REGULATORY REQUIRE-
10 MENTS.—Nothing in this Act shall be construed as permit-
11 ting or prohibiting a State from—

12 (1) licensing or regulating any person;

13 (2) requiring any person to qualify to transact
14 intrastate business;

15 (3) subjecting any person to State or local taxes
16 not related to the sale of products or services; or

17 (4) exercising authority over matters of inter-
18 state commerce.

19 (e) NO NEW TAXES.—Nothing in this Act shall be
20 construed as encouraging a State to impose sales and use
21 taxes on any products or services not subject to taxation
22 prior to the date of the enactment of this Act.

23 (f) NO EFFECT ON INTRASTATE SALES.—The provi-
24 sions of this Act shall apply only to remote sales and shall
25 not apply to intrastate sales or intrastate sourcing rules.

1 States granted authority under section 2(a) shall comply
2 with all intrastate provisions of the Streamlined Sales and
3 Use Tax Agreement.

4 (g) NO EFFECT ON MOBILE TELECOMMUNICATIONS
5 SOURCING ACT.—Nothing in this Act shall be construed
6 as altering in any manner or preempting the Mobile Tele-
7 communications Sourcing Act (4 U.S.C. 116–126).

8 **SEC. 4. DEFINITIONS AND SPECIAL RULES.**

9 In this Act:

10 (1) CERTIFIED SOFTWARE PROVIDER.—The
11 term “certified software provider” means a person
12 that—

13 (A) provides software to remote sellers to
14 facilitate State and local sales and use tax com-
15 pliance pursuant to section 2(b)(2)(D)(ii); and

16 (B) is certified by a State to so provide
17 such software.

18 (2) LOCALITY; LOCAL.—The terms “locality”
19 and “local” refer to any political subdivision of a
20 State.

21 (3) MEMBER STATE.—The term “Member
22 State”—

23 (A) means a Member State as that term is
24 used under the Streamlined Sales and Use Tax

1 Agreement as in effect on the date of the enact-
2 ment of this Act; and

3 (B) does not include any associate member
4 under the Streamlined Sales and Use Tax
5 Agreement.

6 (4) PERSON.—The term “person” means an in-
7 dividual, trust, estate, fiduciary, partnership, cor-
8 poration, limited liability company, or other legal en-
9 tity, and a State or local government.

10 (5) REMOTE SALE.—The term “remote sale”
11 means a sale into a State, as determined under the
12 sourcing rules under paragraph (7), in which the
13 seller would not legally be required to pay, collect,
14 or remit State or local sales and use taxes unless
15 provided by this Act.

16 (6) REMOTE SELLER.—The term “remote sell-
17 er” means a person that makes remote sales in the
18 State.

19 (7) SOURCED.—For purposes of a State grant-
20 ed authority under section 2(b), the location to
21 which a remote sale is sourced refers to the location
22 where the product or service sold is received by the
23 purchaser, based on the location indicated by in-
24 structions for delivery that the purchaser furnishes
25 to the seller. When no delivery location is specified,

1 the remote sale is sourced to the customer’s address
2 that is either known to the seller or, if not known,
3 obtained by the seller during the consummation of
4 the transaction, including the address of the cus-
5 tomer’s payment instrument if no other address is
6 available. If an address is unknown and a billing ad-
7 dress cannot be obtained, the remote sale is sourced
8 to the address of the seller from which the remote
9 sale was made. A State granted authority under sec-
10 tion 2(a) shall comply with the sourcing provisions
11 of the Streamlined Sales and Use Tax Agreement.

12 (8) STATE.—The term “State” means each of
13 the several States, the District of Columbia, the
14 Commonwealth of Puerto Rico, Guam, American
15 Samoa, the United States Virgin Islands, the Com-
16 monwealth of the Northern Mariana Islands, and
17 any other territory or possession of the United
18 States, and any tribal organization (as defined in
19 section 4 of the Indian Self-Determination and Edu-
20 cation Assistance Act (25 U.S.C. 450b)).

21 (9) STREAMLINED SALES AND USE TAX AGREE-
22 MENT.—The term “Streamlined Sales and Use Tax
23 Agreement” means the multi-State agreement with
24 that title adopted on November 12, 2002, as in ef-

1 fect on the date of the enactment of this Act and as
2 further amended from time to time.

3 **SEC. 5. SEVERABILITY.**

4 If any provision of this Act or the application of such
5 provision to any person or circumstance is held to be un-
6 constitutional, the remainder of this Act and the applica-
7 tion of the provisions of such to any person or cir-
8 cumstance shall not be affected thereby.

9 **SEC. 6. PREEMPTION.**

10 Except as otherwise provided in this Act, this Act
11 shall not be construed to preempt or limit any power exer-
12 cised or to be exercised by a State or local jurisdiction
13 under the law of such State or local jurisdiction or under
14 any other Federal law.

Passed the Senate May 6, 2013.

Attest:

NANCY ERICKSON,

Secretary.

Appendix C

Maine Revenue Services
December 31, 2013

Review of Streamlined Sales Tax Agreement's Article III
"Requirements Each State Must Accept to Participate"

Section 301: State Level Administration

Each member state shall provide state level administration of sales and use taxes subject to the Agreement.

This issue has more of an impact on those states that have local option taxes where each municipality administers its own tax. The requirement is that each state has only one administrative arm for sales and use tax. Maine provides a state-level administration of sales and use taxes through the Department of Administrative and Financial Services, Bureau of Revenue Services ("MRS"). If Maine was to consider the imposition of local option taxes, MRS would need to be responsible for administration of the local option tax.

Current: Maine meets this requirement.

Changes required: None

Section 302: State and Local Tax Bases

The tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law.

This issue impacts those sales that have local option taxes where the local tax applies to a different base than the state sales tax. At the present time this does not affect Maine. If Maine was to consider a local option tax, the local option tax would need to apply to all products and services that are subject to the state rate. In other words, Maine could not enact a local option tax only on a few select products or services.

The Agreement does exclude from this issue sales of fuel used to power motor vehicles, aircraft, locomotives, or watercraft, sales of electricity, piped natural or artificial gas or other fuels delivered by the seller and retail sales of motor vehicles, aircraft, watercraft, modular homes, manufactured homes and mobile homes. As a result, Maine could impose a local option tax on the sales of automobiles only, for instance, and still be in compliance with the Agreement.

Current: Maine does not have local option taxes.

Changes required: None

Section 303: Seller Registration

Each member state shall participate in an online sales and use tax registration system in cooperation with the other member states.

Any seller wishing to register as part of the Agreement will have the ability to use an on-line centralized registration system¹. States must be willing and able to electronically accept this information to register the seller in their state.

¹ This on-line system was up and running on October 1, 2005.

Current: Maine has no system currently in place for accepting electronic data to register a seller.

Changes required: Although no change to the statute is needed regarding this issue, this area will require administrative resources to enable us to receive this data and upload the data to our MERITS system.

Section 304: Notice for State Tax Changes

Each member state shall lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base.

Maine must make a reasonable effort to provide sellers with advance notice of rate and legislative changes as well as limit the effective date of a rate change to the first day of a calendar quarter. The Agreement goes on to state that our failure to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect taxes for that state. However, a state that fails to provide at least 30 days notice shall relieve the seller of liability for failing to collect if the seller collected tax at the previous rate and the seller's failure to collect at the new rate does not extend beyond 30 days after the date of enactment.

Current: Current procedures within MRS provide for timely notification of any legislative change. MRS historically recommends that all changes have an effective date of at least 90 days after enactment in order to provide sufficient time for notice to retailers. Our future recommendations would continue this request but would also add a date certain equal to the beginning of a calendar quarter. This may impact the legislature's ability to enact a change sooner. It will be important that the legislature understands the importance of the agreement and the problems that may occur if a rate change effective date is something other than the first day of a calendar quarter.

Changes required: Possibly need statute to require MRS to provide notice within 30 days of a change in law and, if MRS fails to, allow the seller relief from collection of sales tax for no more than 30 days after the effective date.

Section 305: Local Rate and Boundary Changes (see also Section 307)

Each member state that has local jurisdictions that levy a sales or use tax shall provide that rate changes will be effective on the first day of a calendar quarter after a minimum of sixty days' notice to sellers and provide and maintain a database of boundary changes for all taxing jurisdictions, among other requirements.

This section provides sellers with timely notification of local tax rate changes so that the seller can make timely changes to their systems. States will be responsible for creating rates and boundary databases for use by sellers. For instance, if all Maine municipalities had a local tax, MRS would create a database of all the nine digit zip codes in Maine and the applicable local sales tax rate for each jurisdiction. The seller could then upload this information to their computer system and apply the correct rate based on the zip code of the destination.

Current: Maine does not have local option taxes.

Changes required: None

Section 306: Relief from Certain Liability

Each member state shall relieve sellers and CSPs using databases pursuant to Section 305 from liability to the member state and local jurisdiction for having charged and collected the incorrect

amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by a member state on tax rates, boundaries or taxing jurisdiction assignments.

Maine must relieve sellers and Certified Service Providers (“CSP”) (those acting as agents for sellers in the collection and remittance of sales tax) from additional sales/use tax resulting from seller or CSP relying on erroneous data provided by Maine on any of its databases for tax rates, boundaries, or taxing jurisdiction assignments. In short, if MRS provides the wrong information, the seller is held harmless.

Current: Notwithstanding the fact that Maine has little risk on this issue since we have one general state rate, no local option taxes, and no local boundary issues, our statute does not currently support abatement of tax for erroneous information provided by MRS. Abatement of penalties does exist when MRS provides erroneous information.

Changes required: Since this section is referring to databases created under Section 305 (*Local Rate and Boundary Changes*), no change is needed to our current statute. This would need to be considered in the event Maine was to impose a local option tax.

Section 307: Database Requirements and Exceptions

Provides requirements for database formats required in Section 305.

Current: Maine does not have local option taxes.

Changes required: Since this section is referring to databases created under Section 305 (*Local Rate and Boundary Changes*), no change is needed to our current statute. This would need to be considered in the event Maine was to impose a local option tax.

Section 308: State and Local Tax Rates

No member state shall have multiple state sales and use tax rates.

For those states with local taxes, the state shall not have more than one local rate per jurisdiction.

Maine cannot have multiple sales and use tax rates. The Agreement does provide an exception of a single additional rate on food and food ingredients and drugs. Likewise, local jurisdictions can not have more than one rate per jurisdiction. This provision does not apply to sales of fuel used to power motor vehicles, aircraft, locomotives, or watercraft, sales of electricity, piped natural or artificial gas or other fuels delivered by the seller and retail sales of motor vehicles, aircraft, watercraft, modular homes, manufactured homes and mobile homes.

Current: Maine has three rates; 5.5%, 8% and 10%. Food, food ingredients, (prescription) drugs and aircraft are currently exempt from sales tax. The 5.5% tax currently applies to the other listed excepted items, with the exception of short-term auto rentals which is subject to the 10% rate. Since the Agreement defines “retail sale” or “sale at retail” to mean “...any sale, lease or rental...”, the rate relief for motor vehicles would also apply to leases. The 10% rate can remain in place.

Changes required: In order to conform to the Agreement, Maine’s general sales tax rate of 5.5% (or some compromised rate) would apply across the board to all taxable sales and taxable services. Any proposal would need to address the following issues:

- Prepared food is currently subject to a 8% tax
- Rentals of lodging is currently subject to a 8% tax

Alternatives to consider:

- Apply 5.5% across the board and repeal the 8% tax

- Apply a compromised rate across the board; increasing the 5.5% rate and lowering the 8% rate accordingly.
- Reduce the 8% tax to 5.5% and create a “tourism” tax to impose the additional 2.5% taxes.
- Repeal the sales tax on prepared food and lodging and create a “tourism” tax to address these areas.

Statute to amend: § 1811

Section 309: Application of General Sourcing Rules and Exclusions from the Rules

Each member state shall agree to require sellers to source the retail sale of a product in accordance with Section 310.

The Agreement uses destination in determining where a sale is sourced. For example, if a person in Maine makes a purchase from a remote seller located in New Jersey and has that seller deliver the product to Missouri, the sale is sourced to Missouri (the destination state), and under the Agreement, the seller would collect Missouri’s sales tax.

The Agreement’s sourcing rules do not apply to florist sales, sales of watercraft, modular homes, manufactured homes and mobile homes, and sales of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment. Sourcing of these transactions is according to the requirements of each member state.

Current: Maine has historically applied this same destination-based approach, with the exception of floral deliveries². If a Maine retailer delivers a product outside of Maine, no Maine sales tax applies.

Changes required: Sourcing rules will either need to be addressed in the statute, by rule or by bulletin; preferably by statute.

Section 310: General Sourcing Rules

The Agreement provides a number of sourcing rules in an attempt to address every possible scenario in the event the destination state is not known. This section deals with sourcing of retail sales other than those listed above, lease or rental of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment, the retail sale, including the lease or rental, of transportation equipment and the lease or rental of tangible personal property not included above. Purchases of direct mail are sourced pursuant to Section 313. Telecommunications services are sourced pursuant to Section 314.

Current: Maine has historically applied destination-based sourcing rules although not covered in statute or rule.

Changes required: This section creates the rules that are needed to formulate the statute change required in Section 309 above.

Section 310.1: Election for Origin-Based Sourcing

The Agreement also provides an election to a member state that has local jurisdictions that levy a sales or use tax to source the retail sale of tangible personal property and digital goods based on the origin of the sale rather than destination if the seller receives the order for the goods in the

² The florist industry has historically regarded their sales nationally based on origin. Maine, for instance, would have received sales tax on all orders taken in Maine even though delivery was made to Florida.

same state as the purchaser receives the goods (an intrastate sale). This section is in lieu of Section 310 and the member state has other provisions to comply with in this section.

Current: Maine does not have a local option tax.

Changes required: None

Section 311: General Sourcing Definitions

Provides definition for terms “receive” and “receipt” for purposes of Section 310.

Current: Maine has historically applied destination-based sourcing rules although not covered in statute or rule.

Changes required: Our statute should also include these definitions as they relate to sourcing rules.

Section 312: Multiple Points of Use (repealed December 14, 2006)

Section 313 & 313.1: Direct Mail Sourcing

Also see Sections 309 and 310.

This section allows the purchaser of “advertising and promotional direct mail” and “other direct mail” to provide a permit or certificate to the seller in order to exempt the entire transaction. The purchaser is then responsible for reporting directly to each state the appropriate tax. Alternatively, in the case of advertising and promotional direct mail, the purchaser can provide a statement to the seller showing the jurisdictions to which the direct mail is delivered. The seller would then collect tax according to the delivery information. In the absence of either, the seller is to use the sourcing rules in Section 310, sub§(A)(5) i.e., sourced to point of shipment.

This section applies for purposes of uniformly sourcing direct mail transactions and does not impose requirements on states regarding the taxation of direct mail products.

Similar to Section 310.1, there is an election for origin-based sourcing on direct mail that is delivered and distributed within the same state.

Current: Maine has historically applied destination-based sourcing rules although not covered in statute or rule. Maine statute also has an exemption for certain advertising and promotional material (§ 1760(83)).

Changes required: Either § 1760(83) needs to be modified to address “other direct mail” or repealed and replaced with a sourcing rule statute.

§ 1760(83) - Sales of advertising or promotional materials printed on paper and purchased for the purpose of subsequently transporting such materials outside the State for use by the purchaser thereafter solely outside the State.

Section 314: Telecommunication Sourcing Rule

See also Sections 309 and 310.

This section provides sourcing rules for telecommunication services. For services sold on a call-by-call basis, if a call originates and terminates in Maine, the call is sourced in Maine. Also, if the service address is in Maine, any call that originates or terminates in Maine would be sourced to Maine. Service other than call-by-call is sourced to customer’s place of primary use.

Mobile telecommunications services are sourced according to the Mobile Telecommunications Sourcing Act previously enacted by Maine. Post-paid calling service is sourced to the origination point of the signal first identified by the seller or seller's service provider. Prepaid calling service is sourced according to Section 310. Additional sourcing rules exist for the sale of private communications.

Current: Maine does not have sourcing rules to address telecommunication services with the exception of mobile telecommunications services. Intrastate calls are taxable while interstate calls are exempt.

Changes required: This section creates the rules that are needed to formulate the statute change regarding sourcing rules.

Section 315: Telecommunication Sourcing Definitions

Provides definitions for terms found in Section 314.

Current: Many of these definitions are currently found in our Service Provider Tax statute.

Changes required: Our statute should also include these definitions as they relate to sourcing rules.

Section 316: Enactment of Exemptions

A member state may enact a product-based exemption without restriction if the Agreement does not have a definition for the product.

A member state may enact an entity-based or a use-based exemption without restriction if the Agreement does not have a definition for the product.

A product-based exemption is one that exempts a certain product, such as sales of grocery staples.

An entity-based exemption is one that exempts a specific type of organization from tax, such as sales to hospitals.

A use-based exemption is one that exempts the specific use of a product by the purchaser, such as machinery and equipment used directly and primarily in production.

Maine can adopt product-based exemptions without restrictions if the Agreement does not define the product. If the product is defined, Maine must adopt the definition and the exemption must be for all items covered by the definition. We cannot exempt portions of a defined product.

Current: Maine does have exemptions for products defined in the agreement. Some of our definitions differ from the Agreement definitions while others closely resemble them.

Changes required: Need to adopt a variety of definitions. Adopting the Agreement's definitions will in some cases exempt items we currently tax and in other cases tax items we currently exempt. See "*Issues needing to be resolved*" following this review for an overview of the definitions needing to be adopted.

Section 317: Administration of Exemptions

Each member state shall observe the same process when a purchaser claims an exemption.

This section provides how exemptions are to be administered. Except for situations involving fraud on the part of the seller, the seller is held harmless when a purchaser improperly claims an exemption as long as the seller follows the requirements of this section. The purchaser is held liable for payment of tax. The SSTP has developed a common "Certificate of Exemption" form that a purchaser will provide to the vendor. Each member state agrees to accept this form.

Current: Maine currently has in place Rule 302 which provides some procedures for administering exemptions.

Changes required: Since Rule 302 applies a good faith standard on the seller which is stricter than the Agreement, this rule will need to be revised to apply a more relaxed standard. As a result, MRS will find itself needing to make more compliance reviews at the purchaser level on each of the transactions rather than making assessments against the seller.

Section 318: Uniform Tax Returns

Each member state shall require only one tax return for each taxing period for each seller for the member state and all the taxing jurisdictions within the member state.

This section requires that Maine have one tax return with a due date no sooner than the 20th day of the following month. The Governing Board has developed a simplified electronic return (SER) that all sellers will be allowed to use to file their returns in Maine. This section also requires states to adopt a standardized transmission process for receipt of returns.

Current: Maine currently only requires one return from each retailer. The due date, however, is the 15th. Maine also provides for internet filing of returns.

Changes required: The statute would need to be amended to change the due date from the 15th to the 20th of the month. (§ 1951-A) Staff resources would be needed to be able to accept the SERs and upload them to our MERITS system.

§1951-A. Collection of tax; report to State Tax Assessor

1. Monthly report and payment. Every retailer shall file with the State Tax Assessor, on or before the 15th day of each month, a return made under the penalties of perjury on a form prescribed by the assessor. The return must report the total sale price of all sales made during the preceding calendar month and such other information as the assessor requires. The assessor may permit the filing of returns other than monthly. The assessor, by rule, may waive reporting nontaxable sales. The assessor may for good cause extend for not more than 30 days the time for filing returns required under this Part. Every person subject to the use tax shall file similar returns, at similar dates, and pay the tax or furnish a receipt for the tax from a registered retailer.

Section 319: Uniform Rules for Remittance of Funds

Each member state shall require only one remittance for each return.

Maine must require only one remittance for each return. The Agreement does allow a state to require additional remittances, such as estimated payments, but only if the seller has collected more than \$30,000 during the preceding calendar year. The Agreement continues to provide member states with the option of requiring remittances from simplified electronic returns be made electronically, allow for electronic payments, provide for an alternative method for making “same day” payments if electronic funds transfers fail, provide for next business day payment when due date falls on a legal banking holiday and adopt standardized transmissions.

Current: Maine only requires one payment with the return and has the ability to accept electronic remittances.

Changes required: Staff resources would be needed to be able to receive standardized transmissions and upload them to our MERITS system.

Section 320: Uniform Rules for Recovery of Bad Debts

Each member state shall use uniform rules to provide a deduction for bad debts to a seller.

This section provides uniform rules for providing bad debt deductions to a seller. Among other things, the Agreement requires that the federal definition of bad debt must be utilized and that a CSP must be allowed to take credit on behalf of seller. The Agreement supports writing off the bad debt in the period where the taxpayer has determined the debt is uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes.

Current: Maine does provide for bad debt deductions but it is not currently tied into the federal definition.

Changes needed: Revise our statute (§ 1811-A) to reflect the federal definition of bad debt.

§1811-A. Credit for worthless accounts

The tax paid on sales represented by accounts charged off as worthless may be credited against the tax due on a subsequent return filed within 3 years of the charge-off, but, if any such accounts are thereafter collected by the retailer, a tax must be paid upon the amounts so collected.

Section 321: Confidentiality and Privacy Protections under Model 1.

Each member state must have a policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with Model 1 sellers.

A Model 1 seller is a seller who has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases. The Agreement emphasizes the importance of protecting the confidentiality of taxpayer information by the seller and the CSP. It also provides that the member states are to provide public information to consumers of the state's practices relating to the collection, use and retention of personally identifiable information and rights of the taxpayer.

Current: Title 36 contains a confidentiality provision. Many of the issues are currently addressed in statute. Public information is also contained in our published "Taxpayer Bill of Rights".

Changes needed: Minor modifications may be needed to address the specifics of the Agreement.

Section 322: Sales Tax Holidays

If a member state allows for temporary exemption periods, the member state shall not apply an exemption unless the items to be exempted are specifically defined in the Agreement and the exemptions are uniformly applied to the state and local sales and use taxes.

This section establishes rules in the event a member state allows for a sales tax holiday. Member states agree not to exempt items unless the product is defined in Part II or Part III(B) of the Agreement. If price thresholds are used, the member state can only exempt items priced below the threshold. No exemptions are allowed for a portion of the sale price of an item.

Current: Maine has never had a sales tax holiday for any item. If legislation was to be considered in the future, the Agreement provides the framework for how it would work as well as limits the items that could be a part of a sales tax holiday to only those products defined in the Agreement, such as school supplies or clothing.

Changes required: None

Section 323: Caps and Thresholds

Each member state shall not have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item, unless the member

state assumes the administrative responsibility in a manner that places no additional burden on the retailer.

This section prevents the application of caps or thresholds on both the state and local tax rates. The Agreement excludes from this restriction the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes and any retail sales where the burden of administration has been shifted from the retailer. Basically, any exemption that is not fully exempt or any sale where the tax amount is capped would be covered under this section.

Current: Although Maine does not have any tax cap, Maine does have a variety of exemptions that are not full exemptions and would need to be addressed in order to conform with the Agreement:

- the first 750kwh of residential electricity is exempt;
§ 1760(9-B) 9-B. Sale and delivery of residential electricity as follows:
 - A. *The first 750 kilowatt hours of residential electricity per month; and*
 - B. *Off-peak residential electricity used for space heating or water heating by means of an electric thermal storage device. For the purpose of this paragraph, "off-peak residential electricity" means the off-peak delivery of residential electricity pursuant to tariffs on file with the Public Utilities Commission and the electricity supplied.*
- This is allowable as it is not based on the value of the transaction
- the sale of fuel and electricity for use in a manufacturing facility is 95% exempt;
§ 1760(9-D). Ninety-five percent of the sale price of all fuel and electricity purchased for use at a manufacturing facility. For purposes of this subsection, "sale price" includes, in the case of electricity, any charge for transmission and distribution.
- This is not allowed; however fuel and electricity is not subject to the one rate requirement either. For instance a .275% rate (5% of 5.5%) could be applied here rather than an exemption.
- the first 28 days of lodging in a hotel/motel is exempt in certain situations; and
§ 1760(20). Rental charged to any person who resides continuously for 28 days or more at any one hotel, rooming house, tourist camp or trailer camp if:
 - A. *The person does not maintain a primary residence at some other location; or*
 - B. *The person is residing away from that person's primary residence in connection with employment or education.*
- This is allowable as it is not based on the value of the transaction
- the sale of manufactured housing is typically 50% exempt
§ 1760(40) Sales of:
 - A. *Used manufactured housing; and*
 - B. *New manufactured housing to the extent of all costs, other than materials, included in the sale price, but the exemption may not exceed 50% of the sale price.*
- This is not allowed; however manufactured housing is not subject to the one rate requirement either. For instance a 2.75% rate (50% of 5.5%) could be applied here rather than an exemption.
- the sale of watercraft to nonresidents is 60% exempt if the watercraft is to remain in Maine for more than 30 days
25. Watercraft purchased by nonresidents. Sales to or use by a person that is not a resident of this State of watercraft or materials used in watercraft as specified in this subsection.
 - A. *The following are exempt when the sale is made in this State to a person that is not a resident of this State and the watercraft is sailed or transported outside the State within 30 days of delivery by the seller:*
 - (1) *A watercraft;*
 - (2) *Sales, under contract for the construction of a watercraft, of materials to be incorporated in that watercraft; and*
 - (3) *Sales of materials to be incorporated in the watercraft for the repair, alteration, refitting, reconstruction, overhaul or restoration of that watercraft.*

B. The purchase of a watercraft outside this State is exempt if the watercraft is registered outside the State by the purchaser and used outside the State by the purchaser and the watercraft is present in the State not more than 30 days, not including any time spent in this State for temporary storage, during the 12 months following its purchase. For purposes of this paragraph, "used outside the State" does not include storage but means actual use of the watercraft for a purpose consistent with its design.

C. If, for a purpose other than temporary storage, a watercraft is present in the State for more than 30 days during the 12-month period following its date of purchase, the exemption is 60% of the sale price of the watercraft or materials for the construction, repair, alteration, refitting, reconstruction, overhaul or restoration of the watercraft, as specified in paragraph A.

- This is not allowed; however watercraft is not subject to the one rate requirement either. For instance a 2.2% rate (40% of 5.5%) could be applied here rather than an exemption.

Changes required: The exemptions for fuel and electricity for use in manufacturing and sales of manufactured housing need to be addressed. See “*Issues needing to be resolved*” following this review for an overview of the options available to resolve this issue.

Section 324: Rounding Rule

Each member state shall adopt a rounding algorithm that is carried to the third decimal place and rounded to the next whole cent when the third place decimal is greater than 4. No member state shall require a seller to collect tax based on a bracket system.

The section addresses a common rounding algorithm to be used by all states. The Agreement prevents the use of a bracket system. This rounding algorithm is a more common rounding approach. For instance, if a sale amounts to \$34.45, the tax is computed to be \$1.894. Since the third decimal point is not greater than 4, the tax is \$1.89. (Maine’s current bracket system would apply \$1.90 to this transaction.) Member states must also allow sellers to elect to compute tax on an item or an invoice basis.

Current: Maine’s statute contains a bracket system for computing tax.

Changes required: Replace the current bracket system with a conventional rounding algorithm

§1812. Adding tax to sale price

1. Computation. Every retailer shall add the sales tax imposed by chapters 211 to 225, or the average equivalent of that tax, to his sale price, except as otherwise provided, and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid and shall be recoverable at law in the same manner as the purchase price. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedules:

Section 325: Customer Refund Procedures

This section provides the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond.

This section addresses as a first course of remedy procedures for a purchaser to seek a refund of over-collected tax from the seller. The purchaser must provide a written notice to the seller and give the seller 60 days to respond. Presumably if the seller refuses or does not respond, then the purchaser can seek the refund directly from the state. To put this another way, if a purchaser seeks a refund directly from the state, the state can require the purchaser to go to the seller first.

Current: Like the Agreement, Maine’s current procedure is for the purchaser to go to seller first, but there is nothing in statute or rule that addresses this. Also there is nothing in current procedure to dictate a seller’s response time.

Changes required: Establish in statute the Agreement’s customer refund procedures.

Section 326: Direct Pay Permits

Each member state shall provide for a direct pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods and services without payment of tax to the supplier at the time of purchase.

The section allows certain purchasers (as determined by the state) to purchase their goods and services tax free and be accountable directly to the state for reporting the appropriate use tax.

Current: Maine does provide, by rule rather than statute, for direct pay authority but only for those engaged in manufacturing or utilities (Rule 308).

Changes required: Establish authority in statute rather than rule.

Section 327: Library of Definitions

Each member state shall utilize common definitions as provided in the Agreement.

Most of the definitions are set out in the Library of Definitions in Appendix C of the Agreement. Member states are to enact or adopt these definitions in substantially the same language as the Library definition whenever such a term is found in their statute and not adopt definitions that are contrary to the meaning in the Library of Definitions. As noted above, the Agreement requires that each member state either impose a tax on all the products or services included in each definition, or exempt from tax all products or services included within the definition.

To summarize, if any term in Maine’s statute is defined in the Agreement, Maine must adopt the Agreement’s version. If Maine has an exemption for a product defined in the Agreement, the exemption must apply to the entire defined product. For instance, “sale price” is in our statute and is a defined term in the Agreement. To conform to the Agreement, Maine would need to adopt the Agreement’s definition of “sale price”. Maine exempts “grocery staples” which by definition contains items defined in the Agreement as “food and food products”. We would need to adopt the Agreement’s definition of food and food products. Maine could not exclude certain food products from this definition and tax them differently.

Some of these definitions do provide states with the flexibility to include or exclude certain items from the definition. This allows states to adopt definitions as closely as possible to their existing statutes.

Current: Maine’s statute does contain many of the terms defined in the Agreement. The following defined terms will need to be addressed in any proposal in order to be in conformity with the Agreement.

- | | |
|-------------------------------|---------------------------|
| Delivery Charges | Computer related terms |
| Direct Mail | Digital products |
| Lease or rental | Alcoholic beverages |
| Purchase Price | Candy |
| Retail sale or Sale at retail | Dietary supplement |
| Sales price | Food and food ingredients |
| Tangible personal property | Prepared food |

Bottled Water
Soft drinks
Tobacco
Drug
Durable medical equipment

Mobility enhancing equipment
Over-the-counter drug
Prescription
Prosthetic device
Bundled Transaction

Telecommunications definitions have already been incorporated in our Service Provider Tax statute. See “*Issues needing to be resolved*” following this review for an overview of the issues surrounding each of these definitions.

Section 328: Taxability Matrix

Each member state shall complete and maintain a taxability matrix database.

This section establishes a taxability matrix as adopted by the governing board. Simply, this would be a database of the defined products in the Agreement with an indication of whether each state taxes or exempts the product, and a “best practices matrix” with an indication of whether each state employs that practice or not. This database could then be used by sellers and CSPs to determine the proper tax in each state. Maine would make entries to this matrix and notify the governing board of any future changes. Sellers and CSPs will be relieved from any additional tax liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by the member state in the taxability matrix.

Current: Maine does not currently maintain such a matrix.

Changes needed: Although nothing is needed in the statute to address the need for the matrix, staff resources would be needed to create, maintain and update this matrix. In addition the statute would need a provision to hold a seller harmless when relying on the information contained in the matrix.

Section 329: Effective Date for Rate Changes

Each member state shall provide that the effective date of a rate change for taxable services covering a period starting before and ending after the statutory effective date shall be the first billing period starting on or after the effective date for rate increases, and bills rendered on or after the effective date for a rate decrease.

This section addresses those services where a billing period straddles a statutory effective date, such as a telephone bill, cable bill or utility bill and provides that all member states apply the same effective date. As an example, if a telephone bill covered a period of 6/20/xx to 7/19/xx and the sales tax rate increased from 5% to 6% on 7/1/xx, the date on which the 6% would apply would be the next billing period. If the rate had decreased from 5% to 4%, the rate would be effective for this billing period.

Current: Maine has used a different approach. We simply look at the rate in effect on the billing date without regard to whether there was an increase or decrease in the rate. In the above example, if the billing date was 7/20/xx, the rate in effect on 7/20 is the applicable rate.

Changes required: This issue needs to be addressed either in statute, by rule or by bulletin.

Section 330: Bundled Transactions

Each member state shall adopt the core definition for a “bundled transaction”.

This section requires the member state to adopt the definition of bundled transaction but does not restrict how the state treats a bundled transaction for sales tax purposes. However, for certain

telecommunications services, ancillary services, internet access, audio or video programming services and optional computer software maintenance contracts, the Agreement does specify how the bundled transaction is to be handled.

Current: Maine applies this core concept of bundling to many transactions but does not have anything in statute or rule covering this point.

Changes needed: This issue needs to be addressed either in statute, by rule or by bulletin.

Section 331: Relief from Certain Liability for Purchasers

A member state shall relieve a purchaser from liability for penalty for having failed to pay the correct amount of sales or use tax if the purchaser's seller or CSP relied on erroneous data provided by the state on tax rates, boundaries, taxing jurisdiction assignments and the taxability matrix or if the purchaser relied on erroneous data provided in the taxability matrix.

Unless prohibited by a member state's constitution, a member state shall also relieve a purchaser from liability for tax and interest for having failed to pay for reasons under this section.

Just as relief is provided to a seller or CSP when relying on erroneous data provided by the state, a purchaser is relieved from tax and interest when relying on erroneous information in the taxability matrix unless prohibited by the state's constitution. For those states whose constitution prohibits relief for tax and interest, the state must at least provide relief for penalties.

Current: Maine statute does not currently support abatement of tax for erroneous information provided by MRS. Abatement of penalties does exist when MRS provides erroneous information.

Changes required: The statute would need to be amended to abate tax, interest and penalties under this scenario.

Section 332: Specified Digital Products

A member state shall not include "specified digital products", "digital audio-visual works", "digital audio works" or "digital books" within its definition of "ancillary services", "computer software", "telecommunication services" or "tangible personal property".

If a state imposes a sales or use tax on products transferred electronically separately from its imposition of tax on tangible personal property, the state is not required to use the above terms or enacted separate levies on any "specified digital product."

Current: Maine imposes tax on "products transferred electronically" separately from tangible personal property. As a result, we would not need to adopt these terms.

Changes required: None.

Section 333: Use of Specified Digital Products

A member state shall not include any product transferred electronically in its definition of "tangible personal property." "Ancillary services", "computer software", and "telecommunication services" shall be excluded from the term "products transferred electronically."

Current: Maine does not include "products transferred electronically" in its definition of "tangible personal property."

Changes required: None.

Section 334: Prohibited Replacement Taxes

No state may have a prohibited replacement tax on any product defined in Part II or Part III(B) of the Library of Definitions which has the effect of avoiding the intent of this Agreement.

The Agreement prohibits a state from enacting a replacement tax on products defined in the Agreement. For instance, if a state imposes a sales tax on snack food and wished to continue taxing snack food, it must tax all “food and food products” since snack foods are a component of that defined term. The state cannot create a different sales tax on snack food in order to avoid the intent of the Agreement of having common definitions.

Current: n/a

Changes required: See “*Issues needing to be resolved*” following this review for an overview of the issues regarding tax on meals, lodging and short-term auto rentals.

Section 335: Best Practices

“Best practices” shall mean those practices as adopted by the governing board as the best practices in administration of the sales and use taxes in the member states regarding certain identified products, procedures, services, or transactions.

The Agreement provides certain “best practices” in the administration of the sales and use tax laws. Conformance by a member state is voluntary and shall not be found not in compliance if not following the best practice. This was adopted in October 2013 with “vouchers” (a certificate issued to a purchaser for an amount that is less than the face value and both the face value and amount paid by the purchaser are noted on the voucher) being the first “best practice” adopted by the Governing Board.

Review of the Agreement's Article IV

“Seller Registration”

Section 401: Seller Registration

A member state shall provide an online registration system that will allow sellers to register in all the member states and once registered the seller agrees to collect and remit sales and use taxes for all taxable sales into the member states, including states joining after the seller's registration.

The Governing Board has created a centralized registration process. If Maine was found to be in compliance with the Agreement, all previously registered sellers in this system would begin collecting Maine's tax on sales into Maine. As of October 1, 2013, there were 2,016 sellers who have voluntarily registered.

Current: Maine does not have an automated online registration system.

Changes required: Staff resources would be needed to accept the transmission of electronic information from the centralized registration process and upload the information to our MERITS system.

Section 402: Amnesty for Registration

A member state shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers in accordance with the terms of the Agreement, provided the seller was not so registered in that state in the 12 month period preceding the effective date of the state's participation in the Agreement.

For voluntarily registering in this project, a seller is granted amnesty for sales tax, interest and penalties for the period the seller was not registered in Maine provided the seller registers within 12 months of the state's participation. Amnesty is not provided if the seller has received an audit notice or for any tax the seller has already paid or remitted to the state. The amnesty is fully effective as long as the seller continues to be registered, collects and remits sales or use taxes for a period of at least 3 years.

Current: Maine has had amnesty programs in the past for specific purposes and specific time frames.

Changes required: The statute would need to be amended to address this issue.

Section 403: Method of Remittance

A seller may select one of three methods of remittances:

Model 1 – where a seller selects a Certified Service Provider (“CSP”) as an agent to perform all the seller's functions

Model 2 – where a seller selects a Certified Automated System (“CAS”) to calculate the amount of tax due

Model 3 – where a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS

Current: n/a

Changes required: n/a

Section 404: Registration by an Agent

A seller may be registered by an agent. Such appointment shall be in writing and submitted to a member state if requested by the member state.

Current: n/a

Changes required: n/a

Review of Article VI
“Monetary Allowances for New Technological Models for Sales Tax Collections”

Section 601: Monetary Allowance under Model 1

Each member state shall provide a monetary allowance to a CSP in Model 1 in accordance with the terms of the contract between the governing board and the CSP.

Section 602: Monetary Allowance for Model 2 sellers

The member states anticipate a monetary allowance to a Model 2 seller for a period not to exceed 24 months following the seller’s registration through the Agreement’s central registration process. Afterwards, the seller will only be entitled to a vendor discount under each member state’s statutes.

Sections 605 through 613: Repealed

(Per Section 611, sections 605 through 613 are repealed 24 months after October 7, 2010 if Congress has not granted states authority to require remote sellers to collect sales and use tax.)

Other sections of the Agreement not reviewed in detail in this document deal with:

- The purpose and principal of the Agreement (Article I)
- Definitions within Agreement (Article II)
- Certification of service providers and automated systems (Article V)
- Agreement organization (Article VII)
- State entry into and withdrawal from the Agreement (Article VIII)
- Procedures for making amendments to the Agreement (Article IX)
- Process for issue resolutions (Article X)
- Relationship of Agreement to member states and persons (Article XI) and
- Review of costs and benefits associated with the system (Article XII).

Included in this package are the following additional pieces of information:

- Issues needing to be resolved before any proposal can be drafted
- Fiscal impact worksheet
- Governing Board States – October 1, 2012
- Side-by-side comparison of 36 MRSA statute language with conforming language from Agreement

Issues needing to be resolved before any proposal can be drafted

Single Rate

No member state shall have multiple state sales and use tax rates. (Section 308) We currently have three rates in place; 5.5%, 8% and 10%.

Options:

- △ Repeal the 8% rate and have 5.5% apply to meals and lodging
- △ Determine a compromised rate that would yield the same amount of tax, such as 5.75%
- △ Create a different tax type such as a Meals and Lodging Tax or Tourism Tax to deal with the 8% rate and keep 5.5% as the general sales tax rate
- △ Repeal the 8% rate, apply 5.5% to meals and lodging and create a Tourism Tax for the additional 2.5% rate.

Caps and Thresholds

Each member state shall not have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item... (Section 323) Although Maine does not have any tax cap, Maine does have two exemptions that are not full exemptions and would need to be addressed in order to conform with the Agreement.

- Fuel and electricity used in manufacturing currently 95% exempt

Options:

- △ Repeal exemption effectively taxing all sales of fuel and electricity
- △ Repeal 95% threshold effectively exempting all sales of fuel and electricity
- △ Apply a rate of .275% (5% of 5.5%) to all sales of fuel and electricity used in manufacturing (status quo)

- Sales of manufactured housing

Options:

- △ Repeal exemption effectively taxing sales of manufactured housing at 100%
- △ Repeal 50% threshold effectively exempting sales of manufactured housing at 100%
- △ Apply a rate of 2.75% (50% of 5.5%) to sales of manufactured housing (status quo)

- Sales of watercraft to nonresidents

Options:

- △ Repeal exemption effectively taxing sales of watercraft to nonresidents at 100%
- △ Repeal threshold and exempt all sales of watercraft to nonresidents at 100%
- △ Apply a rate of 2.2% (40% of 5.5%) to sales of watercraft to nonresidents (status quo)

Definition of Sales price

The Agreement's definition of sales price is similar to current statute and allows a member state to exclude certain charges by the seller. Decisions will need to be made whether to exclude these charges from the sale price or not.

- any services necessary to complete the sale,

This exclusion is broader than our current statute which excludes installation, application and repair labor but does not exclude other services like alteration charges, modifications made to the goods, assembly charges, and painting or refinishing charges.

Options:

- △ Exclude any service necessary to complete the sale (effectively exempting more services)
- △ Don't exclude any service necessary to complete the sale (effectively taxing repair labor)

- delivery charges,

Delivery charges are also a defined term in the Agreement. Our current statute excludes some delivery charges but not all. In either case, we need to adopt the definition of delivery charges and either:

Options:

- △ exclude all delivery charges (effectively exempting all delivery charges including vendor delivery)
- △ don't exclude delivery charges (effectively taxing contract and common carrier delivery charges that are associated with a retail sale of property)

- installation charges

Our current statute excludes installation charges

Options:

- △ Exclude all installation charges (status quo)
- △ Don't exclude installation charges (effectively taxing all installation charges)

- credit for any trade-in, as determined by state law

Our current statute provides for certain trade-in credits but not on all products. The Agreement allows Maine to continue enumerating certain items as qualifying for trade-in allowance.

Options:

- △ Exclude trade-in allowances as enumerated in statute (status quo)
- △ No longer exclude trade-in allowances

There are additional exclusions from "sale price" in current statute that do not appear in the Agreement's definition that will need to be addressed as well:

- Repair labor (See "any services necessary to complete the sale" above)
- Gratuities and tips (could make this an exemption)
- Allowances for returns (more appropriate as a refund provision)
- Various fees listed in 8-10 (could make these exemptions)
- Forfeited room deposits (could make this an exemption)

Definition of retail sale

The Agreement's definition includes all leases and rentals as a "retail sale". "Lease or rental" is another defined term in the Agreement. Maine's current statute only considers leases that are in lieu of purchase as a sale. The Agreement's definition would effectively apply tax on the lease stream payments of all leases/rentals. This would bring Maine in line with the vast majority of states in how they tax leases and rentals. However choices need to be made on how to transition from our old method of use tax on cost of property to a new tax on the rental stream.

Options:

- △ Adopt the definitions of "retail sale" and "lease or rental"
- △ Tax could apply to all lease payments made on or after the effective date (without regard to how the lease was taxed previously).
- △ Tax could apply to all leases entered into on or after the effective date (this would include new leases and renewals to leases).

- In either case, should payment of tax be accelerated to the first month of the lease?
- In either case, should any consideration be given to providing credit for all or a portion of the use tax paid on the purchase of the equipment?

Definition of tangible personal property

Current definition is quite similar to Agreement’s definition.

Options:

- △ Adopt definition of tangible personal property.

Definition of prewritten computer software

Under the current statute definition of tangible personal property is the inclusion of “any computer software that is not a custom computer software program” and then “custom computer software” is further defined. Alternatively, the Agreement definition of tangible personal property includes “prewritten computer software”.

Options:

- △ Adopt definition of prewritten computer software.

Food and Food Products

Definition of food and food ingredients

This definition would replace our current definition of “grocery staples”. The definition of “food and food ingredients” excludes “**alcoholic beverages**” and “**tobacco**”, both defined terms that would likewise need to be adopted. The Agreement allows a member state to exclude bottled water, candy, dietary supplements and soft drinks, just as our current law provides, but it is the definitions of some of these exclusions that differ from our current application of sales tax. An interpretation by the Governing Board determined that ice is “food and food ingredients.”

Options:

- △ Adopt definitions of “food and food ingredients”, “alcoholic beverages” and “tobacco”.

Bottled water

Our current “grocery staple” definition excludes “water, including mineral bottled and carbonated waters and ice”. The Agreement’s definition of “bottled water” does not include mineral water or carbonated waters or waters containing flavors from a spice or fruit provided it is calorie free and does not contain sweeteners.

Options:

- △ Exclude “bottled water” from “food and food ingredients”, adopt definition and as a result tax bottled water (status quo but with more being exempt)
- △ Don’t exclude bottled water effectively exempting all bottled water

Candy

The definition of candy includes any confection that is in the form of bars, drops or pieces but excludes any preparation containing flour. Our current statute taxes all candy but does not exempt candy containing flour. Conforming to the Agreement would exempt such items as Twix bars but would tax fruit snacks. (If this sounds familiar, this definition of candy had been proposed in the tax reform legislation of 2009.)

Options:

- △ Exclude “candy” from the definition of “food and food ingredients”, adopt the definition and continue to tax candy (status quo albeit some items become exempt while other items become taxable)
- △ Don’t exclude candy effectively exempting all candy

Dietary supplement

The definition of dietary supplements excludes those that are represented as conventional food or is used as a sole item of a meal or of the diet. Our current statute taxes all dietary supplements and dietary substitutes.

Options:

- △ Exclude “dietary supplements” from the definition of “food and food ingredients”, adopt the definition and continue to tax dietary supplements (status quo)
- △ Don’t exclude dietary supplements effectively exempting all dietary supplements

Prepared food

This definition differs from our current statute. And it seems that we will not escape the probability that this area of sales tax will remain confusing. Simply put the Agreement’s definition would include any food prepared by the same retailer making the sale. If a retailer sells products not prepared by that retailer, those items may not be regarded as prepared food and would then either fall within or out of the definition of “food and food ingredients” as previously discussed. It is probably best to explain this area through example rather than statutory language.

- In a restaurant, all meals would be considered prepared food.
- In a take out food establishment, food prepared by them such as Italian sandwiches, pizza, hamburgers, hot dogs, etc. are considered prepared food. Prepackaged products purchased by them to resell in their store may be considered prepared food if such food is sold with eating utensils provided by the seller. “Eating utensils” include plates, knives, forks, spoons, glasses, cups, napkins or straws.
- In a convenience store, pizza, hot dogs and hamburgers prepared by them or heated by them would be considered prepared food. In addition, hot coffee, fountain soft drinks and frozen drinks would be prepared food. Items such as doughnuts or pastries not prepared by the retailer and provided in a self serve area would not be taxable unless eating utensils are provided by the retailer to the customer.
- In a grocery store, rotisserie chicken, chicken pieces, meatballs, soups and other hot foods would be considered prepared food. The salad bar area may be prepared food depending if the food was prepared by the retailer or if eating utensils are provided by the retailer.
- In bakeries, including bakery departments in grocery stores, all food prepared by them such as cakes, pies, breads, pastries, bagels, doughnuts, cookies, etc. would be considered prepared food. However, the Agreement does allow member states to exclude bakery items sold without eating utensils.
- “Food sold with eating utensils provided by the seller” means the seller’s practice for the item is to physically give or hand the utensil to the purchaser except that a seller who sells more than 75% of prepared food need only have the utensils available to purchasers.
- For sellers whose sales of prepared food is greater than 75% and who sell items that contain four (4) or more servings packaged as one item sold for a single price, an item

does not become prepared food due to the seller having utensils available. However, if the seller provides utensils for the item, then the item is considered prepared food.

Options:

- △ Adopt prepared food definition, and exclude 1, 2, all 3, or none of the options.
- △ Exempt prepared food from sales tax and create a separate tax for prepared food.

Soft drinks

The definition of soft drinks is any non-alcoholic beverage that contains natural or artificial sweeteners. It does not include beverages containing milk or milk products, soy, rice or similar milk substitutes or greater than 50% fruit or vegetable juice. Conforming to the Agreement would tax such items as Gatorade and many juice beverages. (If this sounds familiar, this definition of soft drink had been proposed in the tax reform legislation.)

Options:

- △ Exclude soft drinks from the definition of “food and food ingredients”, adopt the definition and effectively tax all soft drinks (status quo except that more products will become taxed as a soft drink)
- △ Don’t exclude soft drinks effectively exempting all soft drinks

Health Care

Definition of durable medical equipment

Our current statute does not address “durable medical equipment”, however we do have an exemption for diabetic equipment/supplies.

Options:

- △ Adopt definition of “durable medical equipment” and expand the current exemption to certain other pieces of medical equipment
- △ Repeal the exemption for diabetic equipment

Definition of mobility enhancing equipment

Our current statute does not address “mobility enhancing equipment”, however we do have an exemption for “crutches and wheelchairs for the use of sick, injured or disabled persons.” The Agreement’s definition is broader. It would include such items as chair lifts in stairways, and modifications to motor vehicles such as wheelchair lifts, higher roofs and driving aids. A member state can limit the application of this definition by requiring a prescription or limit an exemption based on Medicare or Medicaid payments or reimbursements.

Options:

- △ Adopt definition of “mobility enhancing equipment” and expand the current exemption or limit to prescription or Medicare/Medicaid recipients
- △ Repeal the exemption for crutches and wheelchairs

Definition of Drugs and Prescription:

Our current statute provides an exemption for prescription medicines.

Options:

△ Need to adopt definition for “drug” which can be structured to be status quo.

Definition of Prosthetic devices:

Our current statute provides an exemption for prosthetic devices.

Options:

△ Need to adopt definition for “prosthetic device” which may expand the current exemption

Fiscal Impact Worksheet									
Estimated Annual Revenue Impact of Conformity to Streamlined Sales Tax									
	Options								
									Section Reference to Agreement
1.	Return due the 20th of the month - loss of use of the money for 5 days								318 Uniform Tax Returns
2.	Remote sellers will begin to register and collect tax								
3.	Monetary allowance to certified service providers								Article VI Monetary Allowances for New Technological Models
4.	EXEMPT all durable medical equipment (more expansive than just diabetic supplies and CPAP)								327 definition of durable medical equipment
	TAX all durable medical equipment (repeal current exemption for diabetic supplies and CPAP)								
4a.	EXEMPT all prosthetic devices (status quo but more exempt)								327 definition of prosthetic device
	TAX all prosthetic devices								
4b.	EXEMPT all mobility enhancing equipment (more expansive than just wheelchairs, canes, walkers)								327 definition of mobility enhancing equipment
	TAX all mobility enhancing equipment taxing wheelchairs, canes, walkers								
5.	Definition of bad debts - nominal loss								320 Uniform Rules for Recovery of Bad Debts
6.	TAX all delivery charges - gain from third party delivery charges (UPS, etc.)								327 definition of sales price and delivery charges
	EXEMPT all delivery charges - loss on vendor delivery and handling charges								
6a.	EXEMPT any service necessary to complete the sale								327 definition of sales price
	TAX all services necessary to complete the sale (status quo)								
6b.	EXEMPT all installation charges (status quo)								327 definition of sales price
	TAX all installation charges								
7.	Accelerate tax on lease/rental stream to the first month of the agreement								327 definition of retail sale
	Tax lease/rental stream as payments are made on leases entered into or after effective date								
	Tax all lease/rental payments that occur after effective date								
8.	Continue to TAX soft drinks (status quo but with more becoming taxable)								327 definition of soft drinks
	EXEMPT all soft drinks								
9.	Continue to TAX bottled water (status quo but with more being exempt)								327 definition of food and food ingredients
	EXEMPT all bottled water								
9a.	EXEMPT ice								327 definition of food and food ingredients
10.	Continue to TAX candy (status quo but with some becoming taxable and other becoming exempt)								327 definition of candy
	EXEMPT all candy								
11.	Continue to TAX dietary supplements (status quo)								327 definition of dietary supplements
	EXEMPT Dietary supplements								
12.	Continue to TAX prepared food								327 definition of prepared food
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State Info

Streamline Sales Tax State Members

Full Members - A full member state is a state that is in compliance with the Streamlined Sales and Use Tax Agreement through its laws, rules, regulations, and policies

Arkansas	Georgia
Indiana	Iowa
Kansas	Kentucky
Michigan	Minnesota
Nebraska	Nevada
New Jersey	North Carolina
North Dakota	Oklahoma
Rhode Island	South Dakota
Utah	Vermont
Washington	West Virginia
Wisconsin	Wyoming



Associate Members -

Associate Members - An associate state is a state that has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision, measured qualitatively.

Ohio	Tennessee
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Note: Ohio was voted in as a full member state on October 29, 2013.

Note: The following provides a side-by-side comparison only of the terms existing in 36 MRSA Part 3 that have the same or similar terms in the Agreement. Other changes may be necessary in 36 MRSA to comply with the Agreement.

<i>Current Definition</i>	<i>Streamline Definition</i>	<i>Options</i>
<p>3-B. Grocery staples. "Grocery staples" means food products ordinarily consumed for human nourishment. "Grocery staples" does not include spirituous, malt or vinous liquors; soft drinks, iced tea, sodas or beverages such as are ordinarily dispensed at bars or soda fountains or in connection with bars or soda fountains; medicines, tonics, vitamins and preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form, sold as dietary supplements or adjuncts, except when sold on the prescription of a physician; water, including mineral bottled and carbonated waters and ice; dietary substitutes; candy and confections; and prepared food.</p>	<p>“Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include “alcoholic beverages” or “tobacco.”</p>	<p>A member state may exclude “bottled water,” “candy,” “dietary supplements” and “soft drinks” from this definition, which items are mutually exclusive of each other.</p> <p>“Bottled water” means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.</p> <p>“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. “Candy” shall not include any preparation containing flour and shall require no refrigeration.</p>
	<p>“Alcoholic Beverages” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.</p>	
	<p>“Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.</p>	

		<p>“Dietary supplement” means any product, other than “tobacco,” intended to supplement the diet that:</p> <p>A. Contains one or more of the following dietary ingredients:</p> <ol style="list-style-type: none">1. A vitamin;2. A mineral;3. An herb or other botanical;4. An amino acid;5. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or6. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and <p>B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and</p> <p>C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R § 101.36.</p> <p>“Soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.</p>
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<p>8-A. Prepared food. "Prepared food" means:</p> <p>A. Meals served on or off the premises of the retailer;</p> <p>B. Food and drinks that are prepared by the retailer and ready for consumption without further preparation; and</p> <p>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.</p> <p>"Prepared food" does not include bulk sales of grocery staples.</p>	<p>“Prepared food” means:</p> <p>A. Food sold in a heated state or heated by the seller;</p> <p>B. Two or more food ingredients mixed or combined by the seller for sale as a single item; or</p> <p>C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.</p> <p>“Prepared food” in B does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.</p>	<p>The following items may be taxed differently than “prepared food” and each other, if sold without eating utensils provided by the seller, but may not be taxed differently than the same item when classified under “food and food ingredients.”</p> <ol style="list-style-type: none"> 1. Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries). 2. Food sold in an unheated state by weight or volume as a single item. 3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.
<p>17. Tangible personal property. "Tangible personal property" means personal property that may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a custom computer software program.</p>	<p>“Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software.</p>	

<p>"Custom computer software program" means any computer software that is written or prepared exclusively for a particular customer. "Custom computer software program" does not include a "canned" or prewritten program that is held or exists for a general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. An existing prewritten program that has been modified to meet a particular customer's needs is a "custom computer software program" to the extent of the modification, and to the extent that the amount charged for the modification is separately stated.</p>	<p>"Prewritten computer software" means "computer software," including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances "computer software" of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software;" provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."</p>	<p>A member state may exempt "prewritten computer software" "delivered electronically" or by "load and leave."</p>
<p>11. Retail sale. "Retail sale" means any sale of tangible personal property or a taxable service in the ordinary course of business.</p>	<p>"Retail sale or Sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.</p>	

<p>A. "Retail sale" includes:</p> <p>(1) Conditional sales, installment lease sales and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later;</p> <p>(2) Sale of products for internal human consumption to a person for resale through vending machines when sold to a person more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines. The tax must be paid by the retailer to the State;</p> <p>(3) A sale in the ordinary course of business by a retailer to a purchaser who is not engaged in selling that kind of tangible personal property or taxable service in the ordinary course of repeated and successive transactions of like character; and</p> <p>(4) The sale or liquidation of a business or the sale of substantially all of the assets of a business, to the extent that the seller purchased the assets of the business for resale, lease or rental in the ordinary course of business, except when:</p> <p>(a) The sale is to an affiliated entity and the transferee, or ultimate transferee in a series of transactions among affiliated entities, purchases the assets for resale, lease or rental in the ordinary</p>	<p>"Lease or rental" 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.</p> <p>A. Lease or rental does not include:</p> <ol style="list-style-type: none"> 1. A 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. A transfer or 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 does not exceed the greater of one hundred dollars or one percent 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 subsection, an operator must do more than maintain, inspect, or set-up the tangible personal property. <p>B. Lease or rental does include agreements covering motor vehicles and trailers where 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 26 USC 7701(h)(1).</p>	
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<p>course of business; or</p> <p>(b) The sale is to a person that purchases the assets for resale, lease or rental in the ordinary course of business or that purchases the assets for transfer to an affiliate, directly or through a series of transactions among affiliated entities, for resale, lease or rental by the affiliate in the ordinary course of business.</p> <p>For purposes of this subparagraph, "affiliate" or "affiliated" includes both direct and indirect affiliates.</p> <p>B. "Retail sale" does not include:</p> <p>(1) Any casual sale;</p> <p>(2) Any sale by a personal representative in the settlement of an estate unless the sale is made through a retailer or the sale is made in the continuation or operation of a business;</p> <p>(3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented for a period of less than one year. For the purposes of this subparagraph, "automobile" includes a pickup truck or van with a gross vehicle weight of less than 26,000 pounds;</p> <p>(4) The sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental;</p> <p>(5) The sale, to a person engaged in the business</p>	<p>C. This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the [state commercial code], or other provisions of federal, state or local law.</p> <p>D. This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals. This definition shall neither impact any existing sale-leaseback exemption or exclusions that a state may have, nor preclude a state from adopting a sale-leaseback exemption or exclusion after the effective date of the Agreement.</p>	
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<p>of renting or leasing automobiles, of automobiles for rental or lease for one year or more;</p> <p>(6) The sale, to a person engaged in the business of providing cable or satellite television services, of associated equipment for rental or lease to subscribers in conjunction with a sale of extended cable or extended satellite television services;</p> <p>(7) The sale, to a person engaged in the business of renting furniture or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;</p> <p>(8) The sale of loaner vehicles to a new vehicle dealer licensed as such pursuant to Title 29-A, section 953;</p> <p>(9) The sale of automobile repair parts used in the performance of repair services on an automobile pursuant to an extended service contract sold on or after September 20, 2007 that entitles the purchaser to specific benefits in the service of the automobile for a specific duration;</p> <p>(10) The sale, to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of tangible personal property for resale in the form of tangible personal property, except resale as a casual sale;</p> <p>(11) The sale, to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of a taxable service for resale, except resale as a casual sale;</p> <p>(12) The sale, to a retailer that is not required to register under section 1754-B, of tangible</p>		
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<p>personal property for resale outside the State in the form of tangible personal property, except resale as a casual sale;</p> <p>(13) The sale, to a retailer that is not required to register under section 1754-B, of a taxable service for resale outside the State, except resale as a casual sale;</p> <p>(14) The sale of repair parts used in the performance of repair services on telecommunications equipment as defined in section 2551, subsection 19 pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the telecommunications equipment for a specific duration;</p> <p>(15) The sale of positive airway pressure equipment and supplies for rental for personal use to a person engaged in the business of renting positive airway pressure equipment;</p> <p>(16) The sale, to a person engaged in the business of renting or leasing motor homes, as defined in Title 29-A, section 101, subsection 40, or camper trailers, of motor homes or camper trailers for rental; or</p> <p>(17) The sale of truck repair parts used in the performance of repair services on a truck pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the truck for a specific duration.</p>		
<p>14. Sale price. "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.</p>	<p>"Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or</p>	<p>Notwithstanding (B), a state may elect, by statute or administrative regulation, to exclude from sales price the following types of taxes, but only if that tax is separately</p>

<p>A. "Sale price" includes:</p> <p>(1) Any consideration for services that are a part of a retail sale; and</p> <p>(2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.</p> <p>B. "Sale price" does not include:</p> <p>(1) Discounts allowed and taken on sales;</p> <p>(2) Allowances in cash or by credit made upon the return of merchandise pursuant to warranty;</p> <p>(3) The price of property returned by customers, when the full price is refunded either in cash or by credit;</p> <p>(4) The price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated;</p> <p>(5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, restaurant or other eating establishment to its employees as wages;</p>	<p>services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:</p> <p>A. The seller's cost of the property sold;</p> <p>B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;</p> <p>C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;</p> <p>D. Delivery charges;</p> <p>E. Installation charges; and</p> <p>F. Credit for any trade-in, as determined by state law.</p> <p>“Sales price” shall not include:</p> <p>A. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;</p> <p>B. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to</p>	<p>stated on the invoice, bill of sale or similar document given to the purchaser:</p> <p>1. Any or all state and local taxes on a retail sale that are imposed on the seller if the state statute authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer. If there is no state statute authorizing or imposing the local tax, the language in the local ordinance will determine if the local tax may, but is not required, to be collected from the consumer; and/or</p> <p>2. Tribal taxes on a retail sale that are imposed on the seller if the Tribal law authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer.</p> <p>States may exclude from “sales price” the amounts received for charges included in paragraphs (C) through (F), if they are separately stated on the invoice, billing, or similar document given to the purchaser.</p> <p>States may also exclude from “sales price” either employee discounts that are reimbursed by a third party on sales of motor vehicles, or manufacturer rebates on motor vehicles, or both.</p>
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<p>(6) The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax;</p> <p>(7) The cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail;</p> <p>(8) The fee imposed by Title 10, section 1169, subsection 11;</p> <p>(9) The fee imposed by section 4832, subsection 1;</p> <p>(10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B;</p> <p>(11) Any amount charged or collected by a person engaged in the rental of living quarters as a forfeited room deposit or cancellation fee if the prospective occupant of the living quarters cancels the reservation on or before the scheduled date of arrival;</p> <p>(12) The premium imposed on motor vehicle oil by Title 10, section 1020, subsection 6-A; or</p>	<p>the purchaser; and</p> <p>C. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.</p> <p>“Sales price” shall include consideration received by the seller from third parties if:</p> <p>A. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;</p> <p>B. The seller has an obligation to pass the price reduction or discount through to the purchaser;</p> <p>C. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and</p> <p>D. One of the following criteria is met:</p> <p>1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;</p>	<p>“Delivery charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.</p> <p>A. A member state may exclude all delivery charges from the sales price of all personal property and services, or choose to exclude from the sales price of personal property or services one or more of the following components, and may amend the definition of delivery charges accordingly:</p> <ol style="list-style-type: none"> 1. Handling, crating, packing, preparation for mailing or delivery, and similar charges; or 2. Transportation, shipping, postage, and similar charges. <p>B. In addition, a member state may treat “delivery charges” for “direct mail” differently than it treats “delivery charges” for other personal property or services. A member state may exclude all “delivery charges” from the “sales price” for “direct mail” or choose to exclude from the “sales price” of “direct mail” one or more of the following components, and may amend the definition of “delivery charges” accordingly:</p> <ol style="list-style-type: none"> 1. Handling, crating, packing, preparation for mailing or delivery, and similar charges; 2. Transportation, shipping, and similar
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<p>(13) Any amount charged for the disposal of used tires.</p>	<p>2. The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group), or</p> <p>3. The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.</p>	<p>charges; or</p> <p>3. Postage.</p> <p>“Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.</p>
<p>5. Medicines. Sales of medicines for human beings sold on a doctor's prescription. This subsection does not apply to the sale of marijuana pursuant to Title 22, chapter 558-C.</p>	<p>“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”</p> <p>A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or</p> <p>B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or</p> <p>C. Intended to affect the structure or any function of the body.</p>	<p>A member state may independently:</p> <p>A. Limit the definition of “drug” to human use (as opposed to both human and animal use) in the administration of its exemption;</p> <p>B. Draft its exemption for “drug” to specifically add insulin and/or medical oxygen so that no prescription is required, even if a state requires a prescription under its exemption for drugs;</p> <p>C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and other medical facilities;</p> <p>D. Determine the taxability of free samples of drugs; and</p>

	<p>“Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.</p> <p>“Over-the-counter-drug” means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The “over-the-counter-drug” label includes:</p> <p>A. A “Drug Facts” panel; or</p> <p>B. A statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance or preparation.</p>	<p>E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment of bundled transactions is not otherwise defined in the Agreement.</p> <p>A member state may exclude “grooming and hygiene products” from this definition.</p> <p>“Grooming and hygiene products” are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items meet the definition of “over-the-counter-drugs.”</p>
<p>5-A. Prosthetic devices. Sale of prosthetic aids, hearing aids or eyeglasses and artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity; ...</p>	<p>“Prosthetic device” means a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to:</p> <p>A. Artificially replace a missing portion of the body;</p> <p>B. Prevent or correct physical deformity or malfunction; or</p> <p>C. Support a weak or deformed portion of the body.</p>	<p>A member state may exclude any or all of the following from the definition of “prosthetic device:”</p> <p>A. Corrective eyeglasses;</p> <p>B. Contact lenses;</p> <p>C. Hearing aids; and</p> <p>D. Dental prosthesis.</p> <p>A member state may limit the application of this definition by requiring a “prescription,” or limit an exemption based on Medicare or Medicaid payments or reimbursements.</p>

<p>5-A. Prosthetic devices. ...and sale of crutches and wheelchairs for the use of sick, injured or disabled persons and not for rental.</p>	<p>“Mobility enhancing equipment” means equipment including repair and replacement parts to same, but does not include “durable medical equipment,” which:</p> <p>A. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and</p> <p>B. Is not generally used by persons with normal mobility; and</p> <p>C. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.</p>	<p>A member state may limit the application of this definition by requiring a “prescription,” or limit an exemption based on Medicare or Medicaid payments or reimbursements.</p>
<p>33. Diabetic supplies. All equipment and supplies, whether medical or otherwise, used in the diagnosis or treatment of diabetes;</p> <p>94. Positive airway pressure equipment and supplies. Positive airway pressure equipment and supplies sold or leased for personal use.</p>	<p>“Durable medical equipment” means equipment including repair and replacement parts for same, but does not include “mobility enhancing equipment,” which:</p> <p>A. Can withstand repeated use; and</p> <p>B. Is primarily and customarily used to serve a medical purpose; and</p> <p>C. Generally is not useful to a person in the absence of illness or injury; and</p> <p>D. Is not worn in or on the body.</p> <p>Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the “durable medical equipment.”</p>	<p>A member state may limit its exemption to “durable medical equipment:”</p> <p>A. By requiring a prescription;</p> <p>B. Based on Medicare or Medicaid payments or reimbursement; or</p> <p>C. For home use.</p> <p>A member state may limit the exemption using any combination of the above but in no case shall an exemption certificate be required.</p> <p>A member state may exclude from repair and replacement parts items which are for single patient use only.</p> <p>A member state may exclude from the product definition of “durable medical equipment” any of the following for purposes enacting a product-based exemption:</p>

		<ol style="list-style-type: none">1. Oxygen delivery equipment not worn in or on the body, including repair and replacement parts;2. Kidney dialysis equipment not worn in or on the body, including repair and replacement parts; or3. Enteral feeding systems not worn in or on the body, including repair and replacement parts. <p>A member state choosing to enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those items are not worn in or on the body, must also enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those are worn in or on the body.</p> <p>A member state may limit the product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems using any combination of the following:</p> <ol style="list-style-type: none">a. By requiring a prescription;b. Based on Medicare or Medicaid payments or reimbursement; orc. For home use.
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Note: The following provides a side-by-side comparison of other terms existing in 36 MRSA Part 3 that would be affected by the requirement to comply with the Agreement.

<i>Current statute</i>	<i>Agreement requirement</i>	<i>Options</i>
<p>§1811, first ¶</p> <p>A tax is imposed on the value of all tangible personal property, products transferred electronically and taxable services sold at retail in this State. The rate of tax is 7% 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% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile, of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles or of 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% on the value of prepared food; and 5% on the value of all other tangible personal property, taxable services, and products transferred electronically. Notwithstanding the other provisions of this section, from October 1, 2013 to June 30, 2015, the rate of tax is 8% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 8% on the value of prepared food; 8% on the value of liquor sold in licensed establishments as defined in Title 28-</p>	<p>Section 308: State and Local Tax Rates <i>No member state shall have multiple state sales and use tax rates.</i></p>	<ul style="list-style-type: none"> • Apply 5.5% across the board and repeal the 8% tax • Apply a compromised rate across the board; increasing the 5.5% rate and lowering the 8% accordingly. • Reduce the 8% tax to 5.5% and create a "tourism" tax to impose the additional 2.5% tax. • Repeal the sales tax on prepared food and lodging and create a "tourism" tax to address these areas. • This provision does not affect the sale or lease of motor vehicles, allowing the 10% rate to stay in effect.

<p>A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; and 5.5% on the value of all other tangible personal property, taxable services, and products transferred electronically. 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 or of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles 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.</p>		
<p>§1812. Adding tax to sale price 1. Computation. <i>Every retailer shall add the sales tax imposed by chapters 211 to 225, or the average equivalent of that tax, to his sale price, except as otherwise provided, and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid and shall be recoverable at law in the same manner as the purchase price. When the sale price shall involve a fraction of a dollar,</i></p>	<p>Section 324: Rounding Rule <i>Each member state shall adopt a rounding algorithm that is carried to the third decimal place and rounded to the next whole cent when the third place decimal is greater than 4. No member state shall require a seller to collect tax based on a bracket system.</i></p>	<p>Adopt conventional rounding algorithm.</p>

<p><i>the tax shall be added to the sale price upon the following schedules:</i></p>		
<p>§1951-A. Collection of tax; report to State Tax Assessor 1. Monthly report and payment. Every retailer shall file with the State Tax Assessor, on or before the 15th day of each month, a return made under the penalties of perjury on a form prescribed by the assessor. The return must report the total sale price of all sales made during the preceding calendar month and such other information as the assessor requires. The assessor may permit the filing of returns other than monthly. The assessor, by rule, may waive reporting nontaxable sales. The assessor may for good cause extend for not more than 30 days the time for filing returns required under this Part. Every person subject to the use tax shall file similar returns, at similar dates, and pay the tax or furnish a receipt for the tax from a registered retailer.</p>	<p>Section 318: Uniform Tax Returns <i>Each member state shall require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.</i></p>	<p>Change due date from 15th to 20th.</p>
<p>§1811-A. Credit for worthless accounts <i>The tax paid on sales represented by accounts charged off as worthless may be credited against the tax due on a subsequent return filed within 3 years of the charge-off, but, if any such accounts are thereafter collected by the retailer, a tax must be paid upon the amounts so collected.</i></p>	<p>Section 320: Uniform Rules for Recovery of Bad Debts <i>Each member state shall use uniform rules to provide a deduction for bad debts to a seller.</i></p>	<p>Revise § 1811-A to reflect the federal definition of bad debt.</p>
<p>§ 1760(9-D). Ninety-five percent of the sale price of all fuel and electricity purchased for use at a manufacturing facility. For purposes of this subsection, "sale price" includes, in the</p>	<p>Section 323: Caps and Thresholds <i>Each member state shall not have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on</i></p>	<ul style="list-style-type: none"> • Exempt all fuel and electricity purchased for use at a manufacturing facility. • Tax all fuel and electricity purchased for

<p><i>case of electricity, any charge for transmission and distribution.</i></p>	<p><i>the value of the transaction or item, unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.</i></p>	<p>use at a manufacturing facility.</p> <ul style="list-style-type: none"> • Impose a .275% rate to these sales rather than provide an exemption.
<p>§ 1760(40) Sales of: <i>A. Used manufactured housing; and</i> <i>B. New manufactured housing to the extent of all costs, other than materials, included in the sale price, but the exemption may not exceed 50% of the sale price.</i></p>		<ul style="list-style-type: none"> • Exempt all sales of manufactured housing. • Tax all sales of manufactured housing. • Impose a 2.75% rate to these sales rather than provide an exemption.
<p>§ 1760(25) Watercraft purchased by nonresidents. <i>Sales to or use by a person that is not a resident of this State of watercraft or materials used in watercraft as specified in this subsection.</i> <i>A. The following are exempt when the sale is made in this State to a person that is not a resident of this State and the watercraft is sailed or transported outside the State within 30 days of delivery by the seller:</i> <i>(1) A watercraft;</i> <i>(2) Sales, under contract for the construction of a watercraft, of materials to be incorporated in that watercraft; and</i> <i>(3) Sales of materials to be incorporated in the watercraft for the repair, alteration, refitting, reconstruction, overhaul or restoration of that watercraft.</i> <i>B. The purchase of a watercraft outside this State is exempt if the watercraft is registered outside the State by the purchaser and used outside the State by the purchaser and the watercraft is present in the State not more than 30 days, not including any time spent in this</i></p>		<ul style="list-style-type: none"> • Exempt all sales of watercraft sold to nonresidents. • Tax all sales of watercraft sold to nonresidents. • Impose a 2.2% rate (40% of 5.5%) to these sales rather than provide an exemption.

<p><i>State for temporary storage, during the 12 months following its purchase. For purposes of this paragraph, "used outside the State" does not include storage but means actual use of the watercraft for a purpose consistent with its design.</i></p> <p><i>C. If, for a purpose other than temporary storage, a watercraft is present in the State for more than 30 days during the 12-month period following its date of purchase, the exemption is 60% of the sale price of the watercraft or materials for the construction, repair, alteration, refitting, reconstruction, overhaul or restoration of the watercraft, as specified in paragraph A.</i></p>		
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Appendix D

Maine Revenue Services
Fiscal Impact Worksheet
Estimated Annual Revenue Impact of Conformity to Streamlined Sales Tax

\$41,646

Options

Section Reference to Agreement

1.	Return due the 20th of the month - loss of use of the money for 5 days	(\$35,000)	318 Uniform Tax Returns
2.	Remote sellers will begin to register and collect tax	\$940,000	
3.	Monetary allowance to certified service providers		Article VI Monetary Allowances for New Technological Models
4.	EXEMPT all durable medical equipment (more expansive than just diabetic supplies and CPAP)	(\$1,500,000)	327 definition of durable medical equipment
	TAX all durable medical equipment (repeal current exemption for diabetic supplies and CPAP)	\$1,200,000	
4a.	EXEMPT all prosthetic devices (status quo but more exempt)	(\$500,000)	327 definition of prosthetic device
	TAX all prosthetic devices	\$5,600,000	
4b.	EXEMPT all mobility enhancing equipment (more expansive than just wheelchairs, canes, walkers)	(\$750,000)	327 definition of mobility enhancing equipment
	TAX all mobility enhancing equipment taxing wheelchairs, canes, walkers	\$300,000	
5.	Definition of bad debts - nominal loss		320 Uniform Rules for Recovery of Bad Debts
6.	TAX all delivery charges - gain from third party delivery charges (UPS, etc.)	\$450,000	327 definition of sales price and delivery charges
	EXEMPT all delivery charges - loss on vendor delivery and handling charges	(\$4,800,000)	
6a.	EXEMPT any service necessary to complete the sale	(\$200,000)	327 definition of sales price
	TAX all services necessary to complete the sale (status quo)	\$0	
6b.	EXEMPT all installation charges (status quo)	\$0	327 definition of sales price
	TAX all installation charges	\$5,800,000	
7.	Accelerate tax on lease/rental stream to the first month of the agreement	\$360,000	327 definition of retail sale
	Tax lease/rental stream as payments are made on leases entered into or after effective date	(\$4,500,000)	
	Tax all lease/rental payments that occur after effective date	\$3,000,000	
8.	Continue to TAX soft drinks (status quo but with more becoming taxable)	\$730,000	327 definition of soft drinks
	EXEMPT all soft drinks	(\$9,940,000)	
9.	Continue to TAX bottled water (status quo but with more being exempt)	(\$960,000)	327 definition of food and food ingredients
	EXEMPT all bottled water	(\$2,400,000)	
9a.	EXEMPT ice	(\$120,000)	327 definition of food and food ingredients
10.	Continue to TAX candy (status quo but with some becoming taxable and other becoming exempt)	\$200,000	327 definition of candy
	EXEMPT all candy	(\$5,320,000)	
11.	Continue to TAX dietary supplements (status quo)	\$0	327 definition of dietary supplements
	EXEMPT Dietary supplements	(\$2,500,000)	
12.	Include bakery items not currently taxed as prepared food - 7% tax rate	\$2,700,000	327 definition of prepared food
	EXEMPT bakery items currently taxed as prepared food	(\$3,600,000)	
	EXEMPT prepared food	(\$186,180,000)	
13.	Industrial energy - impose .25% tax rate to maintain revenue neutrality	\$0	308 & 323 State and Local Tax Rates - Caps and Thresholds
	TAX all industrial energy	\$27,052,025	
	EXEMPT all industrial energy	(\$1,423,791)	
14.	Sourcing rules - where sale occurs - destination based		309 Application of General Sourcing Rules
15.	Good faith of seller in making exempt sales		317 Administration of Exemptions
	Total		
	Estimated administrative costs		