

OFFICE OF FISCAL AND PROGRAM REVIEW

Date: January 5, 2012
To: Members, Joint Standing Committee on Taxation
From: Elizabeth Cooper, Legislative Analyst

L.D. 590, An Act To Require Review of Certain Changes to Sales Tax Policy Application or Practice prior to Implementation

Summary: This bill (as written) requires the State Tax Assessor to report to the Taxation Committee prior to implementing any change in policy application or practice of the Department of Administrative and Financial Services, Bureau of Revenue Services regarding the sales and use tax if that change will result in additional revenue. The Taxation Committee is authorized to report out legislation reversing or modifying the change.

Public Hearing – March 11, 2011:

Proponents – Maine Chamber of Commerce, Woolwich/Bill’s Garage, Maine Merchant’s Association

Opposed - none

NFNA - none

Work Sessions and Carryover

- There was a subcommittee that worked on the bill and Committee work sessions were held on March 29, May 4 and May 11, 2011.
- A Committee amendment replaced the bill and was further amended in the House.
- On June 7, 2011, the bill, as amended, was passed to be enacted in the House and in the Senate was placed on the Special Appropriations Table pending enactment in concurrence.
- At the end of the 1st Regular Session, the Appropriations and Financial Affairs Committee recommitted the bill to the Taxation Committee.

New Proposed Amendment

- During the interim, the Taxation Committee worked on the bill and a new amendment has been proposed.
- The proposed amendment codifies Resolve 2009, c 127.

Additional Background: This bill had a public hearing on March 11 and the sponsor proposed an amendment, which would replace the bill. There were 2 similar bills considered and a working group was formed to work on issues identified in all 3 bills. Ultimately, the Committee took action on the amendment proposed by the sponsor on LD 590. Additional information regarding Committee action and the bill’s recommitment to Taxation follow.

Similar Bills - LD 590 was considered along with 2 other bills that focused on improvements at Maine Revenue Services.

- *L.D. 176, An Act Regarding Sales and Use Tax Audit Procedures and Enforcement*, sponsored by Senator Langley, prohibited retroactive assessment of the sales and use tax if a taxpayer had no reason to know that it applied to a particular type of transaction and specified reasons a taxpayer should know the tax applies.
- *L.D. 868, An Act To Reform Maine Revenue Services Procedures*, sponsored by Senator Trahan, required Maine Revenue Services to notify the Taxation Committee prior to implementing any change in policy application or practice if that change will result in additional revenue and to implement the change through major substantive rulemaking, which is subject to review by the Legislature. It also required Maine Revenue Service to notify to a taxpayer when an audit has been initiated and to record and preserve all conversations.

Working group

On March 29th, the Committee voted ONTP on LD 176 and LD 868, and formed a working group to develop an amendment for LD 590 that would address the issues raised in all three bills. The working group met but did not propose an amendment.

Amendments approved - On May 11th, the Committee voted on the bill resulting in a divided report in support of a Committee amendment that replaced the bill. The majority and minority reports were both OTPA.

- The Committee amendment provided for the State Tax Assessor to assess additional taxes only in the case of intentional disregard or fraud with the intent to evade taxes, a mathematical error or underpayment when the taxpayer has demonstrated previous knowledge of the tax or 80% of taxpayers required to pay the tax currently pay the tax on the same type of sales or uses. It included provisions for proposing legislation or submitting major substantive rules to clarify the tax obligation. The amendment had a fiscal note showing a General Fund impact of \$9,975,000 in the first year and over \$13 million per year in subsequent years.
- There was a House amendment that required the law imposing the tax at issue to have been in effect for more than 90 days and permitted an additional assessment if a majority, rather than 80%, of the taxpayers were aware of it.

On June 7th, the Committee Amendment (as amended in the House) passed in the House and was placed on the Special Appropriations Table in the Senate. At the end of session, the Appropriations Committee voted to recommit the bill to the Taxation Committee.