



Maine Municipal Association

2013 Federal Issues Paper



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60 Community Drive | Augusta, ME 04330 | 1-800-452-8786 207-623-8428



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EXECUTIVE DIRECTOR Christopher Lockwood

MMA Staff Contributing to the MMA Federal Issues Paper:

Laura Veilleux, Advocacy Associate, State & Federal Relations

Geoff Herman, Director, State & Federal Relations

Kate Dufour, Senior Legislative Advocate, State & Federal Relations

Chris Lockwood, Executive Director

Amanda Meader, Staff Attorney, Legal Services Department

Eric Conrad, Director, Communication & Educational Services



The 2013 Federal Issues Paper is a publication of the Maine Municipal Association. The purpose of the paper is to highlight federal issues that are of concern to Maine municipal officials and to reflect the policy positions adopted by the MMA Executive Committee.

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Preface

As municipal officials, members of the Maine Municipal Association Executive Committee would like to add our voices to the call for members of Congress and the President to restore order and predictability to the process of governing. The issues we face as a nation require strong leadership and a framework for weighing difficult decisions on a solid public policy platform.

Our state and local governments operate within established timetables and procedures for adopting our annual budgets and approving capital expenditures. Through our intergovernmental system, we are inextricably intertwined with federal government tax policy, programs and funding, and mandates. The lack of predictability and timeliness in the federal budget process severely hinders our ability to adopt annual operating budgets and to make key longer term infrastructure investments.

The issues identified in this Paper affect citizens and businesses throughout the State of Maine. We urge you to work with your colleagues to move beyond partisan gridlock and crisis management to restore the functionality of governance at the national level.



Guidelines to Consider

Maine's municipal leaders fully recognize that some very difficult decisions need to be made in order to put the federal government's fiscal house in order. It would hardly be constructive, under the present circumstances, to ignore that reality and demand that our congressional delegation reject all deficit reduction proposals that could have a negative municipal impact. The magnitude of the federal budget issues requires Congress to comprehensively reprioritize in a way that will result in tangible impacts being recognized throughout American society. Without doubt, some impacts will be felt by the town and city governments in New England.

Since there is nothing traditional about the current approach to budgeting at the federal level, it makes little sense to engage in our traditional entreaties to increase or preserve historical funding levels for important municipal programs. As an alternative, and in order to be respectful of the tough decisions our representatives to Congress will have to make, we are offering some possible guidelines that might be considered when evaluating any deficit reduction proposals that negatively affect local government. Examples of how these guidelines might be applied will be provided throughout this edition of the Federal Issues Paper.

It is our hope that by utilizing these guidelines, Congress can prioritize its spending plan in such a way as to minimize long-term negative impacts to local governments.

- **Protect infrastructure.** Prioritize programs and policies that support the maintenance and protection of essential, large scale governmental infrastructure, such as roads and bridges, air and water transport facilities, drinking water and wastewater management systems, solid waste disposal facilities, and other major capital assets. The capacity of our local, state and national economies to expand is highly dependent on the availability of this infrastructure.
- **Preserve municipal and state authorities.** Program funding is one thing, operational authorities are another. Do not remove or disable any authorities that are currently available to local government to cost effectively provide vital services at the local level. Funding levels for important municipal programs can be increased or decreased on a year-to-year basis without irrevocable injury. In contrast, permanent damage to municipal capacity results when a tool is taken away that has long allowed local governments to cost effectively maintain the public's capital assets. The tax exempt status of investments in municipal infrastructure is a prime example.
- **Practice tax policy maintenance at the federal level.** In the same general category of preserving existing municipal and state authorities, Congress is asked to exercise its unique and special authority to keep the tax code as it applies throughout the nation in proper maintenance. In the municipal experience it takes the application of political effort to properly manage a tax code; the consternation that is generated when a property tax revaluation is conducted at the local level provides a small suggestion of what tax code management can entail. On the other hand, a lack of maintenance always seems to bring advantage to some and disadvantage to many. Only Congress can conform the sales tax systems administered at the state level to the modern retail economy, and it is past time for Congress to act.
- **Pay proper share of federal mandate costs.** Give highest priority to properly funding federally mandated programs. When the federal government requires local governments to provide certain programs but provides no funding (or inadequate funding) to the affected municipalities, it "crowds out" the municipal capacity to pay for the local government services that the property taxpayers in Maine both expect and deserve. It is critically important that Congress not "solve" the deficit reduc-

tion challenge by backing farther away from its funding obligations associated with mandates while protecting pet programs that are purely discretionary. The special education mandates (IDEA) and the Clean Water Act mandates are the two major areas of concern.

- **Redesign programs from the inside.** The first question should not be whether to cutback or eliminate Program X instead of Program Y. The question, instead, should be what elements within each federal funding effort are more essential than other aspects of that program to accomplish the core goals. Federal educational funding provides a good example. Title 1 educational programming and the special education policies establish clearly articulated goals and the federal government should pay its share of these educational mandates as a matter of first priority. The same cannot be said for the No Child Left Behind Act (NCLB), at least from the municipal perspective. For reasons of its design and the manner of its implementation, the NCLB is regularly failing its own “annual yearly progress” analysis, and should be overhauled.

In the pages ahead, a number of public policy matters important to local government are discussed and our hope is that by example we might show how these various recommended guidelines might be applied with respect to the decisions that will be made in the months ahead.

Tax Exempt Financing and Municipal Bonds

As the Administration and Congress look for revenue to reduce the deficit and fund programs, the federal income tax exemption provided to interest paid on state and municipal bonds (debt) is under threat. The “Protect infrastructure” and “Preserve municipal and state authorities” guidelines noted on page 2 that we are asking you to utilize pertain to this issue.

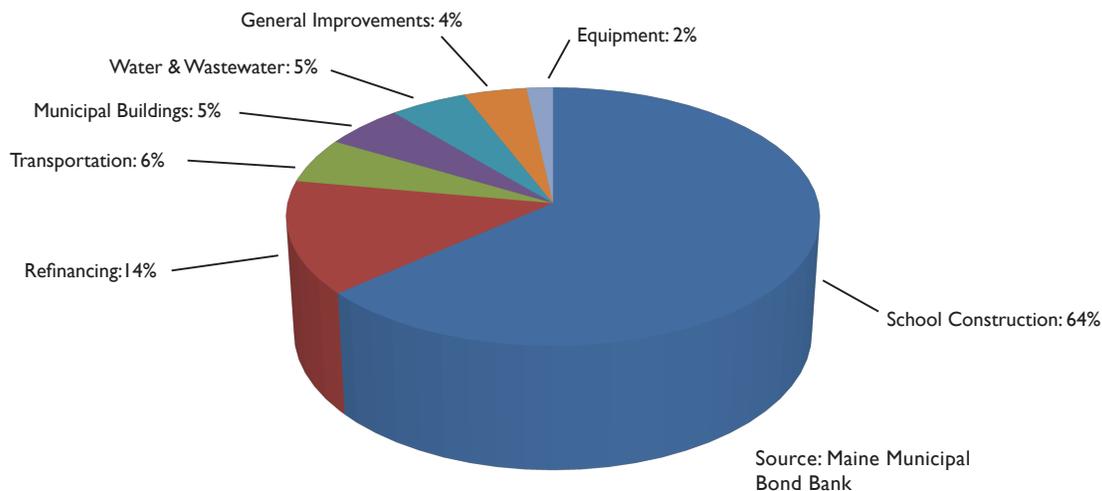
Types of Projects Funded by Maine Municipal Bond Bank Bonds January 2011 to October 2012

	Bond Value	% of Total
School Construction or Renovations	\$131,163,202	63.6%
Refinancing Existing Debt	\$29,322,624	14.2%
Transportation Infrastructure Improvements	\$11,603,246	5.6%
Municipal Building Construction or Renovations	\$11,057,000	5.4%
Water/Wastewater Infrastructure Improvements	\$10,783,432	5.2%
General Capital Improvements	\$8,693,000	4.2%
Equipment Purchases	\$3,632,530	1.8%
Total	\$206,255,034	100.0%

Source: Maine Municipal Bond Bank

This tax exemption has been in place since the federal income tax was instituted in 1913. It is the primary financing mechanism for state and local infrastructure projects, with three-quarters of the infrastructure projects in the U.S. built by state and local governments, and with over \$2.9 trillion in outstanding tax-exempt

Projects Funded with \$206 Million in Maine Municipal Bond Bank Bond Revenue



bonds, issued by 30,000 separate government units. Local governments save an average of 25 percent to 30 percent on interest costs with tax-exempt municipal bonds as compared to taxable bonds. This is because investors are willing to accept lower interest on tax-exempt bonds in conjunction with the tax benefit. If the federal income tax exemption is limited or eliminated, states and localities will pay more to finance projects, leading to less infrastructure investment, fewer jobs, and greater burdens on citizens who will have to pay higher taxes and utility fees.

The importance of preserving tax exempt municipal financing is underscored when viewed in a broader historic context. The Clean Water and Safe Drinking Water Acts are a case in point. When these environmental laws were enacted in the 1970s, the federal government often provided 75% of the funding, with state governments providing 15% and local governments responsible for the remaining 10%. Over the years, federal funding was curtailed and grant programs shifted to revolving loan funds, with the primary responsibility for financing infrastructure shifting to local taxpayers and ratepayers. As an illustration, in addition to the municipal bond projects listed above, local governments invested an additional \$105 million on water-related projects during the past two years through two revolving loan funds managed by the Maine Municipal Bond Bank.

The City of Lewiston provides a good case example of the use of tax exempt municipal bonds to finance roads, bridges, water and waste water systems, schools, and many other projects. Over \$13 million of the amount borrowed by Lewiston during the past five years was required to comply with federal/state environmental regulations in such areas as Combined Sewer Overflow Control and the Clean Drinking Water Act. A number of the projects undertaken by Lewiston reflected the need to update aging infrastructure, as well as to support economic development. Access to tax exempt municipal bonds provided savings to Lewiston property taxpayers and utility ratepayers and enabled Lewiston to undertake a broader scope of infrastructure investments.

“Eliminating the tax exemption on general obligation bonds issued for governmental purposes will increase the interest rates that must be paid on these bonds. Given the current depressed interest rate environment, this will add about 50 basis points to rates, an amount that has been significantly higher in past periods of more traditional borrowing costs, where the differential has ranged to 300 basis points.” (Ed Barrett, City Administrator, City of Lewiston)

Lewiston - General Obligation Bonding 2008- 2012

	Bond Value	% of Total
School Expansion and Renovations	\$16,383,000	27.1%
Combined Sewer Overflow Control	\$10,330,000	17.1%
Street Reconstruction and Overlay	\$7,561,400	12.5%
Other/Misc	\$5,659,000	9.4%
Parking to Support Downtown Development	\$5,165,000	8.5%
Landfill Expansion/Closure	\$4,425,000	7.3%
Replace Old Water Distribution Mains	\$4,147,000	6.9%
Upgrade Water Treatment (Clean Drinking Water Act)	\$2,792,000	4.6%
Replace Old Sewer Collection Lines	\$2,325,000	3.8%
Public Building Improvements/Renovations	\$1,660,000	2.7%
Total	\$60,447,400	100%

Source: Maine Municipal Bond Bank

The Maine Municipal Association urges members of the Delegation to respect the principles of fiscal federalism by maintaining the tax exempt status of municipal bonds and providing stability and predictability to state and local governments and the investment community.

EPA's Integrated Approach to Clean Water Act Regulations

This article is our “progress” report on the Integrated Municipal Stormwater and Wastewater Planning Approach Framework developed by the Environmental Protection Agency (EPA). Administrators of the EPA’s Office of Water first described the integrated approach in a memorandum issued October 27, 2011. Following the issuance of the memo, its authors participated in several conference calls during 2012 with a number of municipal leaders, representatives of municipal leagues and policy experts in the National League of Cities. This article has three purposes. Maine’s towns and cities would like to reiterate the municipal interest in this new methodology of complying with Clean Water Act (CWA) mandates. There is a decided interest in identifying any real progress that has been made in implementing the integrated approach in local governments and sharing that information with others. We would ask Maine’s Congressional Delegation to encourage the EPA to continue down this regulatory road by removing any federal regulatory or procedural obstructions so that municipalities can more easily adopt integrated plans if they so desire. Finally, we would caution that participation in this integrated approach methodology should be the decision of individual municipalities, rather than that of the EPA, and should not be used to expand the reach of current programs or agencies. The federal mandate guidelines and the guidelines related to redesigning programs from the inside are germane to this issue.

One year ago. In last year’s Federal Issues Paper, we expressed interest in the new approach which in concept attempts to logically connect, interrelate and potentially sequence EPA-mandated stormwater and sewer infrastructure projects impacting a common waterway. The integrated approach holds the possibility of

greater flexibility in prioritizing environmental mandates, therefore allowing increased affordability through locally-developed implementation plans. We understand that the focus remains on achieving the environmental protection goals; the integrated approach provides the potential for achieving those goals more cost effectively.

In Maine, 30 municipalities are regulated under the Phase II National Pollutant Discharge Elimination System through the municipal separate storm sewer system (MS4) general permit. Those regulations are on track to be updated over the next 18 months (see following article). Many of these municipalities are urban or suburban communities that have to deal with combined sewer overflow and wastewater treatment plant issues as well as the stormwater controls identified in the MS4 general permit. Because of these layered regulatory systems and because almost all of the cost of dealing with CWA mandates is paid for with property taxes, utility rates and other fees levied and collected at the local level, municipal governments welcome acknowledgement by the federal government of the financial hardship these regulations bring. Now, a year later, steps need to be taken to move this new approach from the conceptual stage to a plan that is acceptable to the regulators and regulated parties, transparently and predictably applied, and financially beneficial to the regulated town or city that invests in the effort to implement this approach.

The literature on the subject at this stage of implementation is mixed. According to one article published in late 2012 about the Town of Durham's experience in New Hampshire, the feasibility of using the integrated approach is limited because the EPA is reluctant to allow the reconsideration of existing administrative orders or consent decrees. A reluctance to re-open existing decrees would obviously hamper the capacity of developing a federal-local agreement that was truly "integrated". Another article suggests it is unclear if EPA will allow the installation of "green infrastructure" (rain gardens and other systems designed to utilize natural percolation) to influence changes to "gray infrastructure" (piping systems designed to collect and move stormwater to treatment areas). Because stormwater regulators in Maine use a different method of calculating water quality threats than chemical analysis (i.e., the percentage of impervious area in the watershed), it is even more unclear if the benefits of green infrastructure in the stormwater application can be measured against the effluent analysis that is applied to wastewater treatment works.

This year. MMA has contacted several of Maine's larger municipalities and discovered that most are not aggressively implementing the integrated approach. Of all of the communities contacted, the City of Bangor seems to be farthest along in the process with EPA.

When dealing with the EPA concerning the expiration (and extension) of the 1991 Consent Decree related to Combined Sewer Overflow (CSO) problems in 2011, the City first expressed an interest in looking more comprehensively at its environmental regulatory requirements. Over and above the City's obligation to maintain its permit for its wastewater treatment program and its continued obligations under the CSO Consent Decree, it is also required to implement the slate of "minimum control measures" under the MS4 General Permit. On top of all that, the City needs to address the improvement of water quality in six streams designated as impaired on the state's 303(d) list of waters that do not meet water quality standards. Four of these streams are also identified in a CWA-related analysis of certain waterways which holds the awkward title of the "Impervious Cover Total Maximum Daily Load" or ICTMDL Report. The City feels that implementing the integrated approach is a potential method for addressing four interrelated environmental issues that are subject to regulatory requirements coming down through at least three separate regulatory silos.

In deciding whether to venture down this path, the City is considering the advantages and disadvantages of trying this new approach. The downside is that there is no past experience or precedent on which to rely, so the learning curve would be very steep for both the City and EPA. Furthermore, there is concern that EPA may wish to extend penalties and requirements from one program to others where they have traditionally not applied. On the other hand, EPA has indicated a willingness to include stormwater regulatory costs (in addition to the

wastewater regulatory costs) into the affordability model. EPA's willingness to group both costs into the model would potentially allow the City to prioritize environmental projects in a way that cost effectively realizes the most beneficial environmental results. Additionally, the City appreciates EPA's willingness to allow Bangor additional time to modify the Consent Decree in order to incorporate non-CSO projects into the document.

Next Year? Experimentation with the integrated approach in Maine is still in its early stages, both in Bangor and most certainly in the other affected communities. As more municipalities in Maine (and across the nation) test the waters with this new regulatory approach, the picture should become clearer.

Federal Stormwater Regulations:

Intensifying Mandates at a Time of Shrinking Financial Resources

In last year's *Federal Issues Paper*, we noted that over 30 of Maine's largest communities were bracing for the EPA to promulgate more stringent stormwater regulations. A year later the wait continues, although the EPA recently announced plans to complete the proposed rulemaking by June 10, 2013 and to release the final rules by December 10, 2014.

The National League of Cities (NLC), along with the National Association of Counties and several national water utility organizations, met with the EPA in late November 2012 to discuss the proposed stormwater rulemaking. The meeting resulted in a letter to the EPA requesting clarification and additional discussion on the following issues:

- **Jurisdictional Expansion.** The EPA is considering expanding federal stormwater regulatory jurisdiction, perhaps by targeting individual stormwater dischargers located outside of existing jurisdictional boundaries if the discharger is contributing to water quality impairment. Local governments are expressing concern about how this process would work and which entities would be responsible for enforcing such permits.
- **Stormwater Retrofit.** The EPA may also require the management of discharges from existing impervious surfaces, thus obligating local governments and municipal utilities to retrofit existing areas of impervious surface. The municipal community is urging the EPA to consider the significant cost burden of such a requirement, to clarify how a retrofit component would be structured, and to fully fund any retrofit mandate.
- **Performance Standard Implementation.** To the extent any new mandates are promulgated, NLC has asked the EPA to allow local governments to engage in a flexible, multi-year implementation of the new standards, arguing that the cost of implementation will be minimized if local governments are able to undertake necessary projects in conjunction with other infrastructure or maintenance plans. Maine's municipalities take a stronger position and ask that no new unfunded federal stormwater mandates be promulgated whatsoever.

The areas of concern related to the pending stormwater rules will evolve as the conversation with the EPA continues. This dialogue is certain to intensify during the public comment period following the EPA's release of the draft rules. At present, the EPA is considering a 90-day public comment, a timeframe that NLC has said is the bare minimum length of time necessary to provide meaningful public input.

The specter of more stringent stormwater mandates at a time of continuing financial crisis for local governments is a troubling prospect. We remain hopeful that the EPA will develop a reasonable and workable solution that takes into account the severe financial constraints facing local governments across the nation and

particularly here in Maine. Proposals currently before the Maine Legislature would redirect over \$400 million in biennial revenues historically dedicated for the provision of local government services to the state budget instead. If any significant part of those proposals are ultimately enacted, the municipal capacity to put more financial resources behind federal environmental mandates will go to zero.

We will continue to monitor the EPA’s stormwater rulemaking efforts and to advise you of significant developments.

Special Education Funding

As outlined in the introduction to this Federal Issues Paper, municipal officials are asking federal level decision makers to take into consideration five guiding principles when developing positions on federal programs and considering cuts to their funding. One of those guidelines, “Pay proper share of federal mandate costs,” asks members of Maine’s Congressional Delegation to prioritize the federal funding for mandated programs.

A prime example where the federal government must continue to work on meeting its funding obligation is with the Individuals with Disabilities Education Act (IDEA). Under the federal program, municipalities and the state must develop and administer curricula and programs geared toward ensuring that special education services are provided to all children with disabilities and provided in the least restrictive environment possible. Students requiring special education services are those identified with having “mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance...orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities”.

Although the program appropriately ensures that children with special needs receive the best education possible, that level of education comes at a cost.

According to the data provided by the Maine Department of Education, in the last 15 years the cost of meeting the IDEA mandate in Maine has averaged \$290 million per year. As originally enacted and

Winthrop School District FY 2012 – FY 2013 Growth in Special Education Expenditures

	FY 2012	FY 2013	% Increase
Out of District Placements	\$ 457,400	\$ 561,715	23%
In-house Special Education	\$ 358,883	\$ 529,888	48%
Total Expenditures	\$ 816,283	\$ 1,091,603	34%
Federal IDEA Grant Revenue	\$ 285,683	\$ 285,372	0%
State and Local Share of Program Cost	\$ 530,600	\$ 806,231	52%

Source: Winthrop School Department

according to current federal law, the federal share of the program is supposed to be pegged at 40%, but only 13% of Maine's special education costs have been funded with federal dollars over that 15-year average. Instead of receiving an average of \$116 million in federal assistance each year, Maine receives an average \$40 million. As a result, the annual cost to state and local taxpayers has averaged \$252 million, rather than \$135 million per year. That shortchanging of federal contributions for mandated special education programs has real impacts at the municipal level. Take the Town of Winthrop as an example.

According to the data provided by the Winthrop school district, funding for special education programs continues to increase, while the federal share of those continually increasing costs are flat-funded. As shown in the table on the previous page, the year-to-year increase in Winthrop's total special education costs between FY 2012 and FY 2013 grew by a staggering 34%. In comparison, federal contributions were flat-funded. In this case, over \$151,000 in federal funding that the Winthrop school system should legitimately expect had to be made up with local and state resources. It is not right.

For this reason it is important to municipal officials that Congress continues to make progress toward appropriately funding its share of special education and opposes all efforts to dial back its financial obligation to this important educational program and intergovernmental funding partnership.

The Marketplace Fairness Act

The retail world has changed since the days of black-and-white television and drug store soda fountains. Federal and state sales tax laws need to change as well.

That's the over-arching argument behind the Marketplace Fairness Act of 2013 (S. 336 and H.R. 684), legislation that would provide a framework to level the playing field for so-called "bricks and mortar" retailers and their online and catalog competitors. The legislation also would generate an estimated \$18 million to \$28 million in sales tax revenue for the State of Maine each year, according to an analysis by the Retail Association of Maine and Maine State Chamber of Commerce.

Proponents of the Marketplace Fairness Act and related measures sense new momentum at both the state and federal levels because elected officials are increasingly recognizing that a sales-tax code written in the 1950s simply does not cut it in the 21st Century. Today, online giants such as Amazon and Overstock dwarf Main Street retailers, which dutifully charge and forward sales taxes while their Web-based competitors do not. Here are some key points about the Act:

- **It would instill fairness.** Consumers should pay sales taxes to support governmental services and the tax should apply equally to all retail establishments. It is indefensible to favor online and catalog retailers. The very notion of a physical establishment has changed forever. True, if you walk down Main Street you may see stores on your right and on your left. But if you turn on your computer, thousands of online stores are at your fingertips, right inside the living room of your "brick and mortar" home.
- **The technology is easy.** Ten years ago, online retailers argued that technical obstacles made it difficult to assess state-by-state sales taxes. That is no longer the case. If an online retailer can automatically calculate shipping fees based upon how much a consumer is spending or what product is being purchased, sales taxes certainly can be calculated and forwarded. Retailers with remote sales of less than \$1 million per year are exempt.

- **This is not a new tax.** Some opponents argue that this is a tax increase; we reject the notion. The sales and use tax in Maine dates to 1953. Maine residents are required by law to report and remit sales and use taxes for purchases made outside the state. The Marketplace Fairness Act simply ensures that all retailers participate equally in the collection and distribution of sales taxes.
- **State action is required.** Each state needs to simplify its sales tax law in order to ease concerns that multistate tax collection could be complicated, and 24 states have done so. Unfortunately, a bill that would have taken Maine a step in the right direction was killed in 2011 in a party-line vote. However, two measures introduced in 2013 – one sponsored by Rep. Gary Knight, R-Livermore Falls, and the other by Rep. Seth Berry, D-Bowdoinham – appear to have broad support. Those bills advance Maine with respect to the Internet taxation issue, but only as far as state law can go. The federal government has to do the rest.
- **The federal Act has many backers.** Not surprisingly, retail and merchants associations in virtually every state – including Maine – support the Act. So, too, do the National League of Cities, National Governors Association, National Conference of State Legislatures, U.S. Conference of Mayors, labor unions and many states’ veterinary associations. The Act is endorsed by many national retailers with strong Maine presences including: Wal-Mart, Dick’s Sporting Goods, Petco, PetSmart, Lowes, Target, Tractor Supply Company and Wendy’s.

The notion that imposing a requirement for online businesses to collect sales taxes and remit them to the appropriate state could somehow hurt a “fragile” Internet retail industry is quite outdated. Amazon, just to cite one online retailer, recorded far-from-fragile sales revenues of more than \$60 billion in 2012.

It’s time to be fair to Main Street retailers. Consistent with the “Practice tax policy maintenance at the federal level” guideline noted on page 2, the Maine Municipal Association encourages members of the state’s Congressional delegation to support the Marketplace Fairness Act.



Maine Municipal Association

OUR MISSION

The mission of the Maine Municipal Association is to provide professional services to local governments throughout Maine and to advocate their common interests at the state and national levels.

OUR CORE BELIEFS

We believe in:

- Local government as the keystone of democracy.
- Representative and participatory local government.
- The accessibility and accountability of municipal government officials.
- A commitment to honesty, integrity and the highest ethical standards among public officials.
- The vital intergovernmental role of municipal governments in providing basic services essential to public safety and the functioning of our economy.
- The individuality of each local government.
- The value of collaboration as a means of strengthening cities and towns and providing needed services.

LOCAL GOVERNMENT
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