

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 1204**

H. P. 1855

House of Representatives, March 2, 1949.

Referred to Committee on Taxation. Sent up for concurrence and 2000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Albee of Portland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-NINE

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**AN ACT Imposing a Sales and Use Tax to Raise Additional Revenue.**

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

**R. S., c. 14, §§ 257-329, additional.** Chapter 14 of the revised statutes, as amended, is hereby further amended by adding thereto new sections to be numbered 257 to 329, inclusive, to read as follows :

**'Sales and Use Tax**

**Sec. 257. Title.** Sections 257 to 329, inclusive, shall be known and may be cited as the "Sales and Use Tax Law."

**Sec. 258. Definitions.** Except where the context otherwise requires, the following definitions shall govern the construction of sections 257 to 329, inclusive:

I. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

II. "Person" includes any individual, firm, copartnership, joint venture, association, club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, the United States, this state, any

county, city, town or other political subdivision of the state, or any other group or combination acting as a unit.

**III. "Purchase" means and includes:**

A. Any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration;

B. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;

C. A transfer for a consideration of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or for any publication.

**IV. "Purchaser" means any person who purchases property receipts from which are taxable under the provisions of sections 257 to 329, inclusive.**

**V. "Receipts" mean:**

A. The total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules and regulations as the state tax assessor may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property;

2. The cost of the materials used, labor or service cost, interest paid, losses, or any other expense;

3. The cost of transportation of the property prior to its sale to the purchaser;

B. The total amount of the sale or lease or rental price includes all of the following:

1. Any services that are a part of the sale;
  2. All receipts, cash, credits, and property of any kind;
  3. Any amount for which credit is allowed by the seller to the purchaser.
- C. "Receipts" do not include any of the following:
1. Cash discounts allowed and taken on sales;
  2. Sale price of property returned by customers upon rescission of the contract of sale when the full sale price is refunded either in cash or credit, and when the property is returned within 90 days from the date of sale;
  3. The price received for labor or services used in installing or applying the property sold;
  4. The amount of any tax (not including, however, any manufactures' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer;
  5. Transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.

For the purposes of the sales tax, if the retailers establish to the satisfaction of the state tax assessor that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

VI. "Retailer" includes:

- A. Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others;
- B. Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

When the state tax assessor determines that it is necessary for the efficient administration of the provisions of sections 257 to 329, inclusive, to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they

operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers the state tax assessor may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of sections 257 to 329, inclusive.

VII. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property.

The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, if the delivery is to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

VIII. "Sale shall mean and include:

A. Any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or any means whatsoever, of tangible personal property for a consideration;

B. The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others;

C. The furnishing, preparing or serving of food, meals or drinks for a consideration;

D. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;

E. A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication.

F. "Sale" does not include the delivery within this state of tangible personal property, processed, fabricated or manufactured within the state, but which is to be transported outside the state for use, sale or consumption solely outside the state.

IX. "Sale price" means:

A. The total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold;
  2. The cost of materials used, labor or service cost, interest charged, losses or any other expenses;
  3. The cost of transportation of the property prior to its purchase;
- B. The total amount for which the property is sold includes all of the following:
1. Any services that are a part of the sale;
  2. Any amount for which credit is given to the purchaser by the seller.
- C. "Sales price" does not include any of the following:
1. Cash discounts allowed and taken on sales;
  2. The amount charged for property returned by customers upon rescission of the contract of sale when the entire amount charged therefor is refunded either in cash or credit, and when the property is returned within 90 days from the date of purchase;
  3. The amount charged for labor or services rendered in installing or applying the property sold;
  4. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer;
  5. Transportation charges separately stated, if the transportation occurs after the purchase of the property is made.
- X. "Sales tax" means the tax imposed by sections 259 to 268, inclusive.
- XI. "Seller" includes every person engaged in the business of selling tangible personal property the receipts from the retail sale of which are required to be included in the measure of the sales tax.
- XII. "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state, of tangible personal property purchased from a retailer.
- XIII. "Storage" and "Use" do not include the keeping, retaining or exercising any right or power over tangible personal property shipped

or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

XIV. "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses, and shall not include intangible personal property such as rights and credits, bills of exchange, stocks and bonds, and similar evidences of indebtedness or ownership.

XV. "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.

XVI. "Use Tax" means the tax imposed by sections 269 to 281, inclusive.

#### Sales Tax

Sec. 259. Imposition and rate of sales tax. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 2% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on and after October 1, 1949.

Sec. 260. Reimbursement. The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done. Whenever a tax is imposed upon the services of any public utility, the rates for which service are established by the public utilities commission, the amount as the tax shall be added to the charge therefor.

Sec. 261. Itemization of tax reimbursement. The state tax assessor may by regulation provide that the amount collected by the retailer from the consumer in reimbursement of the tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

Sec. 262. Unlawful advertising. It is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded. Any person violat-

ing any provision of this section is guilty of a misdemeanor and shall be punished as hereinafter provided.

Sec. 263. Registration and certificates of authority. Every person desiring to engage in or conduct business as a seller within this state shall file with the state tax assessor a certificate of registration in a form prescribed by the state tax assessor. The state tax assessor shall within 5 days after such registration issue a certificate of authority empowering such applicant to collect the tax from the purchaser and duplicates thereof for each additional place of business of such applicant. Each certificate or duplicate shall state the place of business to which it is applicable. Such certificates of authority shall be prominently displayed in the places of business of the seller. Such certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the state tax assessor upon the seller's ceasing to do business at the place named.

Sec. 264. Registration fee. At the time of filing the certificate of registration, the applicant shall pay to the state tax assessor a registration fee of \$1 for each certificate of authority or duplicate thereof.

Sec. 265. Presumption of taxability; resale certificate. For the purpose of the proper administration of the provisions of sections 257 to 329, inclusive, and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

Sec. 266. Effect of certificate. The certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the certificate of authority provided for in section 263 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

Sec. 267. Form of certificate. The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the certificate of authority issued to the purchaser, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax assessor may prescribe.

Sec. 268. Liability of purchaser. If a purchaser who gives a certificate makes any use of the property other than retention, demonstration or dis-

play while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him, and the cost of the property to him shall be deemed the receipts from such retail sale. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his receipts the amount of the rental charged rather than the cost of the property to him.

#### Use Tax

Sec. 269. Imposition and rate of use tax. An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer on or after October 1, 1949, for storage, use or other consumption in this state at the rate of 2% of the sales price of the property.

Sec. 270. Liability for tax. Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or from a retailer who is authorized by the state tax assessor, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of sections 269 to 281, inclusive, relating to the use tax, regarded as a retailer maintaining a place of business in this state, given to the purchaser pursuant to section 271 hereof, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

Sec. 271. Collection by retailer. Every retailer maintaining a place of business in this state and making sales of tangible personal property for storage, use or other consumption in this state, not exempted under the provisions of sections 282 to 284, inclusive, shall, at the time of making the sales or, if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax assessor.

Sec. 272. Tax is debt. The tax required to be collected by the retailer constitutes a debt owed by the retailer to this state.

Sec. 273. Unlawful advertising. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or

indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

Sec. 274. Separate statement of tax. The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

Sec. 275. Unlawful acts. Any person violating sections 271, 273 or 274 is guilty of a misdemeanor and shall be punished as hereinafter provided.

Sec. 276. Registration of retailers. Every retailer selling tangible personal property for storage, use or other consumption in this state shall register with the state tax assessor and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, and such other information as the board may require.

Sec. 277. Presumption of purchase for use; resale certificate. For the purpose of the proper administration of the provisions of sections 257 to 329, inclusive, and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

Sec. 278. Effect of certificate. The certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the certificate of authority provided for by section 263 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

Sec. 279. Form of certificate. The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the certificate of authority issued to the purchaser, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax assessor may prescribe.

Sec. 280. Liability of purchaser. If a purchaser who gives a certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him.

Sec. 281. Presumption of purchase from retailer. It shall be further presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer on or after October 1, 1949, for storage, use or other consumption in this state.

#### Exemptions

Sec. 282. General exemptions. There are exempted from the taxes imposed by sections 257 to 329, inclusive:

I. Exemptions by constitutional provisions. The storage, use or other consumption in this state of tangible personal property the receipts from the sale of which, or the storage, use or other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

II. Vessels. There are exempted from the taxes imposed by the provisions of sections 257 to 329, inclusive, the receipts from sales of vessels of more than 1,000 tons burden by the builders thereof and the storage, use or other consumption in this state of any ship of more than 1,000 tons burden which is purchased in this state from the builders and with respect to which the use tax would, if the ship had been purchased outside this state or in interstate commerce, be inoperative because prohibited under the constitution or the laws of the United States or the constitution of this state.

III. Motor vehicle fuel. There are exempted from the taxes imposed by the provisions of sections 257 to 329, inclusive, the receipts from the distributions of and the storage, use or other consumption in this state of motor vehicle fuel the distributions of which in this state are subject to the taxes imposed by chapter 14.

IV. Sales of liquor. There are exempted from the taxes imposed by sections 257 to 329, inclusive, the receipts from the sale of spirituous or vinous liquors sold in stores operated by the state liquor commission.

V. Publications. There are exempted from the taxes imposed by sections 257 to 329, inclusive, the receipts from the sale of any publication regularly issued at average intervals not exceeding 3 months and any such publication.

VI. Meals. There are exempted from the taxes imposed by the provisions of sections 257 to 329, inclusive, the receipts from the sale of, and storage, use or other consumption in this state of, meals served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school.

VII. Containers. There are exempted from the taxes imposed by sections 257 to 329, inclusive, the receipts from sales of and the storage, use or other consumption in this state of returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

As used herein the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse.

Sec. 283. Exemptions from sales tax. There are exempted from the computation of the amount of the sales tax the receipts from the sale of any tangible personal property to:

- I. The United States, its unincorporated agencies and instrumentalities;
- II. Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

Sec. 284. Exemptions from use tax.

I. Sales tax applicable. The storage, use or other consumption in this state of property, the receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax.

II. Property purchased from United States. The storage, use or other consumption in this state of property purchased from any unincorporated agency or instrumentality of the United States, except:

A. Any property reported to the surplus property board of the United States as surplus property by any owning agency; and

B. Any property included in any contractor's inventory is exempted from the use tax.

“Surplus property,” “owning agency,” and “contractor inventory” as used in this section have the meanings ascribed to them in that act of the Congress of the United States known as the “Surplus Property Act of 1944.”

#### Returns, Payment and Determinations

Sec. 285. Due date. The taxes imposed by sections 257 to 329, inclusive, are due and payable to the state tax assessor quarterly on or before the 30th day of the month next succeeding each quarterly period. The state tax assessor shall pay over all receipts from these taxes to the treasurer of state daily.

Sec. 286. Return. On or before the 30th day of the month following each quarterly period of 3 months, a return for the preceding quarterly period shall be filed with the state tax assessor in such form as the state tax assessor may prescribe.

For the purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer maintaining a place of business in the state and by every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent but need not be verified by oath.

Sec. 287. Contents of return. For purposes of the sales tax the return shall show the receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use or consumption of which property became subject to the use tax during the preceding reporting period; in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period.

The return shall also show the amount of the taxes for the period covered by the return and such other information as the state tax assessor deems necessary for the proper administration of sections 257 to 329, inclusive.

Sec. 288. Filing return. The person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the state tax assessor and he shall pay over such receipts to the treasurer of state daily.

Sec. 289. Return periods. The state tax assessor, if he deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payment of the amount of taxes for quarterly periods other than calendar quarters depending upon the principal place of business of the seller, retailer or purchaser as the case may be, or for other than quarterly periods.

Sec. 290. Rentals or leases. For the purposes of the sales tax receipts from rentals or leases of tangible personal property shall be reported and the tax paid in accordance with such rules and regulations as the state tax assessor may prescribe.

Sec. 291. Extension of time. The state tax assessor for good cause may extend for not to exceed 1 month the time for making any return or paying any amount required to be paid under the provisions of sections 257 to 329, inclusive. The extension may be granted at any time provided a request therefor is filed with the state tax assessor within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of  $\frac{1}{2}$  of 1% per month, or fraction thereof, from the date on which the tax would have been due without the extension until the date of payment.

#### Deficiency Determinations

Sec. 292. Deficiency determination. If the state tax assessor is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one or for more than one period.

Sec. 293. Interest. The amount of the determination, exclusive of penalties, shall bear interest at the rate of  $\frac{1}{2}$  of 1% per month, or fraction thereof, from the 30th day after the close of the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

Sec. 294. Offset. In making a determination the state tax assessor may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against

penalties, and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in section 314.

Sec. 295. Ten per cent penalty. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of sections 257 to 329, inclusive, or authorized rules and regulations, a penalty of 10% of the amount of the determination shall be added thereto.

Sec. 296. Twenty-five per cent penalty. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the provisions of sections 257 to 329, inclusive, or authorized rules and regulations, a penalty of 25% of the amount of the determination shall be added thereto.

Sec. 297. Notice of determination. The state tax assessor shall give to the retailer or person storing, using or consuming tangible personal property written notice of his determination. The notice may be served personally or by registered mail and shall be addressed to the retailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the state tax assessor. In case of service by mail of any notice required by the provisions of sections 257 to 329, inclusive, the service is complete at the time of deposit in the United States post office.

Sec. 298. Limitations; deficiency determinations. Except in the case of fraud, intent to evade the provisions of sections 257 to 329, inclusive, or authorized rules and regulations, failure to make a return, or claim for additional amount pursuant to section 310, every notice of a deficiency determination shall be mailed within 3 years after the 30th day of the calendar month following the quarterly period for which the amount is proposed to be determined or within 3 years after the return is filed, whichever period expires the later.

The limitation specified in this section does not apply in case of a sales tax proposed to be determined with respect to sales of property for the storage, use or other consumption of which notice of a deficiency determination has been or is given pursuant to sections 297, 304 and 306 and to the 1st paragraph of this section. The limitation specified in this section does not apply in case of an amount of use tax proposed to be determined with respect to storage, use or other consumption of property for the sale of which notice of a deficiency determination has been or is given pursuant to sections 297, 304 and 306 and to the 1st paragraph of this section.

Sec. 299. Waiver. If before the expiration of the time prescribed in section 298 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

#### Determination on Failure to File Return

Sec. 300. Determination; failure to file return. If any person fails to make a return, the state tax assessor shall make an estimate of the amount of the receipts of the person, or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use or other consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the state tax assessor's possession or may come in his possession. Upon the basis of this estimate the state tax assessor shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10% thereof. One or more determinations may be made for one or for more than one period.

Sec. 301. Offsets. In making a determination the state tax assessor may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in section 314.

† Sec. 302. Interest. The amount of the determination, exclusive of penalties, shall bear interest at the rate of  $\frac{1}{2}$  of 1% per month, or fraction thereof, from the 30th day after the close of the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

Sec. 303. Penalties. If the failure of any person to file a return is due to fraud or an intent to evade the provisions of sections 257 to 329, inclusive, or rules and regulations, a penalty of 25% of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10% penalty provided in section 300.

Sec. 304. Notice of determination. Promptly after making his determination the state tax assessor shall give to the person written notice of the estimate, determination and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

### Jeopardy Determination

Sec. 305. Jeopardy determination. If the state tax assessor believes that the collection of any tax or any amount of tax required to be collected and paid to the state or of any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable.

Sec. 306. Interest and penalty. If the amount specified in the determination is not paid within 10 days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the 10 days, unless a petition for redetermination is filed within the 10 days, and the delinquency penalty and the interest provided in section 314 shall attach to the amount of the tax or the amount of the tax required to be collected.

Sec. 307. Petition for redetermination; security. The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to section 308. He shall, however, file the petition for redetermination with the state tax assessor within 10 days after the service upon him of notice of the determination. The person shall also within the 10-day period deposit with the state tax assessor such security as it may deem necessary to insure compliance with sections 257 to 329, inclusive. The security may be sold by the state tax assessor in the manner prescribed by section 318.

Sec. 308. Petition for redetermination. Any person against whom a determination is made under the provisions of sections 285 to 317, inclusive, or any person directly interested may petition for a redetermination within 30 days after service upon the person of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

Sec. 309. Oral hearing. If a petition for redetermination is filed within the 30-day period, the state tax assessor shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' notice of the time and place of

the hearing. The state tax assessor may continue the hearing from time to time as may be necessary.

Sec. 310. Decrease or increase of determination. The state tax assessor may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the state tax assessor at or before the hearing.

Sec. 311. Finality date of order or decision. The order or decision of the state tax assessor upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.

Sec. 312. Due date of determination; penalty. All determinations made by the state tax assessor under the provisions of sections 285 to 317, inclusive, are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10% of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

Sec. 313. Service of notice. Any notice required by the provisions of sections 308 to 313, inclusive, shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Sec. 314. Interest and penalties. Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the state tax assessor under the provisions of sections 285 to 317, inclusive, within the time required shall pay a penalty of 10% of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest at the rate of  $\frac{1}{2}$  of 1% per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

Sec. 315. Credits and refunds. If the state tax assessor determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the state tax assessor shall set forth that fact in the records of the state tax assessor and shall certify to the treasurer of state the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited on any amounts then due and payable from the person under the provisions of sections 257 to 329, inclusive, and the balance shall be refunded to the person, or his successors, administrators or executors.

Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor shall be credited or refunded by the state to the purchaser.

Sec. 316. Claim; limitation period. No refund shall be allowed unless a claim therefor is filed with the state tax assessor within 3 years from the 30th day after the close of the quarterly period for which the overpayment was made, or, with respect to determinations made under the provisions of sections 285 to 317, inclusive, within 6 months after the determinations become final, or within 6 months from the date of overpayment, whichever period expires the later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the state tax assessor within such period, or unless the credit relates to a period for which a waiver is given pursuant to section 299.

Sec. 317. Appeals. Any taxpayer aggrieved because of any determination of the state tax assessor under the provisions of sections 257 to 329, inclusive, may within 30 days after notice of the final determination has been mailed to him by the state tax assessor appeal to the superior court in the county of Kennebec or the superior court in the county where the taxpayer resides. Any taxpayer desiring to appeal from any such determination shall furnish a bond or recognizance to the state of Maine with sureties to prosecute the appeal to effect and comply with the orders and decrees of the court in the premises. The appeal shall be returnable at the same time and service and return shall be made in the same manner as is provided for civil actions in the superior court.

#### Collection of Tax

Sec. 318. Security for tax. The state tax assessor, whenever he deems it necessary to insure compliance with the provisions of sections 257 to 329, inclusive, may require any person subject thereto to deposit with him such security as the state tax assessor may determine. The amount of the security shall be fixed by the state tax assessor but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such manner as the state tax assessor deems proper, or \$10,000, whichever amount is the lesser. The amount of the security may be increased or decreased by the state tax assessor subject to the limitations herein provided. The state tax assessor may sell the security at public auction if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner pre-

scribed for service of a notice of a deficiency determination and shall be addressed to the person at his address as it appears in the records of the state tax assessor. Security in the form of a bearer bond issued by the United States or the state of Maine which has a prevailing market price may, however, be sold by the state tax assessor at private sale at a price not lower than the prevailing market price thereof. Upon any sale any surplus above the amounts due shall be returned to the person who deposited the security.

Sec. 319. Proceedings to recover tax; priority.

I. Whenever any person shall fail to pay any tax or penalty imposed by sections 257 to 329, inclusive, as herein provided, the attorney general shall, upon the request of the state tax assessor, bring an action to enforce payment of the same and may attach personal or real property according to law. The proceeds of a judgment in such action shall be paid to the state tax assessor.

II. The state tax assessor shall also have for the collection of taxes and penalties assessed under the provisions of sections 257 to 329, inclusive, all the remedies provided by chapter 81 of the revised statutes, as amended, for the collection of taxes on personal property by collectors of taxes in incorporated places.

The amounts required to be paid by any person under the provisions of sections 257 to 329, inclusive, together with interest and penalties shall be satisfied first in any of the following cases:

I. Whenever the person is insolvent.

II. Whenever the person makes a voluntary assignment of his assets.

III. Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debt due from the deceased.

IV. Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under the provisions of sections 257 to 329, inclusive, are levied upon by process of law.

Sec. 320. Withholding by purchaser. If any retailer liable for any amount under the provisions of sections 257 to 329, inclusive, sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the state tax assessor showing that it has been paid or a certificate stating that no amount is due.

Sec. 321. Liability of purchaser; release. If the purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, the state tax assessor shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the state tax assessor of the amount that must be paid as a condition of issuing the certificate. Failure of the state tax assessor to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the retailer sells out his business or stock of goods or at the time that the determination against the retailer becomes final whichever event occurs the later.

#### Administration

Sec. 322. Enforcement by state tax assessor; rules and regulations. The state tax assessor shall enforce the provisions of sections 257 to 329, inclusive, and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of said sections. The state tax assessor may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

Sec. 323. Employees and representatives of state tax assessor. The state tax assessor may employ, subject to the provisions of the personnel law, accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of sections 257 to 329, inclusive, and may designate representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by said sections or other laws of this state upon the state tax assessor.

Sec. 324. Records. Every seller, every retailer, and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the state tax assessor may require.

Sec. 325. Examination of records. The state tax assessor or any person authorized in writing by him may examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or,

if no return is made by the person, to ascertain and determine the amount required to be paid.

Sec. 326. Reports relative to use tax liability. In the administration of the use tax the state tax assessor may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use or other consumption of which is subject to the tax. The reports shall be filed when the state tax assessor requires and shall set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the state tax assessor may require.

Sec. 327. Divulging of information forbidden. It is unlawful for the state tax assessor or any person having an administrative duty under the provisions of sections 257 to 329, inclusive, to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the governor may, by general or special order, authorize examination of the returns by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

Sec. 328. Criminal penalties.

I. Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the state tax assessor, or who renders a false or fraudulent return, is guilty of a misdemeanor and subject to a fine of not more than \$500 for each offense.

II. Any person required to make, render, sign or verify any report who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor. He shall for each offense be punished by a fine of not less

than \$300, nor more than \$5,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment, in the discretion of the court.

Sec. 329. Disposition of proceeds. The entire proceeds of the tax collected under the provisions of sections 257 to 329, inclusive, shall be credited to the general fund.'