NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

Effective December 31, 1954

IN FIVE VOLUMES

VOLUME 1

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 16.

Department of Finance and Administration. Accounts and Control. Purchasing. Taxation.

Commissioner of Finance and Administration. Bureau Chiefs.

Sec. 1. Commissioner of finance and administration; bureau chiefs; appointment; duties; employees; salaries.—The department of finance and administration, as heretofore established, shall exercise such powers and perform such duties as are set forth in this chapter. The head of the department shall be the commissioner of finance and administration who shall be appointed by the governor, with the advice and consent of the council, to serve for a term of 7 years, and until his successor is appointed and qualified, and who may be removed

by the governor and council for cause. Any vacancy in the said office shall be filled by appointment for a like term in the same manner as hereinbefore provided. The commissioner may employ such bureau chiefs as may be necessary, with the approval of the governor. The bureau chiefs shall be under the immediate supervision, direction and control of the commissioner and shall perform such duties as he may prescribe, except as otherwise provided by law. The salary of the commissioner shall be fixed by the governor and council. The salaries of the bureau chiefs shall be fixed by the commissioner, with the approval of the governor. The commissioner may also employ such deputies, assistants and employees as may be necessary, subject to the provisions of the personnel law.

In the event of a vacancy in the office of the commissioner because of death, resignation, removal or other cause, the various bureau chiefs, deputies and assistants shall continue in office and perform such duties as have been prescribed for or assigned to them, until said vacancy has been filled by the appointment and qualification of a new commissioner.

The commissioner of finance and administration shall have the duty and authority:

I. To serve as the principal administrative and fiscal aide to the governor.

II. To serve as budget officer and supervise development and execution of the biennial budget.

III. To coordinate financial planning and programming activities of departments for review and action by governor and council.

IV. To constantly review the administrative activities of other departments and agencies of the state, study organization and administration, investigate duplication of work and to formulate plans for better and more efficient management, and to report periodically to the governor and on request to the legislature.

V. To prepare and report to the governor or to the legislature such financial data or statistics which may be required or requested by them.

VI. To supervise and direct the activities of the departments or the bureaus which may by statute be designated as being under the department of finance and administration.

The commissioner of finance and administration shall also perform such other duties as heretofore have been designated by statute. (R. S. c. 14, § 1. 1953, c. 265, § 1.)

See c. 32, re charging off of uncollectible accounts; § 36, re purchase of supplies; c. 1, § 35, re destruction of old records; c. 19, § 4, re audit of accounts; c. 102, § 1, re membership in emergency municipal finance board.

Bonds of State Officials and Employees.

Sec. 2. Bonds of state officials and employees; exception.—All state officials and employees shall be bonded. The insurance commissioner shall select and prescribe the forms and types of bond, subject to the approval of the governor and council. Such bonds may be in a blanket or comprehensive form, so called, and for such an amount or amounts as may be determined by the state auditor and the commissioner of finance and administration with the approval of the governor and council. Provided, however, in event of inability to obtain a blanket or comprehensive form, so called, a list shall be submitted annually to the governor and council for their approval, as recommended by the state auditor and commissioner of finance and administration, and designating such state officials and employees who in their discretion shall be bonded. The condition of any bond covering state officials and employees shall be to faithfully discharge the duties of the office or employment of such official or employee. All such bonds shall be deposited with the treasurer of state for safekeeping.

The treasurer of state, his deputy and employees shall not be required to give bond under the provisions of this section. (R. S. c. 14, § 2. 1947, c. 327, § 1. 1953, c. 265, § 2.)

See Const. of Me. Art. V, Part Fourth, § 2 and c. 18, §§ 1-6, re bond of treasurer of state.

Sec. 3. Premiums.—The premiums necessarily incurred and due and payable on account of any bond or bonds required in accordance with the preceding section shall be paid by the state out of the state treasury and charged to an appropriation provided therefor by appropriate legislative action. (R. S. c. 14, § 3. 1947, c. 327, § 2.)

Sec. 4. Notice of cancellation.—The insurance commissioner is expressly authorized to accept a cancellation notice from the surety on any bond, canceling said bond in full or as to any individual, provided the surety gives written notice to said insurance commissioner of such desire and intent, and that said cancellation notice is received by the insurance commissioner at least 30 days before the effective date of such cancellation. (R. S. c. 14, § 4. 1947, c. 327, § 3.)

Fiscal Year.

Sec. 5. Uniform fiscal year.—The fiscal year of the state government shall commence on the 1st day of July and end on the 30th day of June of each year. This fiscal year shall be followed in making appropriations and in financial reporting, and shall be uniformly adopted by all departments and agencies in the state government. (R. S. c. 14, § 5.)

Budget Officer and Budget.

Sec. 6. Budget officer; appointment; salary.—In connection with the department of finance and administration, the governor with the advice and consent of the council shall appoint a state budget officer who may be the commissioner of finance and administration. He shall receive such compensation as shall be determined by the governor and council. (R. S. c. 14, § 6. 1953, c. 265, § 6.)

Sec. 7. Powers and duties relating to budgeting.—The commissioner of finance and administration, as state budget officer, shall have the duty and the authority:

I. To prepare and submit to the governor, biennially, a state budget document in accordance with the provisions outlined in this chapter;

II. To examine and recommend for approval the work program and quarterly allotments of each department or agency of the state government, before the appropriations made for such agency shall become available for expenditure;

III. To examine and recommend for approval any changes in the work program and quarterly allotments of any department or agency during the fiscal year. (R. S. c. 14, § 7. 1953, c. 265, § 3.)

Sec. 8. Scope of the budget.—The budget of the state government shall present a complete financial plan for each fiscal year of the ensuing biennium, which shall set forth all proposed expenditures for the administration, operation and maintenance of the departments and agencies of the state government; all interest and debt redemption charges during each fiscal year; all expenditures for capital projects to be undertaken and executed during each fiscal year of the biennium. In addition thereto, the budget shall set forth the anticipated revenues of the state government and any other additional means of financing the expenditures proposed for each fiscal year of the biennium. (R. S. c. 14, § 8.)

Sec. 9. Form of budget document.—The budget document, setting forth a financial plan for the state government for each fiscal year of the ensuing biennium, shall be set up in 3 parts, the nature and contents of which shall be as follows:

Part 1 shall consist of a budget message by the governor which shall outline the financial policy of the state government for the ensuing biennium, describing in connection therewith the important features of the financial plan; it shall also embrace a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated revenues, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The general budget summary shall be supported by explanatory schedules or statements, classifying the expenditures contained therein by organization units, objects and funds, and the income by organization units, sources and funds.

Part 2 shall embrace the detailed budget estimates both of expenditures and revenues as provided in this chapter; it shall also include statements of the bonded indebtedness of the state government, showing the debt redemption requirements, the debt authorized and unissued, and the condition of the sinking funds; in addition thereto, it shall contain any statements relative to the financial plan which the governor may deem desirable, or which may be required by the legislature.

Part 3 shall embrace complete drafts or summary of the budget bills, that is, the legislative measures required to give legal sanction to the financial plan when adopted by the legislature. These bills shall include an appropriation bill, authorizing by departments and agencies, and by funds, all expenditures of the state government for each fiscal year of the ensuing biennium, and such other bills as may be required to provide the income necessary to finance the budget. (R. S. c. 14, § 9.)

Sec. 10. Budget estimates.—On or before October 1st of the even-numbered years, all departments and other agencies of the state government and corporations and associations receiving or desiring to receive state funds under the provisions of law shall prepare, on blanks furnished them by the state budget officer, and submit to said officer estimates of their expenditure requirements for each fiscal year of the biennium, compared with the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year. The expenditure estimates shall be classified to set forth the data by funds, organization units, character and objects of expenditure; the organization units may be subclassified by functions and activities, or in any other manner, at the discretion of the state budget officer.

Tentative revenue estimates prepared by the state budget officer on October 1st of the even-numbered years shall be revised by this officer on the following January 1st, for inclusion in the budget. The revenue estimates shall be classified so as to show the receipts by funds, organization units and sources of income. (R. S. c. 14, § 10.)

Sec. 11. Review and revision of estimates.—The governor and the governor-elect, with the assistance of the state budget officer, shall review the estimates, altering, revising, increasing or decreasing the items of said estimates as may be deemed necessary in view of the needs of the various departments and agencies and the total anticipated income of the state government during the ensuing biennium. The state budget officer, at the direction of the governor, shall then prepare a budget document in the form required by the provisions of this chapter; the governor shall transmit such document to the legislature not later

than the close of the 2nd week of the regular legislative session. (R. S. c. 14, § 11.)

Sec. 12. Advisory committee on budget.—There shall be an advisory committee on budget consisting of 3 members, one from each house of the legislature selected by the presiding officer thereof prior to October 1st of the even-numbered years. In each case the selection shall be, if practicable, the senior ranking member of the senate and house respectively of the committee on appropriations and financial affairs, who is to serve as a member of his respective branch of the next succeeding legislature, and these two shall select the 3rd member who shall be a member of the next succeeding legislature and a member of the minority party. The members of the committee shall be paid the necessary expenses incurred in the performance of their duties, and in addition thereto, they shall each receive $5 per day for the time actually spent while the legislature is not in session. This committee shall meet with the governor, or the governor-elect, when so requested by him, during the preparation of the budget, and shall advise with the governor or the governer-elect on any and all matters pertaining to the financial policy of the state government. The governor, however, shall be fully responsible for all budgetary recommendations made to the legislature. (R. S. c. 14, § 12. 1949, c. 99.)

Sec. 13. Form of appropriation bill.—The appropriation bill provided for in section 9 shall be drawn in such form as to authorize only lump sum appropriations to meet the expenditure needs of the various departments and agencies of the state government for each fiscal year of the biennium. For the operation and maintenance expenses of each department or agency, there shall be a single appropriation which shall be allotted before becoming available for expenditure as provided for in section 14. Appropriations for the acquisition of property shall be in such detail under each department or agency as the governor shall determine; provided, however, that such appropriation shall not be segregated in greater detail than the major classes or projects for which they are expendable during each fiscal year of the biennium. (R. S. c. 14, § 13.)

Sec. 14. Work program and allotments.—Not later than June 1st of each year, the governor shall require the head of each department and agency of the state government to submit to the department of finance and administration a work program for the ensuing fiscal year, such program shall include all appropriations made available to said department or agency for its operation and maintenance and for the acquisition of property, and it shall show the requested allotments of said appropriations by quarters for the entire fiscal year. The governor and council, with the assistance of the state budget officer, shall review the requested allotments with respect to the work program of each department or agency and shall, if they deem it necessary, revise, alter or change such allotments before approving the same. The aggregate of such allotments shall not exceed the total appropriations made available to said department or agency for the fiscal year in question. The state budget officer shall transmit a copy of the allotments as approved by the governor and council to the head of the department or agency concerned, and also a copy to the state controller. The state controller shall thereupon authorize all expenditures to be made from the appropriations on the basis of such allotments and not otherwise.

The head of any department or agency of the state government, whenever he shall deem it necessary by reason of changed conditions, may revise the work program of his department or agency at the beginning of any quarter during the fiscal year, and submit such revised program to the department of finance and administration with his request for a revision of the allotments of the remaining quarters of that fiscal year. If, upon such reexamination of the work program, the state budget officer, with the approval of the governor and council, shall decide to grant the request for the revision of the allotments, the same procedure, so far

as it relates to review, approval and control shall be followed as in the making of the original allotments.

In order to provide some degree of flexibility to meet emergencies arising during each fiscal year in the expenditures for operation and maintenance of the various departments and agencies of the state government, the state budget officer, with the approval of the governor and council, may require the head of each department or agency, in making the original allotments, to set aside a reserve, the exact amount of which shall be determined by the state budget officer, of the total amount appropriated to the department or agency. At any time during the fiscal year this reserve or any portion of it may be returned to the appropriation to which it belongs and may be added to any one or more of the allotments, provided the state budget officer shall deem such action necessary and shall notify the state controller of such action; any unused portion thereof shall remain at the end of the fiscal year as an unexpended balance of appropriation. Any unexpended and unemcumbered balance of allotments at the end of each quarter shall be credited to the reserve set up for the fiscal year. (R. S. c. 14, § 14. 1953, c. 265, § 4.)

Organization of Department of Finance and Administration.

Sec. 15. Organization. — The department of finance and administration shall be organized into bureaus, as follows:

I. Bureau of accounts and control, the head of which shall be the state controller;

See § 1, re appointment, salary, etc.; §§ 16-34 re powers and duties.

II. Bureau of purchases, the head of which shall be the state purchasing agent;

See § 1, re appointment, salary, etc.; §§ 35-53, re powers and duties.

III. Bureau of taxation, the head of which shall be the state tax assessor;

See § 1, re appointment, salary, etc.; §§ 56-281, re powers and duties.

IV. Such other bureaus, departments and agencies as may by statute be designated as being under this department. (R. S. c. 14, § 15. 1953, c. 265, § 5.)

Bureau of Accounts and Control. State Controller.

Sec. 16. Powers and duties relating to accounting.—The department of finance and administration, through the bureau of accounts and control, shall have authority:

I. To maintain a system of general accounts embracing all the financial transactions of the state government;

II. To examine and approve all contracts, orders and other documents, the purpose of which is to incur financial obligations against the state government, to ascertain that moneys have been duly appropriated and allotted to meet such obligations and will be available when such obligations will become due and payable;

III. To audit and approve all bills, invoices, accounts, payrolls and all other evidences of claims, demands or charges against the state government; and to determine the regularity, legality and correctness of such claims, demands or charges;

IV. To inquire into and cause an inspection to be made of articles and materials furnished, or work and labor performed, for the purpose of ascertaining that the prices, quality and amount of such articles or materials are fair, just and

reasonable, and that all the requirements expressed and implied pertaining thereto have been complied with, and to reject or disallow any excess;

V. To make monthly reports on all receipts and expenditures of the state government to the governor and the state auditor; to make monthly reports on appropriations, allotments, encumbrances and authorized payments to the governor, to the state auditor and to the head of the department or agency directly concerned;

VI. To prescribe the forms of receipts, vouchers, bills or claims to be filed by any and all departments and agencies with the department of finance and administration; (1953, c. 265, § 6.)

VII. To prescribe such subsidiary accounts, including cost accounts, for the various departments and agencies as may be desired for purposes of administration, supervision and financial control;

VIII. To examine the accounts of every department or agency receiving appropriations from the state;

IX. To report to the attorney general for such action, civil or criminal, as he may deem necessary, all facts showing illegality in the expenditure of public moneys or the misappropriation of public properties;

X. To exercise the rights, powers and duties conferred and imposed by law upon the state auditor which were effective on November 9, 1931 in so far as these relate to financial administration and general accounting control of the state government, involving the keeping of general accounts, the auditing before payment of all bills or vouchers and the authorizing of all claims against the state for which appropriations have been made. The state controller shall set up and maintain special accounts in the general fund with respect to moneys received for designated purposes from the federal government;

XI. To make an inventory of all removable equipment belonging to the state government and keep it current; (R. S. c. 14, § 35, sub-§ VII. 1951, c. 266, § 4.)

XII. To list all real estate belonging to or under lease to the state government, showing agency controlling, location, metes and bounds, cost and when acquired. [R. S. c. 14, § 35, sub-§ VIII. 1951, c. 266, § 4.] (R. S. c. 14, §§ 16, 35. 1951, c. 266, § 4. 1953, c. 265, § 6.)

See § 34, re reports of federal funds; c. 11, §§ 15, 16, re permitting state to receive federal grants; c. 18, § 14, re state money in depositories; c. 41, § 197, re treasurer of state custodian of federal funds received for vocational education; P. & S. L., 1945, c. 8, re withholding of federal income tax.

Sec. 17. Signature of outgoing state controller valid.—The facsimile signature of the state controller who is leaving office shall be valid until new signature plates for the signing of checks have been obtained for his successor. (1947, c. 72.)

Sec. 18. Records open to public inspection. — The books, accounts, vouchers, affidavits and other records and papers in the office of the state controller relating to the public business shall be open for inspection to the citizens of this state at all reasonable times and for all proper purposes. (R. S. c. 14, § 17.)

Sec. 19. Handling appropriations; petty cash funds.—No appropriations to any state department or agency shall become available for expenditure until allotted upon the basis of the work program, duly approved by the governor and council as provided in this chapter.

A petty cash fund shall be allowed by the commissioner of finance and administration to each state department or agency, which shall in his opinion require such

a fund, and said fund so established shall be reimbursed only upon statements and bills audited by the state controller. (R. S. c. 14, § 18. 1953, c. 265, § 6.)

Sec. 20. Reproduction of certain documents authorized.—The state controller is authorized to cause to be made, at the expense of the state, by any photostatic, photographic, microfilm or other mechanical process which produces a clear, accurate and permanent copy or reproduction thereof, copies of any part or all of the state canceled checks, vouchers and other documents on file in the bureau of accounts and control. (R. S. c. 14, § 19.)

See c. 113, §§ 144, 145, re processes for making copies of public records, etc.; c. 113, § 146, re admissibility in evidence.

Sec. 21. Departments to exchange information and records. — No state department, commission, board or institution shall be charged for information or copies of records furnished by another state department, commission, board or institution. (R. S. c. 14, § 20.)

Sec. 22. Transfer of unexpended appropriations on recommendation of state budget officer.—Any balance of any appropriation or subdivision of an appropriation made by the legislature for any state department, which at any time may not be required for the purposes named in such appropriation or subdivision may, upon recommendation of the department head concerned and the budget officer, be transferred by the governor and council, at any time prior to the closing of the books, to any other appropriation or subdivision of an appropriation made by the legislature for the use of the same department for the same fiscal year. (1945, c. 135.)

Sec. 23. Appropriations for construction of buildings, highways and bridges to be carried forward to next fiscal year; unexpended balances to revert.—All appropriations by the legislature for the construction of buildings, highways and bridges shall constitute continuous carrying accounts for the purposes designated by the legislature in such appropriations and the state controller is authorized to carry forward all such appropriations to the succeeding fiscal year; provided, however, that the construction shall have been begun by the letting of a contract or contracts or by actually starting the work during the year for which the appropriation was made, and provided further that any balance remaining after the completion of the object of the appropriations shall revert to the general fund in the state treasury or to the fund from which it was apportioned under existing provisions of law. (R. S. c. 14, § 21.)

Sec. 24. State funds eliminated.—The commissioner of finance and administration, with the approval of the governor and council, shall have authority, unless the legislature shall otherwise direct, to discontinue any or all of the special expendable state funds with the exception of the sinking funds and trust funds, and to merge the balance or balances of such fund or funds so discontinued with the general fund. (R. S. c. 14, § 22. 1953, c. 265, § 6.)

See c. 18, § 18, re investments of state trust funds; c. 23, § 131, re general highway fund.

Sec. 25. Unappropriated surplus.—The state controller shall open on the books of the state an account to be known as "Unappropriated Surplus." The balances of all revenue and appropriation accounts not otherwise provided for by law, together with any other necessary adjustments of balances previously closed to unappropriated surplus account, shall be closed to this account at the end of each fiscal year. Any amounts authorized for allocation by the governor and council or representing permanent working capital advances shall be removed from unappropriated surplus and set up in separate accounts so that the balance

of the unappropriated surplus account shall be the amount of free and unencumbered surplus according to generally accepted accounting principles. (R. S. c. 14, § 23.)

Sec. 26. State contingent account.—The governor, with the advice and consent of the council, may allocate from the state contingent account amounts not to exceed in total the sum of $450,000 in any fiscal year. Such allocations may be made to meet any expense necessarily incurred under any requirement of law, or for the maintenance of government within the scope existing at the time of the previous session of the legislature or contemplated by laws enacted thereat, or to pay bills arising out of some emergency requiring an expenditure of money not provided by the legislature. The governor and council shall determine the necessity for such allocations, and all such allocations shall be supported by a statement of facts setting forth the necessity for the allocations. At the close of each fiscal year there shall be transferred from unappropriated surplus an amount sufficient to restore the state contingent account to $450,000. (R. S. c. 14, § 24. 1945, c. 26.)

Sec. 27. Report of state controller relating to the contingent account and unappropriated surplus account.—The state controller shall include in his annual report at the close of each fiscal year, a statement showing all transfers made from the state contingent account for the prior year and shall also submit a statement of the unappropriated surplus account, reflecting all changes in this account during the fiscal year and the balance of this account at the close of the fiscal period. (R. S. c. 14, § 25.)

See § 33, re annual financial statement;
c. 11, § 2, re governor's expense account.

Sec. 28. No agent or officer of state to exceed appropriations.—No agent or officer of the state or of any department thereof, whose duty it is to expend money under an appropriation by the legislature, shall contract any bill or incur any obligation on behalf of the state in excess of the appropriation, and whoever exceeds in his expenditure said appropriation shall not have any claim for reimbursement. Any such agent or officer who shall violate the provisions of this section shall upon conviction be fined a sum equal to such excess of appropriation by him expended, and imprisoned in the discretion of the court. All prosecutions under this section shall be by indictment and the fines inure to the state. (R. S. c. 14, § 26.)

Sec. 29. Disbursements; weekly payment of salaries or wages.—No money shall be drawn from the state treasury except in accordance with appropriations duly authorized by law. Every disbursement from the treasury shall be upon the authorization of the state controller, which authorization shall be in the form of a warrant, drawn in favor of the payee, and said warrant shall, upon being countersigned by the treasurer of state and delivered to the payee, become a check against a designated bank or trust company acting as a depository of the state government.

All state officers and employees, except temporary and seasonal employees, shall be paid their salaries or wages weekly, the dates of payment to be determined by the state controller; provided, however, that payment may be made once in each calendar month or fortnightly to such state officers and employees as consent to such time of payment. Temporary and seasonal employees of the state shall be paid at such times as the commissioner of finance and administration shall specify. (R. S. c. 14, § 27. 1945, c. 323. 1953, c. 265, § 6.)

See c. 18, § 31, re fees, expenses, etc., of
boards and commissions.

Automobile Travel by State Employees.

Sec. 30. State owned cars; assignment, maintenance and marking.—The state shall provide no automobiles for travel of employees; provided, however, that this shall not apply to the governor, the state police, department of inland fisheries and game, department of sea and shore fisheries, inspectors in the motor vehicle division of the secretary of state, superviors in the Maine forestry district, highway department nor to such heads of departments or members ot commissions as the governor and council may from time to time designate. Nothing herein contained shall be deemed to preclude the maintenance of a reasonable and proper number of state owned cars to be operated from the departmental garage, for occasional or emergency use, upon application to and approval by the state purchasing agent.

The highway department shall provide the necessary garage space and facilities for the maintenance of a sufficient and proper number of automobiles for assignment by the state purchasing agent on a temporary basis to state employees for use on official business.

Agencies using state cars shall pay a mileage rate sufficient to reimburse the departmental garage legislative fund for all costs incident to the purchase, maintenance and operation of such cars; provided that no costs or overhead charges incident to other highway or motor transport operations shall be included.

All state owned cars shall display a marker or insignia, approved by the secretary of state, plainly designating them as state owned vehicles; provided, however, that the governor and council may designate the use of certain state owned cars without the said insignia thereon. (R. S. c. 14, § 29. 1947, c. 390. 1949, c. 107; c. 225, §§ 1, 2. 1951, c. 379.)

Sec. 31. Payment per mile for use of privately owned automobiles, regulated.—The state shall pay for the use of privately owned automobiles for travel by employees of the state in the business of the state not more than 7¢ per mile for the first 5,000 miles actually travelled by such employees on such business in any 1 fiscal year, and 6¢ for each mile exceeding 5,000 miles; provided, however, that the state shall pay inspectors of seed potatoes 8¢ for every mile so travelled. Provided, however, that the governor, with the advice and consent of the council, may suspend the operation of this section and require state officials and employees to travel in automobiles owned or controlled by the state, if such automobiles be available. (R. S. c. 14, § 28. 1945, c. 324, §§ 1, 2. 1947, c. 396, §§ 1, 2. 1949, c. 368. 1951, c. 266, § 3; cc. 339, 340. 1953, c. 168.)

Disposition of Uncollectible Accounts.

Sec. 32. Charging off of accounts due the state.—The controller shall charge off the books of account of the state or of any department, institution or agency thereof, such accounts receivable, including all taxes for the assessment or collection of which the state is responsible, and all impounded bank accounts, as shall be certified to him as impractical of realization by or for said state, department, institution or agency; said certification to be by the commissioner of finance and administration and treasurer of state and subject to the approval of the governor and council; provided, however, that in each such case, the charging off of such accounts shall be recommended by the head of the department, institution or agency originally responsible for such account. (R. S. c. 14, § 30. 1947, c. 65. 1953, c. 265, § 6.)

Annual Financial Statement.

Sec. 33. Controller to prepare annual financial statement; newspaper publication.—The state controller shall prepare as soon as possible after the close of each fiscal year an explanatory statement in pamphlet form of

the financial condition of the state together with such supporting figures for such fiscal year as may be necessary to furnish a comprehensive and concise report.

The controller shall publish a condensed summary of such report on or before September 5 of each year in all daily newspapers and in all weekly newspapers published in the state which are entered as second-class matter with the United States post-office department and which are published regularly at least 52 times a year. Such condensed summary shall not require newspaper space in excess of a 6-column page or its equivalent. (R. S. c. 14, § 31.)

Financial Reports of Federal Funds.

Sec. 34. Reports re federal funds required.—The governor and every state officer and department head who shall be intrusted with the expenditure of federal funds in this state shall file in the office of the state controller a detailed report of all disbursements, including the purposes for which such disbursements were made and the persons to whom any money was paid, supported by proper vouchers, said report to be filed from time to time as such disbursements are made and the final report to be filed within 30 days after the entire fund has been disbursed.

Any state officer excepting the governor, whether elected or appointed, and any department head who shall fail or neglect to file such report as herein provided shall be subject to removal from office by authority of the governor, and if the governor of the state shall fail or neglect to file such report, he shall be subject to impeachment in the manner provided in Article IX, section 5, of the constitution of the state of Maine. (R. S. c. 14, § 32.)

Bureau of Purchases. State Purchasing Agent.

Sec. 35. Powers and duties pertaining to purchasing.—The department of finance and administration, through the bureau of purchases, shall have authority:

I. To purchase all supplies, materials and equipment required by the state government or by any department or agency thereof subject to the provisions set forth in this chapter;

II. To establish and enforce standard specifications which shall apply to supplies, materials and equipment purchased for the use of the state government;

III. To purchase or contract for all telephone, telegraph, postal or electric light and power service for the state departments and agencies;

IV. To lease all grounds, buildings, office or other space required by the state departments or agencies;

V. To have general care and supervision of all central storerooms operated by the state government;

VI. To transfer to or between state departments and agencies, or sell supplies, materials and equipment which are surplus, obsolete or unused;

VII. To establish and conduct a central mailing room for the state departments and agencies at the capitol. [1951, c. 266, § 5]. (R. S. c. 14, § 35. 1951, c. 266, §§ 4, 5. 1953, c. 265, § 6.)

See §§ 30, 31, re state owned cars and automobile travel by state employees.

Sec. 36. Scope of purchasing authority.—The terms "supplies", "materials" and "equipment", as used in this chapter, shall be construed to mean any and all articles or things which shall hereafter be used by or furnished to the state or to any department or agency thereof, and also any and all printing, binding, publication of laws, journals and reports. Except as provided in this chapter,

any or all supplies, materials and equipment needed by one or more departments or agencies shall be directly purchased or contracted for by the state purchasing agent, as may be determined from time to time by rules adopted pursuant to this chapter, which rules the department of finance and administration is authorized and empowered to make, it being the intent and purpose of this statute that the state purchasing agent shall purchase collectively all supplies for the state or for any department or agency thereof in the manner that will best secure the greatest possible economy consistent with the grade or quality of supplies best adapted for the purposes for which they are needed.

The trustees of the University of Maine, the state board of education and the directors of the Maine Port Authority may authorize the department of finance and administration to act for them in any purchases. (R. S. c. 14, § 36. 1945, c. 378, § 6. 1949, c. 80. 1951, c. 266, § 6. 1953, c. 265, § 6.)

See P. & S. L. 1947, c. 99, re purposes and powers of Maine Port Authority.

Sec. 37. Institution supplies to be bid for separately.—The state purchasing agent, in requesting bids for institutional supplies, shall list the articles on which bids are requested under the names of the institutions for which they are desired. Bids shall be made on any or all of the articles listed, each bid being made for the supply of a specific article or articles to the particular institution without reference to those otherwise listed. (R. S. c. 14, § 37.)

Sec. 38. Open market and other purchases. — The state purchasing agent may authorize, in writing, an officer of the state or any department or agency thereof to purchase in the open market and without requisition or estimate, specific supplies, materials and equipment for immediate delivery to meet exigencies arising from unforeseen causes, including delays by contractors, delays in transportation and unanticipated volume of work. (R. S. c. 14, § 38.)

Sec. 39. Standardization committee.—A standardization committee, as heretofore established, shall consist of the governor or his representative, the chairman of the highway commission or his representative, the commissioner of health and welfare or his representative, the commissioner of education or his representative and the state purchasing agent. The members of this committee shall serve without additional compensation.

It shall be the duty of the standardization committee to advise the state purchasing agent and the commissioner of finance and administration in the formulation and modification of the rules and regulations which shall prescribe the purchasing policy of the state, and to assist in the formulation, adoption and modification of standard specifications which shall apply to state purchases. (R. S. c. 14, § 39. 1953, c. 265, § 6.)

Sec. 40. Standard specifications. — In the formulation, adoption and modification of any standard specification, the state purchasing agent shall seek the advice, assistance and cooperation of the state departments or agencies concerned, to ascertain their precise requirements. Each specification adopted for any commodity shall, in so far as possible, satisfy the requirements of the majority of the state agencies which use the same. After its adoption by the state purchasing agent, with the appoval of the commissioner of finance and administration, each standard specification shall, until revised or rescinded, apply alike in terms and effect, to every future purchase of a commodity described in such specifications; provided, however, that the state purchasing agent, with the approval of the commissioner of finance and administration, may exempt any department or agency of the state government from use of the commodity described in such specification. (R. S. c. 14, § 40. 1953, c. 265, § 6.)

Sec. 41. Rules and regulations.—The state purchasing agent, with the

approval of the commissioner of finance and administration, may adopt, modify or abrogate rules and regulations for the following purposes:

I. Authorizing any state department or agency to purchase directly certain specified supplies, materials and equipment, limiting their powers in relation thereto, and describing the manner in which purchases shall be made;

II. Prescribing the manner in which the supplies, materials and equipment shall be purchased, delivered, sorted and distributed;

III. Requiring monthly reports by state departments or agencies of stocks of supplies, materials and equipment on hand and prescribing the form of such reports;

IV. Prescribing the dates for making requisitions and estimates, the periods for which they are to be made, the form thereof and the manner of authentication;

V. Prescribing the manner of inspecting all deliveries of supplies, materials and equipment, and making chemical and physical tests of samples submitted with bids and samples from deliveries;

VI. Providing for transfer of supplies, materials and equipment which are surplus from one state department or agency to another which may need them, and for the disposal by private and public sale of supplies, materials and equipment which are obsolete and unusable;

VII. Prescribing the amount of deposit or bond to be submitted with a bid on a contract and the amount of bond to be given for the faithful performance of a contract;

VIII. Providing for such other matters as may be necessary to give effect to the foregoing rules and to the provisions of this chapter. (R. S. c. 14, § 41. 1953, c. 265, § 6.)

Sec. 42. Awards and contracts.—Except as otherwise provided by law, orders awarded or contracts made by the state purchasing agent or by any department or agency shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required and the date of delivery. Bids shall be received only in accordance with such standard specifications as may be adopted by the state purchasing agent, with the approval of the commissioner of finance and administration, and in the manner provided in this chapter. Any or all bids may be rejected.

Each bid, with the name of the bidder, shall be entered on a record, and each record with the successful bid indicated shall, after the award or letting of the contract, be open to public inspection. A bond for the proper performance of each contract may be required in the discretion of the state purchasing agent, with the approval of the commissioner of finance and administration. (R. S. c. 14, § 42. 1953, c. 265, § 6.)

Sec. 43. Competitive bids for building contracts.—All contracts for construction or repairs of buildings at the expense of the state involving a total cost of more than $3,000 shall be awarded by a system of competitive bids in accordance with the provisions of the following section and such other conditions and restrictions as the governor and council may from time to time prescribe. (R. S. c. 14, § 43.)

Sec. 44. Advertisements for sealed proposals; bond.—The trustees, commissioners or other persons in charge of such construction shall advertise for sealed proposals not less than 2 weeks in such papers as the governor and council may direct; the last advertisement shall be at least 1 week before the time named therein for the closing of such bids. Sealed proposals submitted in accordance

with such advertisement shall be addressed to the trustees, commissioners or other persons having the construction in charge and shall remain sealed until opened in the presence of a committee of the governor's council at such time as the governor and council may direct. No contract shall be awarded unless the faithful performance thereof shall be secured by a bond in the penal sum of not less than 20% of the amount of the contract, payable to the state, and deposited with the treasurer of state. (R. S. c. 14, § 44.)

Sec. 45. Questionnaire as pre-bid qualification.—In order to facilitate the work of any public official, it shall be lawful for said official to require from any person proposing to bid on public work duly advertised a standard form of questionnaire and financial statement, containing a complete statement of the person's financial ability and experience in performing public work, before furnishing such person with plans and specifications for the proposed public work advertised. (R. S. c. 14, § 45.)

See § 48, re penalty.

Sec. 46. Procedure if answers unsatisfactory.—Whenever the public official is not satisfied with the sufficiency of the answers contained in such standard questionnaire and financial statement of such persons, he may refuse to furnish such persons with plans and specifications on public work duly advertised, and the bid of any person to whom plans and specifications have not been issued may be disregarded. (R. S. c. 14, § 46.)

Sec. 47. Procedure of contractor.—Any contractor, after being notified of his classification by the public official and being dissatisfied therewith, may request a hearing before the public official and present such further evidence with respect to his financial responsibility, plant and equipment, or experience as might tend to justify in his opinion a higher classification. After hearing the additional evidence the public official may in his discretion change the classification of the contractor. (R. S. c. 14, § 47.)

Sec. 48. Penalty.—Any contractor who makes or causes to be made any incomplete, false or fraudulent statement in the application required to be made by section 45 shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $100, nor more than $1,000; or in the case of an individual or the officer or employee charged with the duty of making such application for a person, firm, copartnership, association or corporation, by imprisonment for not more than 6 months, or by both such fine and imprisonment. (R. S. c. 14, § 48.)

Sec. 49. "Person" defined.—The word "person" as used in sections 45 to 49, inclusive, shall mean and include any individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever. (R. S. c. 14, § 49.)

Sec. 50. Requisitions required.—Except as provided in this chapter and in the rules and regulations adopted hereunder, supplies, materials and equipment shall be purchased by or furnished to the state government or to any department or agency thereof only upon requisition to the state purchasing agent. The agent shall examine each requisition submitted to him by any department or agency and may revise it as to quantity, quality or estimated cost. (R. S. c. 14, § 50.)

Sec. 51. Maine granite to be considered for construction material for public works and buildings.—Whenever any public work is to be undertaken or repaired by contract by the state, or any county, city or town, or any public building is to be erected or repaired, not under contract by the state, or any county, city or town in which concrete may be used, Maine granite shall be

set up as an alternative construction material and the officials of the state, county, city or town shall require alternate bids to be offered, one based on the use of concrete, and the other on the use of granite on all or such part of the building or other project as may be deemed expedient from an engineering standpoint. (R. S. c. 14, § 51.)

Sec. 52. Deliveries. — Supplies, materials and equipment, purchased or contracted for by the state purchasing agent, shall be delivered by him or by the contractor to the department or agency by which or for whom the same are to be used from time to time as required. (R. S. c. 14, § 52.)

Sec. 53. Unlawful purchases. — Whenever any department or agency of the state government, required by this chapter and the rules and regulations adopted pursuant thereto applying to the purchase of supplies, materials or equipment through the state purchasing agent, shall contract for the purchase of such supplies, materials or equipment contrary to the provisions of this chapter or the rules and regulations made hereunder, such contract shall be void and of no effect. If any such department or agency purchases any supplies, materials or equipment contrary to the provisions of this chapter or the rules and regulations made hereunder, the head of such department or agency shall be personally liable for the costs thereof, and if such supplies, materials or equipment are so unlawfully purchased and paid for out of state moneys, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor. (R. S. c. 14, § 53.)

See c. 27, § 18, re use of out-of-state, prison-made goods; c. 27, §§ 30, 31, re sale of articles made at state prison; c. 83, § 19, re services of professional engineer required on public works; c. 135, § 17, re public officers or officials not to have pecuniary interest in public contracts.

Collection of State Taxes.

Sec. 54. Liability for taxes recognized by courts.—The courts of this state shall recognize and enforce liabilities for taxes lawfully imposed by other states which extend a like comity to this state. (1949, c. 131.)

Sec. 55. Attorney general to sue.—The attorney general of this state is empowered to bring suits in the courts of other states, in the name of this state or any of its tax collecting agencies to collect taxes legally due this state or its said agencies. The officials of other states which extend a like comity to this state are empowered to sue for the collection of such taxes in the courts of this state. A certificate by the secretary of state, under the great seal of the state, that such officers have authority to collect the tax shall be conclusive evidence of such authority. (1949, c. 131.)

Bureau of Taxation. State Tax Assessor.

Sec. 56. State tax assessor; duties.—The state tax assessor shall have the power to distribute the duties given to the bureau of taxation among such divisions in said bureau as he may deem necessary for economy and efficiency in administration and may add to or eliminate the number of such divisions and may employ such deputies, assistants and employees as may be necessary, subject to the provisions of the personnel law. He shall have an office in the state house which shall be open for the transaction of business every secular day. Some officer within each division of the bureau shall be designated by the said assessor as director of said division. (R. S. c. 14, § 54.)

See c. 100, § 190, et seq., re certificate for sale of oils, etc.; c. 102, §§ 1-11, re emergency municipal finance board; c. 102, § 13, re deorganized towns and plantations; c. 155, re administration of inheritance and succession law taxes; c. 184, § 6, re unfair sales practices in cigarettes.

Sec. 57. State tax assessor to examine method of taxation in other states and incorporate result in report.—The state tax assessor shall investigate and examine into the system and method of taxation of other states, and also make careful and constant inquiry into the practical operation and effect of the laws of this state, in comparison with the laws of other states, with the view of ascertaining wherein the tax laws of this state are defective, inefficient, inoperative or inequitable. He shall biennially incorporate the result of his investigation and inquiry in his report made prior to each legislative session, and recommend therein such modifications, changes and additions in the tax laws of this state as may seem advisable or necessary to secure a more just and equitable system of taxation. (R. S. c. 14, § 55.)

Sec. 58. Expenses of convention of town assessors defrayed by bureau of taxation.—The state tax assessor, during any fiscal year, may apply a sum not to exceed $200 to be taken from the departmental appropriation of the property division, to assist the Maine Municipal Association in defraying the expenses incident to the holding of conventions and meetings of town assessors. (R. S. c. 14, § 56.)

Sec. 59. Annual report to governor and council.—The state tax assessor shall annually, before the 1st day of January, make a report to the governor and council of the proceedings of the bureau of taxation, and shall include therein tabular summaries derived from returns from local assessors, with summaries showing the taxes assessed against corporations, and such statistics and other information concerning revenue and taxation as may be deemed of public interest, and for the years in which the board of equalization shall have equalized the valuation of the state, the report shall include tabular statements of the state valuation by towns. (R. S. c. 14, § 57.)

Sec. 60. Property assessment districts.—The state tax assessor may establish property assessment districts not to exceed 6 in number. He may combine two or more counties in order to form such a district, but no county shall be divided between 2 districts. He may rearrange such assessment districts from time to time at his discretion. (R. S. c. 14, § 58.)

Sec. 61. Supervisors and assistants.—The state tax assessor may appoint a supervisor for each of such property assessment districts, and such other assistants as he may deem necessary for the proper discharge of the duties imposed upon him by the provisions of sections 60 to 63, inclusive. When appointed, such supervisors and assistants shall be subject to the provisions of the personnel law. He shall control and direct such supervisors and assistants, prescribe their duties and fix the compensation of each, but the total compensation for any year shall not exceed the aggregate amount appropriated by the legislature for that purpose. He may transfer supervisors or assistants from their positions, to other positions, or abolish or consolidate such positions. (R. S. c. 14, § 59.)

Sec. 62. Expenses.—The reasonable and necessary traveling expenses of the state tax assessor and of his employees while actually engaged in the performance of their duties, certified upon vouchers approved by the state tax assessor, shall be paid by the treasurer of state upon warrant of the controller. (R. S. c. 14, § 60.)

Sec. 63. Forms, reports, records.—The state tax assessor shall prescribe the form of blanks, reports, abstracts and other records relating to the assessment of property for taxation. Assessors and other officers shall use and follow the forms so prescribed and the state tax assessor shall have power to enforce their use. (R. S. c. 14, § 61.)

Sec. 64. Powers of state tax assessor.—The state tax assessor, or any agent he may designate, may summon before him and examine on oath any town assessor or other officer, or any officer of any corporation, or any individual whose testimony he shall deem necessary in the proper discharge of his duties, and shall require such witnesses to bring with them for examination any books, records, papers or documents, belonging to them or in their custody or control, relating to any matter which he may have authority to investigate or determine. The state tax assessor or such agent as he may designate shall have power to administer all oaths required under the provisions of sections 56 to 269, inclusive. In case of failure on the part of any person or persons to comply with any order of the state tax assessor, or on refusal of any witness to testify on any matter regarding which he may lawfully be interrogated before the state tax assessor or his agent, the superior court or any justice thereof may, on application of the attorney general made at the written request of the state tax assessor, compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirement of a subpoena issued from such court or a refusal to testify therein. Officers who serve summonses or subpoenas and witnesses attending when summoned shall receive like compensation as officers and witnesses in the superior court. He or his agents may hold sessions at any place other than the capital when deemed necessary in the performance of his duties. (R. S. c. 14, § 62. 1951, c. 266, § 7. 1953, c. 308, § 9.)

See § 104, re lists of residents of unorganized territory, their poll taxes, etc.; § 105, re penalty for failure to remit poll tax collections.

Board of Equalization.

Sec. 65. Board of equalization.—The board of equalization, as heretofore established, shall consist of the state tax assessor as chairman serving without additional salary, and 2 associate members not otherwise connected with the state government or any local government thereof appointed by the governor and council for terms of 4 years. One of the associate members shall be of the minority party. The associate members shall be persons known to possess knowledge of and training in the valuation of property, and shall devote to the duties of their office such time as may be required of them by the chairman. Each associate member shall be paid a per diem, to be fixed by the governor and council, when attending meetings called by the chairman, and shall also receive his actual expenses incurred in the performance of his official duties. The director of the property tax division in the bureau of taxation shall serve as secretary of the board, and he shall maintain all the records and papers of the board, and be in charge of all its clerical work and correspondence. (R. S. c. 14, § 63.)

Cross reference.—See § 95, re inventory of personal property in unorganized townships not to be included in state valuation.

Cited in Keyes v. State, 121 Me. 306, 117 A. 166.

Sec. 66. Duties.—The board of equalization shall have the duty of equalizing the state and county taxes among the several towns and unorganized territory. It shall equalize and adjust the assessment list of each town, by adding to or deducting from it such amount as will make it equal to its just value. (R. S. c. 14, § 64.)

Stated in Keyes v. State, 121 Me. 306, 117 A. 166.

State Valuation. Abatements.

Sec. 67. State valuation filed with secretary of state biennially; appeal; procedure.—A statement of the amount of the assessed valuation for each town, township and lot or parcel of land in any unorganized township and

lot or parcel of land not included in any township, after adjustment as provided by section 66, the aggregate amount for each county, and for the entire state as fixed by the board of equalization, shall be certified by said board and deposited in the office of the secretary of state as soon as completed, and before the 1st day of December preceding the regular sessions of the legislature. The valuation thus determined shall be the basis for the computation and apportionment of the state and county taxes until the next biennial assessment and equalization. If any owner or owners of an unorganized township, or a lot or parcel of land in any unorganized township, or lot or parcel of land not included in any unorganized township, in either case with or without improvements, or right to cut timber and grass from public reserved lots in any township, who has filed the list and answered any and all interrogatories addressed to him under the provisions of section 71, shall deem himself or themselves aggrieved by the assessed valuation certified and deposited as above provided, he or they may appeal therefrom to the superior court for the county within which said lands or interests therein are located. Such appeal shall be entered at the term first occurring not less than 30 days after such statement of assessed valuation shall have been so deposited, and notice thereon shall be ordered by said court in term time or by any justice thereof in vacation; and said appeal shall be tried, heard and determined by the court without a jury and with the rights provided by law in other civil cases so heard. If upon such appeal it is found that the valuation is excessive, the court hearing the same shall determine the true valuation of said lands or interest therein, and the clerk of said court shall certify its final determination to the board of equalization and to the state tax assessor. The valuation thus determined by the court, instead of the valuation certified and deposited in accordance with the previous provisions of this section, shall be the basis for the computation and apportionment of the state, county and forestry district taxes until the next biennial assessment and equalization, and the state tax assessor shall in all proceedings relative to the collection of taxes against said lands or interest therein proceed in accordance with the valuation so fixed by the court. In the event that prior to such final decision any owner or owners so appealing shall have paid any tax as fixed by the valuation so appealed from, the controller shall, if said valuation is found excessive, issue his warrant to the treasurer of state for a return of so much of said tax as was based upon the excessive portion of said valuation. Such appeal shall be tried at the term at which the notice is returnable, unless delay shall be granted for good cause, and may be referred by the court in its discretion to a commissioner to hear the parties and to report to the court the facts, or the facts with the evidence, which report shall be prima facie evidence of the facts thereby found. The fees of the commissioner shall be paid in the same manner as those of auditors appointed by the court, and the court may make such order relating to the payment of costs as justice shall require and issue execution therefor. In all such appeals, the state shall be regarded as the appellee; and all notices required by statute, rule or order of court shall be served upon the chairman of the said board of equalization or upon the attorney general. Either party may file exceptions to the decisions or rulings of the court on matters of law arising at the trial in the same manner and with the same effect as are allowed in the superior court at a trial without jury. Any and all liens created by statute on any of said lands or interest therein shall continue until 1 year after final determination of the appeal. (R. S. c. 14, § 65. 1945, c. 41, § 1.)

Quoted in part in Keyes v. State, 121 Me. 306, 117 A. 166.

Sec. 68. Supervision over administration of assessment and taxation laws and over local assessors; notice of meetings; town assessors to attend meetings and answer questions.—The state tax assessors shall have and exercise general supervision over the administration of the assessment

and taxation laws of the state, and over local assessors and all other assessing officers in the performance of their duties, to the end that all property shall be assessed at the just value thereof in compliance with the laws of the state. The state tax assessor, or any agent he may designate, shall visit officially every county in the state at least once each year, and at other times as may be necessary in the performance of his duties, and shall there hold sessions at such times and places as he may deem necessary to inquire into the methods of assessment and taxation and to confer with and give necessary advice and instruction to local assessors as to their duties under the laws of the state, and to secure information to enable him to perform his duties as herein provided. The state tax assessor shall give such public notice of said meetings as he deems proper, and shall give to each board of town assesors in the county in which meetings are to be held a notice by mail of the time and place of such meetings. Each board of town assessors, or some member or members of each of them, shall attend said meeting, having with them the then last lists or books giving the valuation of all taxable property in their respective towns. They shall answer, under oath if required, such questions pertaining to the valuation of the property in their towns as the state tax assessor or such agent may put to them. Said meeting shall be under the general direction of the state tax assessor and governed by such rules of order as said state tax assessor shall make. Any town, whose assessors shall fail to attend said meetings without excuse, satisfactory to the state tax assessor, shall be liable to pay the reasonable expenses of the state tax assessor, or of any person appointed by him, incurred in making examination of the lists or books of said town or in getting other evidence pertaining to the valuation of the property in such town. Such expenses shall be reported to the legislature by the state tax assessor and shall be added to the amount of the next state tax levied against such town, or may be recovered in an action of debt against such town in the name of the treasurer of state. Towns shall pay to said town assessors a reasonable compensation and actual expenses incurred in complying with the requirements of this chapter. Towns shall also pay to town collectors and treasurers a reasonable compensation and actual expenses incurred in attending meetings called by the state tax assessor. Such meetings shall be held not more than once each calendar year. (R. S. c. 14, § 66. 1947, c. 61.)

See c. 36, § 97, re duties as to taxes in Maine Forestry District.

Sec. 69. If assessors fail to furnish information, board of equalization may report such valuation as it may deem just.—If the assessors of any town or some one of them fail to appear before the state tax assessor or his agent as hereinbefore provided in this chapter, or to transmit to him the lists hereinbefore named within 10 days after the mailing or publication of notice or notices to them to so appear or transmit said lists, the state tax assessor shall so report to the board of equalization and it may in its discretion report the valuation of the estates and property and lists of polls liable to taxation in the town so in default, as it shall deem just and equitable. (R. S. c. 14, § 67.)

Sec. 70. Assessors of towns to annually make return to state tax assessor.—The assessors of each town shall, on or before the 1st day of August, annually, and at such other times as the state tax assessor may require, make and return on blank lists which shall be seasonably furnished by the said state tax assessor for that purpose, all such information as to the assessment of property and collection of taxes as may be needed in the work of the state tax assessor or the board of equalization, including annually aggregates of polls, the land value, exclusive of buildings and all other improvements, and the valuation of each and every class of property assessed in their respective towns, with the total valuation

and percentage of taxation, and itemized lists of property upon which the town has voted to affix a value for taxation purposes. (R. S. c. 14, § 68.)

See c. 91, § 42, re reports of sworn officers not to be verified.

Sec. 71. Forest commissioner to furnish state tax assessor with lists of all lands in unorganized territory; value, when soil and growth are owned by different persons; owners to appear before state tax assessor and render lists.—The forest commissioner shall prepare and deliver to the state tax assessor full and accurate lists of all townships or parts of townships or lots or parcels of lands in unorganized territory in this state sold and not included in the tax lists, whether conveyed or not, and shall lay before said assessor at his request all information in his possession touching the value and description of lands in unorganized territory; also a statement of all lands on which timber has been sold or a permit to cut timber has been granted by lease or otherwise. All other state officers, when requested shall, in like manner, lay all information in their possession touching said valuation before said assessor. In fixing the valuation of unorganized townships whenever practicable, the lands and other property therein of any owners shall be valued and assessed separately. When the soil of townships or tracts taxed by the state as land in unorganized territory is not owned by the person or persons who own the growth or part of the growth thereon, the board of equalization shall value the soil and such growth separately for purposes of taxation. All owners of lands in unorganized territory or rights of timber and grass on public reserve lots shall, on or before the 1st day of August of each year preceding the regular legislative session of this state, render to the state tax assessor a signed list of all lands in unorganized territory thus owned, either in common or severalty, giving the township, number, range and county where located; and upon notice in writing any such owner shall either in person or by authorized agent appear before said assessor at such reasonable time and place as he may designate and answer such questions or interrogatories as said assessor may deem necessary in order to obtain a full knowledge of the just value, ownership and description of said lands. If any owner does not render such list to said assessor on or before said 1st day of August or, after notice, fails or refuses to appear before said assessor and to answer such questions or interrogatories, he is thereby barred of his right of appeal from the assessed valuation of such lands or rights of timber or grass. (R. S. c. 14, § 69.)

This section requires separate valuation on soil and growth, only when practicable. Pejepscot Paper Co. v. State, 134 Me. 238, 184 A. 764.

"Growth" defined.—The word "growth" as used in this section is in reason, and in any business view, limited to the enlargement and increase of trees valuable for timber and wood. Pejepscot Paper Co. v. State, 134 Me. 238, 184 A. 764.

Separate valuation for wild fruit not necessary.—The legislature, in enacting this section, used the word "growth" in its common meaning as growth of timber or wood. Thus, it is not necessary to establish a separate valuation on a crop of wild fruit. Pejepscot Paper Co. v. State, 134 Me. 238, 184 A. 764.

Quoted in part in Keyes v. State, 121 Me. 306, 117 A. 166.

Sec. 72. To investigate all cases of concealment and of under valuation; direct proceedings, actions and prosecutions; order reassessment; appeal.—The state tax assessor shall, at his own instance or on complaint made to him, diligently investigate all cases of concealment of property from taxation, of under valuation and of failure to assess property liable to taxation. He shall bring to the attention of town assessors all such cases in their respective towns. He shall direct proceedings, actions and prosecutions to be instituted to enforce all laws relating to the assessment and taxation of property and to the liability of individuals, public officers and officers and agents of corporations for failure or negligence to comply with the provisions of the laws governing the as-

sessment or taxation of property, and the attorney general and county attorneys, upon the written request of the state tax assessor, shall institute such legal proceedings as may be necessary to carry out the provisions of this chapter. The state tax assessor shall have power to order the reassessment of any or all real and personal property, or either, in any town where in his judgment such reassessment is advisable or necessary to the end that all classes of property in such town shall be assessed in compliance with the law. Neglect or failure to comply with such orders on the part of any assessor or other official shall be deemed willful neglect of duty and he shall be subject to the penalties provided by law in such cases. Provided a satisfactory reassessment is not made by the local assessors, then the state tax assessor may employ assistance from within or without the town where such reassessment is to be made, and said town shall bear all necessary expense incurred. Any person aggrieved because of such reassessment shall have the same right of petition and appeal as from the original assessment. (R. S. c. 14, § 70.)

Sec. 73. Owners and agents of lands in unorganized territory and of certain lands in towns and plantations to make returns to state tax assessor; on failure, state tax assessor may obtain information and assess expense against lands.—The owners or agents of all lands in unorganized territory and in such towns and plantations as the state tax assessor may designate shall return to the state tax assessor, on blanks furnished upon application to said assessor, the amount in board feet of all logs and other timber cut, or if it has been cut into 4-foot lengths, or otherwise, the number of cords of each kind of wood cut from their land the year preceding July 1st of the year in which said return is made. Should any owner or agent whose duty it is to make such return, neglect or refuse to comply with the requirements of this section, the state tax assessor may secure the information as to the amount of such cut by such methods as he deems expedient or advisable, and the expense of securing such information shall be added to the state tax next assessed against the land of such owner or agent, and collected in the same manner as all taxes are collected on lands in unorganized territory. (R. S. c. 14, § 71.)

See c. 41, § 166, re school tax in unorganized territory.

Sec. 74. State tax assessor may make abatement of taxes and supplemental assessments.—The state tax assessor may, subject to the approval of the governor and council, within 3 years from the assessment, if justice requires, make an abatement of any state, county or forestry district taxes. A list of such abatements and the amount of the same shall be transmitted by the said state tax assessor to the state controller, and such amount or amounts shall be deducted from such taxes.

The state tax assessor may, within 2 years from the assessment, if justice requires, make a supplementary assessment of any tax of which the original assessment is required by law to be made by the tax assessor. Such supplementary assessment shall be made in the same manner as the original assessment and the taxes so assessed shall be committed and collected accordingly.

The state tax assessor shall make a supplementary assessment of any state, county or forestry district tax on lands which have been acquired by the state for non-payment of such tax, which have been omitted from the state valuation and which have been conveyed by legislative authorization. Such supplementary assessment shall be made only for the calendar year following the date of conveyance and shall be based on the valuation to be established by the board of equalization.

The state tax assessor shall also make a supplementary assessment of any state, county or forestry district tax on lands in unorganized territory omitted

by error from the last previous state valuation, and of buildings located in unorganized territory built since the last previous state valuation. Such supplementary assessment shall be based on the valuation to be established by the board of equalization. (R. S. c. 14, § 72. 1945, c. 41, § 2; c. 288. 1947, c. 31, § 1. 1951, c. 23.)

Sec. 75. May abate tax when property has been doubly taxed. — Whenever it appears to the state tax assessor that any parcel of property in the state has been doubly taxed in any year, and it appears by the records that a moiety of such tax has been paid, the state tax assessor may, subject to the approval of the governor and council, abate the balance remaining unpaid, and said tax or taxes shall be canceled upon the books of the state. (R. S. c. 14, § 73. 1945, c. 41, § 3. 1947, c. 31, § 2.)

Sec. 76. Certification to treasurer of state and state controller.— Before commencing to collect the taxes which the state tax assessor is authorized by law to collect, he shall certify to the treasurer of state and the state controller the total amount of each type of tax. Copies of all supplemental assessments and abatements of taxes shall also be sent to the treasurer of state. (1945, c. 41, § 3-A.)

Sec. 77. Property taxes to be credited upon assessments; payment to be made quarterly.—Notwithstanding any other provisions of statute to the contrary, the gross amount of property taxes assessed upon real and personal property in the unorganized territory through the state tax assessor for the benefit of any special fund or political subdivision of the state may be credited on the books of the state to the special fund or to the proper fiscal officer of the political subdivision. This provision shall not apply to supplemental assessments. The treasurer of state shall pay to such fiscal officer the amount of the tax so assessed, in equal quarterly amounts, on or before the last day of July, October, January and April following the date of such assessment. The amount of such assessment is appropriated for the purposes of this section. Upon collection by the state tax assessor, such taxes shall be deposited in the general fund. All abatements of such taxes shall be charged against the general fund and all interest and supplemental assessments shall be paid into the general fund; and neither shall be charged against or credited to the special fund or political subdivision on account of which the tax was levied. Any excess of supplemental assessments over abatements accruing to the general fund shall be considered as reimbursement to the general fund for administrative expenses connected with the assessment of said taxes. The intent of the legislature is to permit the administration of all real and personal property taxes in the unorganized territory through the general fund as a matter of convenience and economy. (1953, c. 156, § 1.)

Taxes on Lands in Places Not Incorporated.

Sec. 78. Lands in places not incorporated may be taxed by the state; forest fire tax.—Lands not exempt, and not liable to be assessed in any town, may be taxed by the legislature for a just proportion of all state, county and forestry district taxes as herein provided for ordering the state, county and forestry district taxes upon property liable to be assessed in towns. The board of equalization shall make lists thereof, with as many divisions as will secure equitable taxation, conforming as near as convenient to known divisions and separate ownership.

All areas not incorporated outside the Maine forestry district shall pay a forest fire tax equal to that of the Maine forestry district. The valuation as determined by the board of equalization and set forth in the statement filed by it as provided

by section 67 shall be the basis for the computation and apportionment of the tax assessed. The sum of $50 of the amount assessed for each area shall be credited to the general forestry appropriation, forest fire control for organized towns, to allow the forest commissioner to employ a forest fire warden for prevention and the remainder credited to the aid to towns appropriation for control and suppression of forest fires. (R. S. c. 14, § 74. 1949, c. 160. 1951, c. 89.)

See § 82, re interest on unpaid taxes; c. 92, § 3, re buildings on leased land.

Sec. 79. Determination of taxes on lands in places not incorporated; list to be filed for public inspection.—When the lands mentioned in section 78 are assessed for any state, county and forestry district taxes, the state tax assessor shall determine the proportionate amount of such taxes due from the owners of such lands by applying the total millage rate of all such taxes against the valuation as listed by the board of equalization. The statements of the total tax due from each such owner shall be mailed as provided in section 82. The county commissioners, in assessing county taxes, shall assess such taxes upon the total valuation of each unorganized township and lot or parcel of land not included in any township and rights in public reserved lots whenever assessable, according to the last state valuation. Lists of such taxes certified by the county treasurer to the state tax assessor for collection shall contain, in addition to the total amount of taxes due, the millage rate to be applied for the entire county for county taxes, and for each township for county road repair taxes. The state tax assessor shall make a list, using the last state valuation as established by the board of equalization. Such list shall contain the total amount of any state, county and forestry district taxes due from each owner of lands mentioned in section 78 and each owner of rights in public reserved lots, and shall also contain the millage rate used in determining the proportionate amount of taxes due from such owners. Such list shall be filed in the office of the state tax assessor on or before the 1st day of July of each year, and shall be available for public inspection. (1945, c. 41, § 4; c. 378, § 7.)

See c. 36, § 96, re forestry district taxes; c. 36, § 98, re payment and collection of forestry district taxes; c. 41, § 166, re school tax for unorganized territory.

Sec. 80. Meaning of letters used in lists of lands in unorganized territory.—In the lists made by the board of equalization, in accordance with sections 78 and 79, for purposes of valuation and assessment, the following initial letters shall be held and construed to mean as follows: The letter "T." when used alone shall be held and construed to mean Township; the letter "R." when used alone, Range; the letter "N." when used alone shall be construed to mean North; "E." East; "S." South; "W." West; the letters "N. W." North West; "N. E." North East; "S. W." South West; "S. E." South East.

The letters "W. E. L. S." West of the East Line of the State; "B. K. P." Bingham's Kennebec Purchase; "B. P. P." Bingham's Penobscot Purchase; "W. B. K. P." West of Bingham's Kennebec Purchase; "N. B. K. P." North of Bingham's Kennebec Purchase; "W. K. R." West of the Kennebec River; "E. K. R." East of the Kennebec River; "E. C. R." East of the Canada Road; "W. C. R." West of the Canada Road; "N. W. P." North of Waldo Patent; "T. S." Titcomb Survey. (R. S. c. 14, § 75.)

Cross reference.—See c. 36, § 95, re Maine Forestry District.

Cited in Keyes v. State, 121 Me. 306, 117 A. 166.

Sec. 81. Lands in places not incorporated subject to county taxes; list certified to state tax assessor; determination of tax; payments to counties; interest.—Lands mentioned in section 78 may be assessed by the county commissioners for a due proportion of county taxes. Such assessment

shall be made upon the total valuation of each unorganized township and lot or parcel of land not included in any township and rights in public reserved lots whenever assessable, according to the last state valuation. Lists of such taxes showing the total tax assessed for each unorganized township and lot or parcel of land not included in any township, and rights in public reserved lots whenever assessable, and the millage rate for county tax purposes shall immediately be certified and transmitted by the county treasurer to the state tax assessor. The state tax assessor shall determine the proportionate amount of such taxes due from the owners of such lands and shall include such amounts in the statements referred to in section 82. (R. S. c. 14, § 76. 1945, c. 41, § 5. 1953, c. 156, § 2.)

Cited in Skowhegan Savings Bank v. Parsons, 86 Me. 514, 30 A. 110.

Sec. 82. Tax notices may be sent by mail to known owners; lists of assessments of unknown owners to be advertised; interest.—When any state, county and forestry district taxes are assessed as provided for in section 79, the state tax assessor shall, on or before the 1st day of July thereafter, notify in writing the owners of lands so assessed, by sending to each by mail at his last known address, a statement containing a brief description of the land assessed, the date when payment is required, and the amount in total due from each such owner of all such state, county and forestry district taxes; and whenever such taxes are assessed on a biennial basis, he shall send like statements of such taxes for the 2nd year of the biennium on or before the 1st day of July of such 2nd year. In case the owners of any such lands are unknown, instead of sending the notices by mail he shall, on or before the 1st day of August, cause the lists of assessments on such lands to be advertised in the state paper and in some newspaper, if any, published in the county in which the land lies, and shall cause like advertisement of the lists of such taxes for the following year to be made on or before the 1st day of August of that year. Such a statement or advertisement shall be sufficient legal notice of such assessment. The state tax assessor shall mail to each owner or owners, making a written request therefor, a statement showing the amount of each state, county and forestry district tax assessed on the lands of such owner or owners. Such lands are held to the state for payment of such state, county and forestry district taxes, with interest thereon at the rate of 6% per year to commence on October 1st upon the taxes for the year for which such assessment is made; and whenever such taxes are assessed on a biennial basis, interest on taxes for the 2nd year of the biennium shall commence on October 1st of such 2nd year. (R. S. c. 14, § 77. 1945, c. 41, § 6.)

Cross references.—See c. 36, § 96, re forestry district taxes; c. 36, § 98, re payment and collection of forestry district taxes.

The recital in the deed is no proof that the tax was advertised as required by this section. Hatch v. Hollingsworth & Whitney Co., 113 Me. 255, 93 A. 541.

The interest of the state continues until the taxes assessed upon the several tracts are paid in full or the state's interest otherwise legally released. Keyes v. State, 121 Me. 306, 117 A. 166.

Description of land in advertised list held insufficient.—See Foulkes v. Nevers, 119 Me. 315, 111 A. 335.

Applied in Millett v. Mullen, 95 Me. 400, 49 A. 871.

Cited in Skowhegan Savings Bank v. Parsons, 86 Me. 514, 30 A. 110.

Sec. 83. Payment of taxes; delinquent taxes; publication; certificate filed in registry.—State, county and forestry district taxes on lands mentioned in section 78 shall be paid on or before the 1st day of October following the date of assessment and such taxes shall be delinquent on the 1st day of February of the next year. Whenever such taxes are assessed on a biennial basis, the taxes for the 2nd year of the biennium shall be paid on or before the 1st day of October of such 2nd year and shall be delinquent on the 1st day of the next February. On or before the 20th day of February annually, the state tax assess-

or shall send by mail to the last known address of each owner of such lands upon which taxes remain unpaid a notice in writing, containing a description of the land assessed, the amount of unpaid taxes, interest to the 1st day of February, and publication costs of $3, and alleging that a lien is claimed on such land for payment of such taxes, interest and costs, with a demand that payment be made by the 1st day of March, following. On or before the 20th day of February annually, the state tax assessor shall publish in the state paper and in some newspaper, if any, published in the county where the land lies, a list, containing the name or names of the owners according to the last state valuation, the amount of unpaid taxes, together with interest and costs, and a description according to the last state valuation of the lands upon which taxes remain unpaid. If such taxes and interest to date of payment and costs are not paid by such 1st day of March, the state tax assessor shall record between the 1st and 15th days of March in the registry of deeds of the county or registry district where such land lies a certificate signed by the state tax assessor, setting forth the name or names of the owners according to the last state valuation, the description of such lands assessed as contained in the last state valuation, the amount of unpaid taxes, interest to the 1st day of March, the amount of costs, and a statement that demand for payment and publication of such taxes has been made, and that such taxes, interest and costs remain unpaid. The costs to be charged by the register of deeds for such filing shall not exceed 50c. (1945, c. 41, § 7. 1947, c. 5.)

Sec. 84. Filing of certificate to create mortgage; foreclosure provisions; notice; discharge.—The filing of the certificate provided for in section 83 in the registry of deeds as aforesaid shall be deemed to create and shall create a mortgage on such real estate to the state, having priority over all other mortgages, liens, attachments and encumbrances of any nature, and shall give to the state all the rights usually incident to a mortgage, except that the mortgagee shall not have any right of possession of such real estate until the right of redemption herein provided for shall have expired.

If said mortgage, together with interest and costs, shall not be paid by the 30th day of March of the year following the filing of such certificate in the registry of deeds as provided for in this and the preceding section, the said mortgage shall be deemed to have been foreclosed and the right of redemption to have expired.

The filing of such certificate in the registry of deeds shall be sufficient notice of the existence of the mortgage.

In the event that such tax, interest and costs shall be paid within the period of redemption herein provided, the state tax assessor shall discharge said mortgage in the same manner as is now provided for the discharge of real estate mortgages.

Each owner may pay for his proportionate ownership in any tract of land whether in common or not, and upon filing with the state tax assessor a certificate containing a suitable description of the property on which he desires to pay the taxes and where the same is located, and paying the amount due, together with interest and costs, shall receive a certificate from the state tax assessor discharging the taxes on the fractional part or ownership upon which such payment is made. (1945, c. 41, § 8.)

Cross reference.—See c. 36, § 98, re payment and collection of forestry district taxes.

Certificate of release to tenant in common.—It is undoubtedly the purpose of the last paragraph of this section to provide a procedure whereby an owner of an interest in any tract, whether in common or not, may effectually obtain a release of the state's interest in his holdings. If he is a tenant in common, he may obtain such release by paying the proportion of the tax represented by his holdings. He would then obtain a certificate discharging the tax upon his one undivided half, or one undivided quarter, or one undivided twelfth, as the case may be. The state's interest would then be effectually released from

that fractional interest, and remain upon the rest of the township or tract, and the advertisements should then offer for sale the state's interest, not in one half, three quarters or eleven twelfths as the case may be, but in one undivided half, or three undivided quarters, or eleven undivided twelfths, because different portions may have different values. Keyes v. State, 121 Me. 306, 117 A. 166.

Effect of certificate of release on certain acreage without description.—If an owner in severalty of a portion of the township or tract taxed wishes to discharge the tax upon his holding, he may, if he sees fit, waiving the inequality in value between his holding and the remainder of the tract, pay the proportion of the tax which his acreage bears to the acreage of the township and tract as stated by the state assessors. This seems to have been the usual procedure. But if he takes a certificate discharging the tax upon a certain number of acres without further description, the payment and certificate are ineffectual to release the state's interest upon any part of the tract, and the whole tract remains held for the balance of the tax. It is clear that such a certificate is insufficient to release the state's interest in any particular parcel, and thereby that interest be restricted to the remaining acreage. Keyes v. State, 121 Me. 306, 117 A. 166.

Cited in Adams v. Larrabee, 46 Me. 516.

Sec. 85. Supervision, administration and sale of such lands. — A copy of the lien certificate shall be filed in the office of the state tax assessor; and on the 30th day of March annually, whenever the state shall have acquired title to lands assessed for any state, county and forestry district taxes, the state tax assessor shall certify to the state controller the amount of unpaid taxes, interest and costs then outstanding. Unpaid state, county and forestry district taxes and interest and costs on the books of the state shall be charged against the general fund.

The state tax assessor shall, whenever the state acquires title to such lands, cause an inventory to be made of all such lands. Such inventory shall contain a description of the land, amount of accrued taxes by years and such other information as may be necessary in the administration and supervision of such lands. A copy of such inventory shall be furnished to the forest commissioner prior to the convening of the legislature. The state tax assessor shall biennially make a report to the legislature not later than 15 days after such legislature convenes. Such report shall contain a copy of the inventory of lands then owned by the state and such recommendations as to the disposition of these lands as the state tax assessor and the forest commissioner may wish to make.

The state tax assessor shall, after authorization by the legislature, sell and convey any such lands; but shall in all cases of sales, except sales to the former owners of the lands, give public notice of the proposal to sell such lands and shall ask for competitive bids and shall sell to the highest bidder, with the right of rejecting all bids. No sales of such lands or any stumpage thereon shall be made by the state tax assessor except by authorization of the legislature.

The supervision, administration, utilization and vindication of the rights of the state in such lands shall be vested in the state tax assessor until title is conveyed or otherwise disposed of by the legislature.

All moneys received from the sale or use of such lands shall be credited to the general fund.

The provisions of this section shall apply to lands acquired through tax sales and owned by the state. (1945, c. 41, § 9. 1949, c. 30, §§ 1, 2. 1953, c. 156, § 3.)

Cross reference.—See c. 36, § 98, re payment and collection of forestry district taxes.

All proceedings must be in compliance with statute.—It is held to be a condition precedent to the passing of the title at sales under this section that all of the proceedings of the officers who have anything to do with the listing and valuation of the land, the levy and collection of the tax, the advertisement and sale of the property, the return, the filing, the record of the proceedings, whether the acts are to be performed before or after the sale, must be in

strict compliance with the statute authorizing the sale. Hatch v. Hollingsworth & Whitney Co., 113 Me. 255, 93 A. 541.

And person claiming under tax deed must prove officer complied with section.— In a suit to remove a cloud from title, the defendant claiming the premises under a tax deed, given by an officer in pursuance of this section, must prove that the officer complied with the provisions prescribed in the section giving him the power of sale, for they are not only bound to know the law, but are also bound, if they desire to claim under the deed, to see that all of the substantial requirements to authorize the sale have been complied with. Hatch v. Hollingsworth & Whitney Co., 113 Me. 255, 93 A. 541.

Applied in Millett v. Mullen, 95 Me. 400, 49 A. 871; Keyes v. State, 121 Me. 306, 117 A. 166.

Stated in Chandler v. Wilson, 77 Me. 76.

Cited in Loomis v. Pingree, 43 Me. 299; Tolman v. Hobbs, 68 Me. 316; Skowhegan Savings Bank v. Parsons, 86 Me. 514, 30 A. 110.

Timber and Grass on Public Reserved Lots.

Sec. 86. Timber and grass on public reserved lots held for payment of taxes. — The timber and grass on the public reserved lots shall be held to the state for the payment of such state, county and forestry district taxes as may be lawfully assessed against them after the 26th day of April, 1897, with interest thereon at the rate of 6% a year, to commence upon the taxes for the year in which such assessment is made, on the 1st day of October following the date of assessment. Whenever such taxes are assessed on a biennial basis, interest shall commence on the taxes for the 2nd year on the 1st day of October of such 2nd year. (R. S. c. 14, § 84. 1945, c. 41, § 11.)

Sec. 87. Owner may pay his proportion of tax; discharge. — Each owner of timber and grass so assessed may pay the part of the tax so assessed proportioned to his interest in any tract, whether in common or not; and shall receive from the state tax assessor a certificate, discharging the tax upon the interest upon which such payment is made. (R. S. c. 14, § 85. 1945, c. 41, § 12.)

Sec. 88. Each interest by acreage to be forfeited, if tax is not paid. —Each fractional part, or interest represented by acreage, in all such public reserved lots, upon which the state, county and forestry district taxes and interest are not paid by the 30th day of March of the year following the assessment shall be forfeited to the state, and whenever such taxes are assessed on a biennial basis, such forfeiture shall occur on the 30th day of March following the 2nd year of the biennium; but any owner may redeem his interest in such public reserved lots by tendering to the state tax assessor, within 1 year after the date of the forfeiture, his proportional part of all the sums due on such lots, together with interest at 6% a year from the date of the forfeiture, and $1 for a release. (R. S. c. 14, § 86. 1945, c. 41, § 13.)

Sec. 89. If land is not redeemed in 1 year, forfeited to the state.— If any fractional part or interest represented by acreage in such public reserved lots shall not be redeemed as provided in the preceding section at the expiration of 1 year from the date of the forfeiture, then it shall be and remain wholly forfeited to the state, and shall vest in the state free from all claims by any former owner. (R. S. c. 14, § 87. 1945, c. 41, § 14.)

Sec. 90. Timber and grass forfeited to be held for the benefit of the townships.—All timber and grass forfeited under the provisions of the preceding section shall be held in trust by the state for the benefit of the townships in which such public reserved lots lie, and shall be under the control of the forest commissioner, as provided in the case of public reserved lots in plantations. (R. S. c. 14, § 88.)

Sec. 91. Forest commissioner to make division of lots partially for-

feited.—The forest commissioner shall cause a division to be made, if found necessary from time to time, of the public reserved lots which have been partially forfeited, and shall set off and hold the forfeited portions for the benefit of townships in which they lie, as provided in the preceding section. (R. S. c. 14, § 89.)

Sec. 92. Taxes due from interest forfeited to be charged against unorganized townships fund.—After such timber and grass shall be wholly forfeited to the state, the state tax assessor shall certify to the state controller the amount of unpaid taxes and interest then outstanding; and such state, county and forestry district taxes and interest shall be charged to the unorganized townships fund in the township in which the forfeited interest in the public reserved lot is located. (R. S. c. 14, § 90. 1945, c. 41, § 15. 1953, c. 156, § 4.)

Duties of State Tax Assessor and Treasurer of State Regarding Taxes.

Sec. 93. State tax assessor may bring action to recover taxes. — The state tax assessor may bring an action of debt in his own name to enforce the lien on real estate created by section 3 of chapter 92, to secure the payment of state, county and forestry district taxes assessed under section 78 and 81 upon lands not liable to be assessed in any town. Such action shall be begun after the expiration of 8 months and within 1 year after the publication of the advertisement named in section 82. The proceedings shall be in accordance with section 93 of chapter 92, except that the preliminary notice and demand for payment of said tax as provided in said section shall not be required. (R. S. c. 14, § 91. 1945, c. 41, § 16.)

See c. 92, § 92, re collector or administrator may sue for taxes; c. 92, § 146, re municipal officers may direct suit for taxes.

Sec. 94. Taxes on lands in unorganized townships, collected by state tax assessor.—In addition to the methods of collecting state, county and forestry district taxes provided by law, owners of lands in unorganized townships shall be liable to pay such taxes to the state tax assessor upon demand. If such taxes shall not be paid within 30 days after such demand, the state tax assessor may collect the same, with interest as provided by law, by an action of debt in the name of the state. Such action shall be brought in the superior court in the county where such unorganized townships are located, and the attorney general may begin and prosecute such actions when thereto requested by the state tax assessor. The demand herein provided for shall be sufficient if made by a writing mailed to such landowner or his agent at his usual post office address. In case such owner resides without the state and has no agent within the state known to the state tax assessor, such demand shall be sufficient if made upon the forest commissioner. Such action shall be brought not less than 30 days after the giving or mailing of the demand herein provided for. The beginning of such action, obtaining execution and collecting the same shall be deemed a waiver of the rights of the state under the provisions of sections 83 and 84. (R. S. c. 14, § 92. 1945, c. 41, § 17.)

Sec. 95. Inventory of personal property in unorganized township to be returned to state tax assessor.—Each owner or person in charge or control of personal property such as would not be exempt from taxation if it were located in a city or town of this state, and not otherwise subject to taxation under existing laws of the state, which on the 1st day of April in each year is situated, whether permanently or temporarily, within an unorganized township, shall, on or before the 1st day of May in each year, return to the state tax assessor a complete list of such property upon blanks furnished by said assessor; and such

property shall be assessed by said state tax assessor for a just proportion of all state and county taxes; but none of the property described in this section shall be included in the state valuation as made for unorganized townships.

Any such owner or person who willfully makes a fraudulent return under the provisions of this section shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (R. S. c. 14, § 93. 1945, c. 41, § 18.)

See § 67, re state valuation.

Sec. 96. Proceedings by state tax assessor when inventory is not made.—Should any owner or person having in his charge or control personal property taxable by said state tax assessor, as provided in section 95, neglect or refuse to comply with the requirements of sections 95 to 97, inclusive, the state tax assessor may secure the necessary information by such methods as he deems advisable, and the necessary expense incurred in securing such information shall be added to the tax assessed against the property of such owner or person and paid to the state tax assessor with the tax. (R. S. c. 14, § 94. 1945, c. 41, § 19.)

Sec. 97. Tax to be paid to state tax assessor on or before October 1st, to be turned over to counties; proceedings when taxpayer is delinquent.—Taxes levied under the provisions of section 95 shall be paid to the state tax assessor on or before October 1st of each year. Interest on such state and county taxes shall be charged at the rate of 6% per year after the 1st day of October following the date of the assessment. A lien is created on all personal property for such taxes and expenses incurred in accordance with the provisions of section 96, and such property may be sold for the payment of such taxes and expenses at any time after October 1st. When the time for the payment of the tax to the state tax assessor has expired, and it is unpaid, the state tax assessor shall give notice thereof to the delinquent property owner, and unless such tax shall be paid within 60 days, the state tax assessor may issue his warrant to the sheriff of the county, requiring him to levy by distress and sale upon the personal property of said property owner, and the sheriff or his deputy shall execute such warrants, but any balance remaining after deducting taxes and necessary additions made in accordance with the provisions of sections 95 to 97, inclusive, shall be returned to the owner or person in possession of such property or the state tax assessor may certify such unpaid taxes to the attorney general, who shall bring an action of debt in the name of the state. (R. S. c. 14, § 95. 1945, c. 41, § 20. 1947, c. 6. 1953, c. 156, § 5.)

Sec. 98. Receipts from taxes to be paid by state tax assessor to treasurer of state daily.—All state, county and forestry district taxes collected by the state tax assessor under the provisions of this chapter shall be paid to the treasurer of state daily. (R. S. c. 14, § 96. 1945, c. 41, § 21.)

Sec. 99. Treasurer to send warrants for assessment on towns of state tax. — When a state tax is imposed and required to be assessed by the proper officers of towns, the treasurer of state shall send such warrants as he is, from time to time, ordered to issue for the assessment thereof to the assessors, requiring them forthwith to assess the sum apportioned to their town or place, and to commit their assessment to the constable or collector for collection. (R. S. c. 14, § 97.)

Cross reference.—See § 100, re warrants and executions against delinquent towns.

The assessors' authority to assess and commit the tax does not depend upon the state treasurer's warrant. The issuance of the warrant is a ministerial act, and such warrant is not the only nor the best evidence of the amount of the state tax that is to be assessed in the town. If the assessors see fit to complete the assessment,

including the tax for the current year, and commit the same to the collector before the issuance of the state treasurer's warrant, the taxpayer can find no fault. Rowe v. Friend, 90 Me. 241, 38 A. 95.

Sec. 100. Treasurer to issue warrants for taxes.—The treasurer of state shall issue warrants or executions against delinquent towns, assessors, constables and collectors to enforce the collection and payment of state taxes in cases prescribed in chapter 92. (R. S. c. 14, § 98. 1949, c. 349, § 4.)

See c. 36, § 98, re tax notices; c. 92, § 31, re warrants for state tax.

Sec. 101. Limitation of action to recover lands in unorganized territory sold and deeded for non-payment of taxes.—When the state has taxed lands in unorganized territory, and the treasurer of state has conveyed it, or part of it, for non-payment of tax, by deed purporting to convey the interest of the state by forfeiture for such non-payment, or it or a part of it has been conveyed under authority given by the legislature by a deed purporting to convey the interest of the state acquired under the provisions of sections 83 to 85, inclusive, and the pertinent records of the treasurer of state or the state tax assessor show that the grantee, his heirs or assigns, has paid the state and county taxes thereon, or on his acres or interest therein, as stated in the deed, continuously for the 20 years subsequent to such deed; and when a person claims under a recorded deed describing land in unorganized territory taxed by the state, and the pertinent records of the treasurer of state or the state tax assessor show that he has, by himself or by his predecessors under such deed, paid the state and county taxes thereon, or on his acres or interest therein as stated in the deed, continuously for 20 years subsequent to recording such deed; and whenever, in either case, it appears that the person claiming under such a deed, and those under whom he claims, have, during such period, held such exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of lands in unorganized territory in this state, and it further appears that during such period no former owner, or person claiming under him, has paid any such tax, or any assessment by the county commissioners, or done any other act indicative of ownership, no action shall be maintained by a former owner, or those claiming under him, to recover such land or to avoid such deed, unless commenced within said 20 years. Such payment shall give such grantee or person claiming as aforesaid, his heirs or assigns, a right of entry and seizin in the whole, or such part, in common and undivided, of the whole tract as the deed states, or as the number of acres in the deed is to the number of acres assessed.

The provisions of this section shall apply to rights and interests acquired under tax sales made by the treasurer of state for the non-payment of taxes. (R. S. c. 14, § 99. 1945, c. 41, § 22.)

Cross reference.—See notes to § 103.

Purpose of section.—Prior to the enactment of this section, it had been repeatedly held that title to wild lands could not be acquired by adverse possession by merely taking a deed of a tract of timber land, running lines around it, keeping off trespassers and making occasional lumbering operations upon it for a period of twenty years. The exercise of such acts of ownership had not been deemed sufficient or effectual to establish title by disseizin of the true owner (Chandler v. Wilson, 77 Me. 76; Hudson v. Coe, 79 Me. 83, 8 A. 249, 1 Am. St. Rep. 288). Thus, while title to farming land might be acquired by twenty years of such "adverse" possession as comports with the ordinary management of that kind of land by the owner, title to wild lands could not be acquired by twenty years of the qualified possession above described, although it was ordinarily the only kind of occupancy of which wild lands are capable. It was the obvious purpose of this section to extend the same relative protection to possessory titles to wild lands that all other lands enjoyed under the law. Soper v. Lawrence Bros. Co., 98 Me. 268, 56 A. 908.

This section is to be construed as a stat-

ute of limitation and of repose. Soper v. Lawrence Bros. Co., 98 Me. 268, 56 A. 908.

This section was obviously designed to operate as a statute of repose through the confirmation of ancient titles. Soper v. Lawrence Bros. Co., 98 Me. 268, 56 A. 908.

Section designed to protect rights.—All the provisions of this section are designed and adapted to protect and not to extinguish the rights of one who is in the possession and enjoyment of his property. The legislature deemed it just to recognize the practical distinction between the acts constituting the occupation and enjoyment of wild lands and those accepted as proof of the possession of cultivated lands. The section protects no one unless for twenty years he has not only paid all the taxes upon the land, but during all that time has also had such "exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of lands in unorganized territories in this state," and unless it further appears that no former owner, during all that time, has paid any such taxes "or done any other act indicative of ownership." Soper v. Lawrence Bros. Co., 98 Me. 268, 56 A. 908.

This section contemplates an actual possession of some kind. It need not be as continuous as the possession of a farm would be expected to be, but there should be some kind of continuity. Hill v. Coburn, 105 Me. 437, 75 A. 67.

And no presumption of possession in absence of acts of ownership. — Where there is an entire absence of any acts of ownership for the statutory period of time, it cannot be said that there is any presumption of fact that there was "exclusive and continuous" possession on the part of a claimant under a tax title. Hill v. Coburn, 105 Me. 437, 75 A. 67.

Section constitutional.—See Soper v. Lawrence Bros. Co., 98 Me. 268, 56 A. 908.

Applied in Stetson v. Grant, 102 Me. 222, 66 A. 480

Sec. 102. Action may be commenced within 10 years, after removal of disability.—If any such former owner, or person claiming under him, during said period of 20 years, or any portion thereof, is a minor, insane, imprisoned or absent from the United States he may, if otherwise entitled, bring such action at any time within 10 years after such disability is removed, notwithstanding said period of 20 years has expired, and if such person dies during the continuance of the disability, and no determination or judgment has been had on his title or right of action, such action may be brought by his heirs, or other person claiming under him, at any time within 10 years after his death, notwithstanding the 20 years have elapsed. (R. S. c. 14, § 100.)

Section prospective in operation.—See note to § 103.

Sec. 103. Sections 101 and 102 not applicable to certain cases.—The provisions of the 2 preceding sections shall not apply to actions between cotenants, nor to actions pending in court on the 27th day of April, 1895, nor to those commenced before the 1st day of January, 1900. (R. S. c. 14, § 101.)

Sections 101 and 102 are not only not retrospective, but they are distinctly made prospective only in their operation by this section. Soper v. Lawrence Bros. Co., 98 Me. 268, 56 A. 908.

Section considered in connection with language of § 101.—The provision of this section that the "two preceding sections shall not apply to actions between cotenants" must be considered in connection with the language of § 101 and construed with reference to the object to be accomplished. If the acts enumerated in § 101 are performed by one who claims by virtue of a recorded deed to be the owner of the entire tract, and one who has maintained such qualified possession for twenty years in assertion of an exclusive title to the whole tract, that section applies; but if the same acts are done by one who has a recorded deed of only a fractional part, and during the period of twenty years has only claimed as a tenant in common with another and all his acts of ownership have been admittedly done as a co-tenant, and not as an exclusive owner, § 101 does not apply. It thus becomes a question of fact in each case whether the acts of occupation were done in subordination to the record title or in repudiation of it. If they were done as a disseizor in defiance of the true owner, § 101 applies notwithstanding the plaintiff may have discovered a defect in the defendant's record title, and may show title in himself as co-tenant. Soper v. Lawrence Bros. Co., 98 Me. 268, 56 A. 908.

One who enters under a warranty deed of the entire premises is never presumed to be a tenant in common but a tenant in severalty. By the express terms of his deed he acquires not an undivided interest, but the entire estate. In the case of lands in unorganized territories, possession under such a deed is by the terms of § 101, "such as comports with the ordinary management" of such lands, and if continued for twenty years, bars the right of action. Soper v. Lawrence Bros. Co., 98 Me. 268, 56 A. 908.

Determination of character of possession.—Section 101 does not apply to "actions between co-tenants." It is competent for the plaintiff to prove that during all the years in question he claimed title only to an undivided share of the land and thus sustained the relation of co-tenant. It is equally competent for the defendant to prove that during the same period he was not a tenant in common with any one, but was claiming and occupying the entire estate. With respect to both plaintiff and defendant the character and quality of the possession must be determined by the acts of ownership and by the intention as disclosed by all the circumstances. Soper v. Lawerence Bros. Co., 98 Me. 268, 56 A. 908.

Where a party to the action, during the period of possession, was at no time holding in submission to a record title in another, but in assertion of an absolute title in himself, and he was at no time holding as tenants in common with another, but as exclusive owners of an entire estate, the action is not "between co-tenants" within the meaning and contemplation of this section. Soper v. Lawerence Bros. Co., 98 Me. 268, 56 A. 908.

Poll Taxes in Unorganized Territory.

Sec. 104. Poll taxes in unorganized territory.—It shall be the duty of the state tax assessor through agents as hereinafter provided to procure annually, on or as of April 1, a sworn return enumerating all persons, male or female, 21 years of age and upwards, who are residents of the various unorganized units, government reservations excepted, of the unorganized territory as defined in section 159 of chapter 41, and he shall give a certificate of residence to all such residents as shall make written application therefor upon the form provided therefor by him.

He shall have the authority for the purpose of carrying out the provisions of this section to appoint agents for the whole or any portion of the unorganized territory and they shall perform such duties, including the collection of the poll tax as hereinafter provided, as he may authorize or delegate in each particular appointment. They shall have the same powers and may exercise the same methods in the collection of the poll tax aforesaid as collectors of taxes in towns are authorized to exercise and use for the collection of personal and poll taxes committed to them. He may require, in his discretion, the filing of surety bonds by his agents in such penal sums as he may deem necessary.

Poll taxes shall be assessed annually, on or as of April 1, on all residents in unorganized territory who are required by law to pay a poll tax, and the tax shall be paid to the state tax assessor or to his duly authorized agent, who shall give a receipt in proper form therefor. Poll taxes paid to any such agent shall be remitted by such agent to the state tax assessor. The state tax assessor shall have authority to abate such tax in any case where conditions warrant such action, and in such case the person whose tax is abated shall not forfeit any right or privilege to which payment thereof would entitle him.

Poll taxes collected by the state tax assessor from the residents of Connor in the year in which the biennial state election is held shall be paid by the state to the town of Limestone, provided the state tax assessor receives from the officials of the town of Limestone a request therefor by June 1st of the following year.

The poll taxes assessed and collected by the state tax assessor from electors in unorganized territory who register in a town as voters shall be paid by him to such town for any year in which such electors actually vote therein, provided the state tax assessor receives from the officials thereof a certification of such registration and act of voting by June 1st of the following year, and such pay-

ment shall be considered as an assessment on such electors by such town officials. The remainder of the poll taxes collected, if any, shall be paid to the treasurer of state. (1949, c. 349, § 5. 1951, c. 19; c. 398, § 2. 1953, c. 200, § 2; c. 220, § 2.)

Sec. 105. Penalty for failure to remit poll tax collections. — Any agent of the state tax assessor, who shall fail to remit poll taxes collected, to the said assessor within 3 months after collection, upon request therefor by the said assessor, shall be guilty of embezzlement and shall be punished accordingly. (1949, c. 349, § 5.)

See c. 132, re punishment for embezzlement.

Taxation of Corporate Franchises.

Sec. 106. Taxation and rate.—Every corporation incorporated under the laws of this state, having a fixed capital, except such as are excepted by section 41 of chapter 53, shall pay an annual franchise tax of $5, provided the authorized capital of said corporation does not exceed $50,000; of $10, provided said authorized capital exceeds $50,000 and does not exceed $200,000; of $25, provided said authorized capital exceeds $200,000 and does not exceed $500,000; of $50, provided said authorized capital exceeds $500,000 and does not exceed $1,000,000; and the further sum of $25 for each $1,000,000, or any part thereof, in excess of $1,000,000; also on all shares without par value; of $5, provided the authorized number thereof does not exceed 250 shares; of $10, provided said authorized number thereof exceeds 250 shares and does not exceed 1,000 shares; of $20, provided said authorized number thereof exceeds 1,000 shares and does not exceed 3,000 shares; of $25, provided said authorized number thereof exceeds 3,000 shares and does not exceed 5,000 shares; of $50, provided said authorized number thereof exceeds 5,000 shares and does not exceed 10,000 shares; and the further sum of $25 for each 10,000 shares, or any part thereof, authorized in excess of 10,000 shares. (R. S. c. 14, § 102.)

Cross reference.—See c. 53, § 42, re penalty for failure to make returns.

This tax is not levied on property, but is imposed on the corporation in the nature of an annual license fee for the right to continue to exercise the privileges conferred upon it by the state. Johnson v. Johnson Bros., 108 Me. 272, 80 A. 741.

Cited in Johnson v. Monson Consolidated Slate Co., 108 Me. 296, 80 A. 750.

Sec. 107. Taxes, how assessed, when due and payable.—The secretary of state shall certify to the state tax assessor the corporate name, the name of the treasurer and the amount of authorized capital stock of each of such corporations and shall thus certify to the state tax assessor whenever a new corporation has been organized and whenever a change has occurred in the corporate name or the name of the treasurer or the amount of authorized capital stock of a corporation already organized. The state tax assessor shall, on or before the 1st day of July, annually, assess the tax provided by the preceding section upon the authorized capital stock of each of said corporations and shall thereupon notify each of said corporations of the amount of said tax assessed to it, and such tax shall become due and payable from said corporation to the state tax assessor on the 1st day of September thereafter. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 103. 1945, c. 42, § 1. 1949, c. 349, § 6.)

Assessment subsequent to appointment of receivers creates no debt.—The assessment of a franchise tax against a corporation subsequent to the appointment of receivers by the court in proceedings for the dissolution of the corporation, and while such proceedings are pending, does not create a debt provable against such corporation. Johnson v. Monson Consolidated Slate Co., 108 Me. 296, 80 A. 750.

It is plain that under the provisions of this section a franchise tax is assessable against a corporation only as of the first day of July annually, and covers the period of the succeeding year. Where a corporation had passed into the hands of receivers

by order of court made prior to the assessment, under proceedings for its dissolution, the corporation thereafter had no right to exercise for itself any of the privileges conferred upon it by the state. Its franchise—its right to do business for itself—had ceased, and the state had taken possession of its assets for distribution among its then existing creditors. No claim can share in those assets unless it was an outstanding debt against the corporation at the date of the decree of sequestration. The franchise tax was not such a debt. It did not exist at that time, and under the statute which authorized it, could not have existed prior to July 1. Moreover, at the time this tax was assessed there was no basis for its assessment, because the corporation then had no franchise or privilege to do business, without which, manifestly, no franchise tax could be imposed. Johnson v. Johnson Bros., 108 Me. 272, 80 A. 741.

Sec. 108. Tax to be a debt due from corporation.—The tax assessed under the provisions of section 107 shall be a debt due from such corporation to the state, for which an action of debt may be maintained after the same shall have been in arrears for the period of 1 month; such tax shall also be a preferred debt in case of insolvency under the laws of this state or in any process of liquidation in its courts. (R. S. c. 14, § 104.)

Stated in Johnson v. Johnson Bros., 108 Me. 272, 80 A. 741.

Sec. 109. Neglect or refusal to pay.—If any corporation liable to taxation under the provisions of section 106 shall for 1 year neglect or refuse to pay to the state any tax or penalty assessed against it hereunder, its charter shall be liable to forfeiture as hereinafter provided. (R. S. c. 14, § 105.)

Sec. 110. Company in arrears 6 months.—The state tax assessor, whenever any tax due under the provisions of the 4 preceding sections from any company shall have remained in arrears for a period of 6 months after the same shall have become payable, shall report the same to the attorney general, who shall, if he deems it advisable, apply to the supreme judicial court or the superior court in equity in the name of the state for the forfeiture of the charter of such delinquent corporation, and said court shall order such notice to all parties interested as it may deem proper and shall have jurisdiction in said cause to appoint receivers, issue injunctions and pass interlocutory decrees and orders according to the usual course of proceedings in equity, and to make such final orders and decrees as the nature of the case may require. (R. S. c. 14, § 106. 1945, c. 42, § 2. 1947, c. 30, § 1.)

Sec. 111. Annual list to be prepared and published.—The state tax assessor shall annually prepare a list of all corporations that have failed to pay their annual franchise tax for the preceding year, giving the corporate name, the name of the treasurer last filed in the office of the secretary of state and the amount of the tax due from each corporation, except those from which by reason of having been duly excused as provided by statute, or dissolved by decree of court, no franchise tax is due for such year, which list shall be published once in the month of August in 4 places within the state, namely, Lewiston, Bangor, Portland and Augusta, in such newspapers in each place as the state tax assessor may select. If any corporation so advertised shall fail to pay all franchise taxes due the state for such year, and $3 for the expenses of advertising the same, on or before the 1st day of December following, the state tax assessor shall so certify to the secretary of state who shall suspend its charter, and such corporation shall have no right to use the same. (R. S. c. 14, § 107. 1945, c. 42, § 3. 1947, c. 30, § 2. 1949, c. 7.)

Sec. 112. Charter may be revived; certain data recorded. — Any charter suspended under the provisions of the preceding section may be revived by payment of all franchise taxes and expenses of advertising as aforesaid due

from the corporation at the time of such payment. Any corporation whose charter shall have become suspended as aforesaid shall continue liable for its yearly franchise tax, but while its charter is so suspended, no notice relating to said franchise tax need be sent to the corporation by any state officer. The data covering the suspension of said charter, to wit: the fact of publication and the dates thereof, and the suspension of said charter by reason of such publication and the failure to pay said overdue franchise tax as herein provided, shall be so entered upon the corporation records of the state and be certified by the secretary of state as evidence of the suspension of the charter of such corporation. (R. S. c. 14, § 108.)

Taxation of Railroad Companies.

History of railroad tax law.—See State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Sec. 113. Annual returns of railroad companies.—Every railroad company incorporated under the laws of the state or doing business therein shall annually, on or before the 15th day of May, return to the treasurer of state, signed by its treasurer, clerk or secretary, the amount of the capital stock of the corporation, the number and par value of the shares, by the respective classes thereof, and either a complete list of its shareholders or a list of shareholders resident within the state, with their places of residence and the number of shares belonging to each on the 1st day of April. Such railroad company shall also annually, between the 1st and 15th days of April, return to the state tax assessor, signed by its treasurer or its chief accounting officer, a statement of the gross transportation receipts, the net railway operating income, the average number of miles operated in the system and the average number of miles operated in the state for the preceding calendar year. (R. S. c. 14, § 109. 1945, c. 42, § 4.)

Applied in State v. Maine Central R. R., 66 Me. 488. Co., 73 Me. 518; State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Cited in State v. Western Union Tel.

Sec. 114. Penalty.—Any corporation, company or person willfully neglecting to make returns as provided in section 113 forfeits $5 for every day's neglect, to be recovered by an action of debt in the name of the state. Any officer, agent or employee of such railroad company who willfully violates any provision of section 113 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (1945, c. 42, § 5.)

Sec. 115. Annual excise tax; state to pay cities and towns 1% on stock held therein.—Every corporation, person or association operating any railroad in the state under lease or otherwise shall pay to the state tax assessor, for the use of the state, an annual excise tax for the privilege of exercising its franchises and the franchises of its leased roads in the state, which, with the tax provided for in section 4 of chapter 92, is in place of all taxes upon such railroad, its property and stock. There shall be apportioned and paid by the state from the taxes received under this and the 6 following sections to the several cities and towns in which, on the 1st day of April in each year, is held railroad stock of either such operating or operated roads exempted from other taxation, an amount equal to 1% on the value of such stock on that day, as determined by the state tax assessor; provided, however, that the total amount thus apportioned on account of any railroad shall not exceed the sum received by the state as tax on account of such railroad; and provided further, that there shall not be apportioned on account of any railroad and its several parts, if any, operated by lease or otherwise, a greater part of the whole tax received from such railroad and its several parts, than the proportion which the amount of capital stock of such railroad and its several parts owned in this state bears to the whole amount of

the capital stock of said railroad and its several parts. (R. S. c. 14, § 110. 1945, c. 42, § 6.)

Cross reference.—See § 153, re penalty.

The language of this constitutionally valid statute is plain and unambiguous; adherence to its obvious meaning, which is not devoid of purpose, would lead neither to injustice nor to contradictory provisions. Opinion of the Justices, 136 Me. 525, 2 A. (2d) 451.

The tax provided for in this section is an excise tax, a tax not upon property but privilege. It is a tax upon the privilege of exercising franchises, to wit, doing railroad business in the State of Maine. Railroad business consists in transporting passengers and freight by means of cars propelled by steam or other power and running upon rails. State v. Canadian Pacific Ry., 125 Me. 350, 134 A. 59.

And tax not affected by investment of capital.—The tax under this section would not be affected if the nature of the property in which the whole capital stock is invested were changed, and put into real property or bonds of other states. From the very nature of the tax, being laid upon a franchise given by the state, and revocable at pleasure, it cannot be affected in any way by the character of the property in which its capital stock is invested. State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Tax in lieu of municipal taxes.—In lieu of municipal taxes upon railroads, their property and stock, which are with some exceptions exempt from other taxation, railroad companies in this state are required by this section to pay an annual excise tax. State v. Canadian Pacific Ry., 125 Me. 350, 134 A. 59.

Railroads and their property and stock, except buildings, and real estate and fixtures lying and being outside located rights of way, are made exempt from municipal taxation. In lieu, the state levies, for the privilege of operating a railroad, whether by the absolute owner or a lessee, an annual excise tax. Opinion of the Justices, 136 Me. 525, 2 A. (2d) 541.

Apportionment to town of corporate domicile of lessee.—In apportioning excise taxes, and paying the respective amounts, those shares of the capital stock of a corporation which owns, but does not operate, a railroad that have been acquired in ownership by and are of the assets of the lessee, the operator of the line or system, should be considered as "held" in the city or town, in Maine, of the corporate domicile of the lessee. Opinion of the Justices, 136 Me. 525, 2 A. (2d) 541.

Tax not on leased roads alone.—This tax is assessed against the corporation operating the road "for the privilege of exercising its franchises and the franchises of its leased roads." It is as plain as language can make it that this is not a tax upon the franchises of the leased road alone. Lewiston & Auburn R. R. v. Grand Trunk Ry., 97 Me. 261, 54 A. 750.

Tax precluded by provisions of charter.—A railroad holding a charter which provides that a portion of its net income shall be paid to the state as a tax and further that "no other tax than herein is provided, shall be levied, or assessed on said corporation, or any of their privileges, property, or franchises," and that the legislature shall have power to impose fines and penalties necessary more effectually to compel compliance with its charter, "but not to impose any other, or further duties, liabilities, or obligations," is not amenable to the tax under this section. State v. Knox & Lincoln R. R., 78 Me. 92, 2 A. 846.

Cited in State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697; East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306; Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A. (2d) 5.

Sec. 116. Amount of tax.—The amount of the annual excise tax on railroads shall be ascertained as follows: the amount of the gross transportation receipts as returned to the public utilities commission for the year ended on the 31st day of December preceding the levying of such tax shall be compared with the net railway operating income for that year as returned to the public utilities commission; when the net railway operating income does not exceed 10% of the gross transportation receipts, the tax shall be an amount equal to 3¼% of such gross transportation receipts; when the net railway operating income exceeds 10% of the gross transportation receipts but does not exceed 15%, the tax shall be an amount equal to 3¾% of the gross transportation receipts; when the net railway operating income exceeds 15% of the gross transportation receipts but does not exceed 20%, the tax shall be an amount equal to 4¼% of such gross transportation receipts; when the net railway operating income exceeds 20% of

the gross transportation receipts but does not exceed 25%, the tax shall be an amount equal to 4¾% of such gross transportation receipts; when the net railway operating income exceeds 25% of the gross transportation receipts, the tax shall be an amount equal to 5¼% of such gross transportation receipts; provided, however, that in the case of railroads operating not over 50 miles of road, the tax shall not exceed 1¾% of the gross transportation receipts; and provided further, that when the net railway operating income of any narrow gauge railroad located wholly in this state exceeds 5% but does not exceed 10% of its gross transportation receipts, the tax on such railroad shall be ¼ of 1% of its gross transportation receipts; and when the net railway operating income of such railroad exceeds 10% of its gross transportation receipts, the tax shall be ¾% of its gross transportation receipts; and when the net railway operating income of such a railroad does not exceed 5% of its gross transportation receipts, no excise tax shall be assessed upon it. When a railroad lies partly within and partly without the state, or is operated as a part of a line or system extending beyond the state, the tax shall be equal to the same proportion of the gross transportation receipts in the state as herein provided, and its amount shall be determined as follows:

The gross transportation receipts of such railroad, line or system, as the case may be, over its whole extent, within and without the state, shall be divided by the total number of miles operated to obtain the average gross transportation receipts per mile, and the gross transportation receipts in the state shall be taken to be the average gross transportation receipts per mile multiplied by the number of miles operated within the state, and the net railway operating income within the state shall be similarly determined.

The term "net railway operating income" means the railway operating revenues less the railway operating expenses, tax accruals and uncollectible railway revenues, including in the computation thereof debits and credits arising from equipment rents and joint facility rents. The public utilities commission, after notice and hearing, may determine the accuracy of any returns required of any railroad, and if found inaccurate, may order proper corrections to be made therein. (R. S. c. 14, § 111. 1951, c. 250, § 2.)

Cross reference.—See c. 44, §§ 80, 84, re penalty for failure to make returns.

In all cases the tax is required to be assessed upon the gross transportation receipts in the state. If the railroad is wholly within the state such gross receipts appear in the corporation's return to the Public Utilities Commission. If it lies partly within and partly without the state such gross receipts are determined according to the statutory rule set up in this section. State v. Canadian Pacific Ry., 125 Me. 350, 134 A. 59.

The tax is not upon the business of the railroads as property, but it is an annual sum having reference to their gross transportation receipts returned to the railroad commissioners in proportion to their mileage in the state; and to find this sum these receipts are divided by the number of miles of railroad operated to determine the average gross receipts per mile; and when the railroad lies partly within and partly without the state or is operated as a part of a line or system extending beyond the state the receipts over its whole extent are divided by the total number of miles operated to obtain the average gross receipts per mile. It seems obvious that the words "line or system" cannot be disconnected with the word "railroad" of which they are predicated. It is a railroad "operated as a part of a line or system extending beyond the state." State v. Canadian Pacific Ry., 100 Me. 202, 60 A. 901.

Railroad taxed as unit.—The taxation is of the railroad as a unit, and the measure of liability is determined by its length in miles and its gross earnings per mile of line. State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Franchises of lessor and lessee of interstate railroad not taxed separately.—The manner in which the amount of the tax is determined under this section precludes the conclusion that the franchises of the lessor and lessee are or can be taxed separately. Its gross transportation receipts returned are to be divided by the number of miles of railroad operated, and from the result thus obtained the amount of the tax is determined by a scale of varying percentages on the gross receipts per mile operated. No distinction is made between the receipts of one leased line and of another, or between these and those of

the operating road. They all go in together and make up the total of gross receipts, which in like manner is divided by the total number of miles operated to get the one sum which fixes the rates of taxation. In short, there is but one tax. It is assessed against the operator upon the basis of all its operations on all its operated roads within this state. Where the operator is a corporation it must be regarded either as a tax upon its franchise alone, or as a tax upon its own franchises and those of its leased roads, and in the last case it is incapable of apportionment. Lewiston & Auburn R. R. v. Grand Trunk Ry., 97 Me. 261, 54 A. 750.

Meaning of "railroad," "line" and "system".—In determining the legal construction of the words "railroad," "line" and "system" in the clause of this section dealing with railroads lying partly within and partly without the state, they should be construed according to their ordinary and popular meaning in connection with the subject matter to which they relate. The word "railroad" comprehends not only the equipment and road way but the sites of depots, warehouses, and other real estate incidentally connected with the business, including property which would properly be subjected to local taxation independently of the excise tax. The signification of the words "line or system" depends upon the subject to which they are applied, and the connection in which they are used. They have not in themselves a meaning so clear and explicit that they must be interpreted according to their ordinary and popular meaning, regardless of the consequences of interpretation. They are used in a statute which provides a franchise tax upon railroads for the right and privileges of doing business in the state in their corporate capacity, and defines the basis upon which the tax is to be determined; and the purpose of the statute and the language used in other parts of the section must be considered in interpreting these words. State v. Canadian Pacific Ry., 100 Me. 202, 60 A. 901.

Meaning of "number of miles operated."—In that part of this section dealing with interstate railroads, the legislature, in the use of the words "number of miles operated," undoubtedly referred to the transportation of passengers and freight by means of cars propelled by steam or other power and running upon rails. State v. Canadian Pacific Ry., 125 Me. 350, 134 A. 59.

A railroad is only operated within the meaning of the law by moving trains, cars, engines or machinery on the track. State v. Canadian Pacific Ry., 125 Me. 350, 134 A. 59.

Line included in computing tax according to legislative intent.—When it is sought to bring a particular line within the statutory scope of either the words "railroad" or "railway," the controlling factor is the legislative intent. In accordance with that intent the line must be included or excluded. State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Ownership of track not essential to taxation of interstate railroad.—If an interstate railroad operates between two points in Maine, it must pay the franchise tax based upon the mileage between these two points, even though it does not own the track over which it operates, and such track is used jointly with another company. State v. Canadian Pacific Ry., 125 Me. 350, 134 A. 59.

Every train run by a railway company carrying passengers or freight over the line of another company is an act of operating a railroad in this state. It is immaterial that another railroad is operated upon the same track for the mutual benefit and interest of both. State v. Canadian Pacific Ry., 125 Me. 350, 134 A. 59.

The spirit and intention of this section is to include only actual railroad lines as existing on the face of the earth and operated as such. State v. Canadian Pacific Ry., 100 Me. 202, 60 A. 901.

And miles of transportation by boat are excluded in computing tax.—It cannot be presumed that the legislature contemplated, when it adopted the present rule of determining the amount of the excise tax, railroads having as part of their lines and systems steamboat and steamship lines over navigable waters. The reverse would be true, for a corporation formed for the purpose of constructing and operating a railroad cannot, unless special powers and authority are granted under the general law or by a special statute of a state, engage in the business of running steamboats and steamships beyond its terminus. Hence, the miles of transportation by boats owned by a railroad should be excluded in computing the tax. State v. Canadian Pacific Ry., 100 Me. 202, 60 A. 901.

Street railways not within meaning of this section.—It is clear that the legislative intent could not have been to include street railways as within the meaning of this section. This is plain from the terms of the statute and the date of its

passage. State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

And mileage of street railway excluded in computing tax.—The mileage and transportation receipts of an electric railway, leased, or owned by, or merged with a steam railroad company should not be added to and included in the mileage and transportation receipts of such steam railroad, for purposes of taxation. State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Under an enabling statute a railroad may acquire an electric railway, and may operate the same, as it might operate a hotel, or steamboat, or ferry, or do other authorized acts as accessory to its business, but like the instances mentioned such acquisition cannot be held to add to its mileage as a railroad and extend the line or system of railroad for purposes of taxation. State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

The words "total number of miles operated" does not mean miles of railroad plus miles of street railroad operated. The word "railroad" standing alone does not, as used in this section, include street railroad. Inasmuch as this section and all that goes before relates exclusively to railroads and not at all to street railroads it is clear that it is the number of miles of "railroad" that the legislature intended. State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

The distinction between railroads and street railroads is maintained in the tax laws relating to the two (see § 121). The preliminaries are the same for both kinds of railroads, but the question as to ascertaining the amount of taxation is not the same. If the legislature did not intend to recognize two classes of railroads, resort would not have been had to subdivisions, the presence of which clearly demonstrates such legislative intent. State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Notwithstanding merger of railroad and street railway companies.—A merger cannot constitute an electric street railway a part of a line of commercial steam railroad so to actually include the mileage of the former as an extension of the latter's line or system. State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Constitutionality of former statute.—For a discussion of the constitutionality of an earlier statute (c. 249, Acts 1880) under which the basis of the tax was the value of a railroad's franchise, rolling stock and fixtures, see State v. Maine Central R. R., 74 Me. 376.

Stated in State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

Sec. 117. Tax, how fixed; notice to companies.—The state tax assessor, on or before the 1st day of each May, shall determine the amount of the tax on railroad companies and shall forthwith give notice thereof to the corporation, person or association upon which the tax is levied. (R. S. c. 14, § 112. 1945, c. 42, § 7.)

Sec. 118. Tax, to whom and when payable.—The tax on railroad companies shall be deemed an asset and credit of the state on the 15th day of June next after the levy is made and shall be payable 1/3 on the said 15th day of June, 1/3 on the 15th day of September and 1/3 on the 15th day of December next following. Such tax shall be payable to the state tax assessor, who shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 113. 1945, c. 42, § 8.)

Sec. 119. Aggrieved parties may apply for abatement.—Any corporation, person or association aggrieved by the action of the state tax assessor in determining the tax on railroad companies, through error or mistake in calculating the same, may apply for abatement of any such excessive tax within the year for which such tax is assessed, and if, upon rehearing and reexamination, the tax appears to be excessive through such error or mistake, the said state tax assessor may thereupon abate such excess, and the amount so abated shall be deducted from any tax due and unpaid upon the railroad upon which the excessive tax was assessed; or, if there is no such unpaid tax, the controller shall draw a warrant for the abatement, to be paid from any money in the treasury not otherwise appropriated. (R. S. c. 14, § 114.)

Sec. 120. Further returns; public utilities commission to have access to books.—If the returns required by law in relation to railroads are

found insufficient to furnish the basis upon which the tax on railroads is to be levied, the public utilities commission shall require such additional facts in the returns as may be found necessary; and, until such returns are so required, or, in default of such returns when required, the state tax assessor shall act upon the best information that he may obtain. The public utilities commission shall have access to the books of railroad companies to ascertain if the required returns are correctly made; and any railroad corporation, association or person operating any railroad in the state, which refuses or neglects to make returns required by law or to exhibit to the public utilities commission its books for the purposes aforesaid, or makes returns which the president, clerk, treasurer or other person certifying to such returns knows to be false forfeits not less than $1,000, nor more than $10,000, to be recovered by indictment, or by an action of debt in any county into which the railroad operated extends. (R. S. c. 14, § 115.)

Taxation of Street Railroad Corporations.

Sec. 121. Taxation of street railroad corporations.—Street railroad corporations and associations which own or operate a street railroad are subject to the provisions of the 8 preceding sections and all street railroad corporations and associations are subject to the provisions of section 4 of chapter 92, except that the annual excise tax shall be ascertained as follows: when the gross average receipts per mile do not exceed $1,000, the tax shall be equal to ¼ of 1% on the gross transportation receipts; and for each $1,000 additional gross receipts per mile, or fractional part thereof, the rate shall be increased ¼ of 1%, provided that the rate shall in no case exceed 4%.

The provisions of this section shall not apply to street railways operating not more than 5 miles of road, and such railways shall be subject to an annual excise tax of $200. (R. S. c. 14, § 116. 1945, c. 283. 1951, c. 266, § 8.)

Receipts from bus operation not included in computing tax.—In determining what under this section are the "gross average receipts per mile" the state tax assessor should divide the gross transportation receipts received from rail operation by the number of miles of track mileage and disregard the receipts from bus operation by the taxpayer and the mileage of the bus routes. He should not include in the gross transportation receipts the revenue received from both bus and rail revenue and divide this amount by the sum of the rail and bus mileage to determine the "gross average receipts per mile." State v. York Utilities Co., 142 Me. 40, 45 A. (2d) 634.

Street railway mileage not considered in determining railroad's tax under § 116.—See note to § 116.

Quoted in State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Taxation of Parlor Cars.

Sec. 122. Taxation of owners of parlor cars.—Every corporation or person owning or operating parlor or other cars for which extra compensation is charged for riding therein over any of the railroads of the state shall annually, on the 1st day of April, pay to the state tax assessor for the use of the state an annual excise tax for the privilege of exercising its franchise in the state, equal to 9% of its or his gross receipts from business done wholly in the state, for the preceding calendar year. (R. S. c. 14, § 117. 1945, c. 42, § 9. 1949, c. 349, § 7.)

See § 153, re penalty.

Sec. 123. Returns to state tax assessor; tax in place of local taxation.—Every corporation or person owning or operating parlor or other cars for which extra compensation is charged for riding therein over the railroads of the state shall, by its properly authorized agent or officer annually on or before the 1st day of March, make a return to the state tax assessor, stating the amount of such gross receipts; whereupon the said assessor shall on or before the 15th

day of March assess the tax herein provided and shall thereupon notify said corporations or persons. Such tax shall be paid to the state tax assessor on or before the 1st day of April following and is in place of all local taxation upon the cars and equipment of said corporations or persons used in carrying on business in the state. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 118. 1945, c. 42, § 10.)

See § 153, re access to books by state tax assessor.

Sec. 124. Penalty. — Any corporation or person willfully neglecting to make returns according to the provisions of the preceding section forfeits $5 for every day's neglect, to be recovered by an action of debt in the name of the state. Any officer, agent or employee of such companies operating parlor cars who willfully violates any provision of section 123 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (R. S. c. 14, § 119. 1945, c. 42, § 11.)

Taxation of Telephone and Telegraph Companies.

Sec. 125. Returns of corporations or persons operating telephone or telegraph lines.—Every corporation, association or person operating in whole or in part a telephone or telegraph line for toll or other compensation within the state shall annually, on or before May 15th, return to the treasurer of state signed by the treasurer, clerk or secretary of the corporation, the amount of the capital stock of the corporation, the number and par value of the shares and a complete list of its shareholders resident within the state, with their places of residence and the number of shares belonging to each on the 1st day of April; if the line is operated by an association or person, the owner or owners or the members of the association, or one of them, shall annually make a return to the treasurer of state, on or before May 15th of the names and residences of the owner or owners, or members of an association, and the relative interest each owner has in the line so operated, or that each member has in any such association on the 1st day of April; provided that any corporation may include in its return a statement of the whole amount of its capital stock owned in the state and if no apportionment or payment is required to be made by the state to the several cities and towns under the provisions of section 127, it may exclude from its return the list of its shareholders resident within the state and the number of shares belonging to each. Such corporation, association or person shall also annually, between the 1st and 15th days of April, return to the state tax assessor, signed by its treasurer or its chief accounting officer if a corporation, or by the owner or owners, or by the members of an association or one of them, if a person or association, a statement of the gross receipts of such corporation, association or person collected within this state on account of its telephone or telegraph business during the preceding year ending December 31st. (R. S. c. 14, § 120. 1945, c. 42, § 12.)

Cross reference.—See § 153, re failure to make returns.

Constitutionality of former statute.—For constitutionality of tax on telegraph companies under former law (c. 246, Acts 1880), see State v. Western Union Tel. Co., 73 Me. 518.

Cited in Portland v. New England Tel. & Tel. Co., 103 Me. 240, 68 A. 1040.

Sec. 126. Penalty.—Any corporation, association or person willfully neglecting to make returns as provided in section 125 forfeits $5 for every day's neglect, to be recovered by an action of debt in the name of the state. Any officer, agent or employee of such telephone or telegraph company who willfully violates any provision of section 125 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (1945, c. 42, § 13.)

Sec. 127. Taxation; apportionment to cities and towns.—Every corporation, association or person operating in whole or in part a telephone or telegraph line within the state for tolls or other compensation shall pay to the state tax assessor, for the use of the state, an annual excise tax for the privilege of conducting such business within the state, which tax, with the tax provided for in section 132, is in place of all taxes upon the property of such corporation, association or person employed in such business, and of all taxes upon the shares of the capital stock of any such corporation.

There shall be apportioned and paid by the state from the taxes collected under this section to the several cities and towns in which on the 1st day of April in each year is held stock of any such corporation, or in which resides the owner or owners of an interest in any telegraph or telephone lines operated by any association or person not a corporation and taxed under this section, an amount equal to 1% on the value of such stock on that day as determined by the state tax assessor, if a corporation; and, if not a corporation, such proportion of the amount of such excise tax paid to the state tax assessor by the association, person or persons operating such line as such interest owned by a resident in any such municipality bears to the whole ownership; provided, however, that the total thus apportioned on account of such stock, if a corporation, shall not exceed the sum received by the state as a tax on account of such corporation; and provided further, that there shall not be apportioned on account of any such corporation a greater part of the whole tax received by the state from such corporation than the proportion which the amount of capital stock of such corporation owned in this state bears to the whole amount of the capital stock of such corporation, and that, in the case of any corporation of which not exceeding 2% of the capital stock is owned in the state, no apportionment and payment shall be made unless the amount to be apportioned and paid shall exceed the sum of $250. (R. S. c. 14, § 121. 1945, c. 42, § 14.)

Cross reference.—See § 153, re penalty.

Quoted in part in Portland v. New England Tel. & Tel. Co., 103 Me. 240, 68 A. 1040.

Sec. 128. Computation of tax.—The amount of the annual excise tax on telephone and telegraph companies shall be ascertained as follows: when the gross receipts of such corporation, association or person collected within this state on account of its telephone or telegraph business during the year for which the tax is assessed on such corporation, association or person exceed $1,000 and do not exceed $5,000, the tax shall be 1¼% of such gross receipts; when such gross receipts exceed $5,000 and do not exceed $10,000, the tax shall be 1½% of such gross receipts; when such gross receipts exceed $10,000 and do not exceed $20,000, the tax shall be 1¾% of such gross receipts; when such gross receipts exceed $20,000 and do not exceed $40,000, the tax shall be 2% of such gross receipts; and so on, increasing the rate of tax ¼ of 1 % for each additional $20,000 or fractional part thereof, of such gross receipts, provided that the rate shall in no event exceed 6% of such gross receipts. (R. S. c. 14, § 122.)

Applied in Portland v. New England Tel. & Tel. Co., 103 Me. 240, 68 A. 1040.

Sec. 129. Tax to be determined; notice to companies.—The state tax assessor on or before the 1st day of May annually shall determine the amount of the tax on telephone and telegraph companies and shall forthwith give notice thereof to the corporation, association or person upon which the tax is levied. (R. S. c. 14, § 123. 1945, c. 42, § 15.)

Sec. 130. Payment of tax; lien.—The tax on telephone and telegraph companies shall be paid to the state tax assessor on or before the 1st day of June annually. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. Such tax shall be a lien on the property of such corporation, and on its franchise, and upon the property used in operating a telephone

or telegraph business by any such association or person, and takes precedence over all other liens. (R. S. c. 14, § 124. 1945, c. 42, § 16.)

Sec. 131. Books of corporations to be open to assessors.—The state tax assessor or his duly authorized agent shall have access to the books of any corporation, association or person operating telephone or telegraph lines in this state, to ascertain if the required returns are correctly made; and any corporation, association or person refusing or neglecting to make the returns required by law or to exhibit to the said assessor or to his duly authorized agent, its or his books for the purpose aforesaid, or making returns which the president, clerk, treasurer or other person certifying such returns knows to be false shall forfeit not less than $1,000, nor more than $10,000, to be recovered by indictment or by an action of debt in any county into which the said telegraph or telephone lines extend. (R. S. c. 14, § 125.)

Sec. 132. Tax to be in lieu of all taxes.—The excise tax collected under the provisions of the 7 preceding sections shall be in lieu of all taxes upon any corporation therein designated, upon its shares of capital stock and its property; provided, however, that the land and buildings thereon owned by such corporation, association or person shall be taxed in the municipality in which the same are situated. The assessment of taxes on such land and buildings shall be legal, whether assessed as resident or nonresident property. (R. S. c. 14, § 126. 1949, c. 349, § 8.)

Intent of legislature.—In view of the clear and unambiguous terms of this section, it seems to have been the manifest purpose of the legislature to impose upon telephone companies an excise tax for the privilege of doing business in this state, and to exempt all personal property used in its business, leaving only its real estate, such as land and buildings for local taxation. Portland v. New England Tel. & Tel. Co., 103 Me. 240, 68 A. 1040.

Conduits not annexed to realty and taxable by municipality.—See Portland v. New England Tel. & Tel. Co., 103 Me. 240, 68 A. 1040.

Stated in East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306.

Taxation of Express Companies.

Sec. 133. Companies and persons doing express business to apply annually for license and to pay tax.—Every corporation, company or person doing express business on any railroad, steamboat or vessel in the state shall, annually before the 1st day of May, apply to the state tax assessor for a license authorizing the carrying on of said business and any such corporation, company or person neglecting to make application as aforesaid shall be punished by a fine of $50, to be recovered by complaint or indictment; every such corporation, company or person shall pay to the state tax assessor 4% of the gross receipts of said business done during the preceding calendar year. Said 4% shall be on all business done in the state, including a proportional part on all express business coming from other states or countries into this state, and all going from this state to other states or countries; provided, however, that nothing herein applies to goods or merchandise in transit through the state. (R. S. c. 14, § 127. 1945, c. 42, § 17.)

Cross reference.—See § 153, re penalty.

Section imposes franchise tax.—The legislature intended that the payment required of express companies should be considered as an excise or franchise tax. State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

A fair construction of this section fully excludes all the elements of any other tax than those of an excise or franchise tax, and clearly shows that it was the intention of the legislature to impose such a tax and no other. State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

One reason for concluding that it was the intention of the legislature to impose an excise or franchise tax is found in the fact that they are not only presumed to

have had knowledge of the rights of interstate commerce with respect to the matter of taxation, but that they gave actual expression to such knowledge by excluding from the operation of the law the subject matter of interstate commerce by a proviso "that nothing herein applies to goods or merchandise in transit through the state," and by confining the tax provided for solely to the business done in the state. State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

And not tax on real or personal property.—This section prescribes only the mode by which the state undertakes to fix the standard upon which it is disposed to impose a franchise tax upon the express company. It was intended to provide for a franchise tax. It certainly does not impose a tax upon real or personal property, as the tax prescribed "is in place of all local taxation" (§ 135). State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

Validity of tax not dependent mode of computation.—The validity of the tax under this section can in no way be dependent upon the mode which the state may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of the legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows. State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

The tax is upon earnings in the state of Maine alone, and such proportion of earnings can only be determined by a prorating according to the miles of haul within and without the state. In other words, the tax can only be upon such proportion of the gross earnings of the company as the miles of haul within the state bears to the whole haul for which the receipts are had. State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

The legislature intended by the phraseology of the section that the pro rate part of the gross receipts, to be used as a basis for taxation, should be found by a rule analogous to that employed in determining the gross receipts of railroads as the basis for the assessment of the railroad tax (see § 116); that is, in the proportion that the number of miles of the express haul in the state bears to the whole number of miles of the route from which the entire gross receipts are derived. State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

Sec. 134. Annual return to state tax assessor; assessment of tax.—Every such corporation, company or person coming under the provisions of the preceding section shall, by its properly authorized agent or officer, annually on or before the 1st day of March make a return to the state tax assessor, stating the amount of said receipts for all express matter carried within the state as specified in the preceding section; whereupon the said state tax assessor shall, on or before the 15th day of March following, assess the tax therein provided and shall thereupon notify said corporations, companies or persons, and said taxes shall be paid to the state tax assessor on or before the 15th day of April following. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 128. 1945, c. 42, § 18.)

Cross reference.—See § 153, re access to books by state tax assessor.

Tax assessed on return.—The tax for a particular year should be assessed upon the return made by the company for that year. State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

And return not to be disregarded by assessors.—The return, if it conforms with all the requirements of this section, cannot be arbitrarily disregarded by the state assessors in determining the amount of business done by the defendant company in this state. Otherwise, the assessors would, if they saw fit to exercise the power, become the sole judges and final arbiters of the amount of business upon which they would impose the franchise tax provided for. It may be said that upon the suspicion or the detection of an error, the return might be sent back for correction, but finally it is the sworn return of the company that must control the action of the assessors. If, upon suspicion and investigation, it should be discovered that the agent of any corporation had intentionally made a false return, the state would be amply protected against the repetition of the offense by a conviction and punishment of the offender under the administration of the criminal law. State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

Sec. 135. State tax in place of local taxation.—The tax assessed upon express corporations, companies and persons in section 133 is in place of all local taxation, except that real estate owned by such corporations, companies or persons shall be taxed in the municipality where the same is situated as non-resident real estate. (R. S. c. 14, § 129.)

Stated in State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697; East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306.

Sec. 136. Penalty.—Any corporation, company or person willfully neglecting to make returns according to section 134 forfeits $5 for every day's neglect, to be recovered by an action of debt in the name of the state. Any officer, agent or employee of such express company who willfully violates any provision of section 134 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (R. S. c. 14, § 130. 1945, c. 42, § 19.)

Cited in State v. Boston & Portland Express Co., 100 Me. 278, 61 A. 697.

Taxation of Insurance Companies.

Sec. 137. Taxation of domestic insurance companies. — Every life insurance company or association, organized under the laws of this state, in lieu of all other taxation, shall be taxed as follows: 1st, its real estate shall be taxed by the municipality in which such real estate is situated, in the same manner as other real estate is taxed therein; 2nd, it shall pay a tax of 1% upon all gross direct premiums written, including annuity considerations, whether in cash or notes absolutely payable, received from residents of this state during the year preceding the assessment, as hereinafter provided, first deducting therefrom all return premiums and all dividends paid to policyholders in this state on account of said premiums or considerations. Every other insurance company or association organized under the laws of this state, except those mentioned in section 143, including surety companies and companies engaged in the business of credit insurance or title insurance shall, as hereinafter provided, annually pay a tax of 1% upon all gross direct premiums written whether in cash or in notes absolutely payable on contracts made in the state for fire, casualty and other risks, less return premiums thereon and less all dividends paid to policyholders and less all premiums and assessments on policies of insurance issued on farm property. (R. S. c. 14, § 131. 1945, c. 118, § 1. 1947, c. 15, § 1.)

Cross reference.—See c. 60, § 7, re penalty for failure to make returns.

Cited in Portland v. Union Mutual Life Ins. Co., 79 Me. 231, 9 A. 613; East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306.

Sec. 138. Annual returns to insurance commissioner. — Every domestic life insurance company shall include in its annual return to the insurance commissioner a statement of the amount of premiums and annuity considerations liable to taxation as provided in the preceding section, and of the real estate held by it on the 31st day of the previous December, showing in detail the amount of all premiums including annuity considerations whether in cash or notes absolutely payable, received by said company from residents of this state during the year preceding the assessment and all dividends paid to policyholders in this state on account of said premiums or annuity considerations as required by blanks furnished by the commissioner. The taxes provided by the preceding section shall be assessed and paid as provided in section 148, and said section and section 144 shall be applicable thereto. (R. S. c. 14, § 132.)

See c. 60, § 7, re annual statement of condition.

Sec. 139. Tax on premiums and annuity considerations.—Every in-

surance company or association which does business or collects premiums or assessments including annuity considerations in the state, except those mentioned in sections 137 and 143, including surety companies and companies engaged in the business of credit insurance or title insurance, shall, for the privilege of doing business in this state, and in addition to any other taxes imposed for such privilege, as hereinafter provided, annually pay a tax upon all gross direct premiums including annuity considerations whether in cash or otherwise, on contracts written on risks located or resident in the state for insurance of life, annuity, fire, casualty and other risks at the rate of 2% a year. (R. S. c. 14, § 133. 1945, c. 118, § 2; c. 378, § 8. 1947, c. 15, § 2.)

Sec. 140. Limitation.—The provisions of sections 137, 138 and 139 shall not apply to the taxation of any annuity consideration on any annuity contract issued prior to August 1, 1943. (R. S. c. 14, § 134.)

Sec. 141. Amount of tax.—In determining the amount of tax due under the provisions of sections 137 and 139, there shall be deducted by each company from the full amount of gross direct premiums, the amount of all direct return premiums thereon, and all dividends paid to policyholders on direct premiums and the tax shall be computed by said companies or their agents as aforesaid. (R. S. c. 14, § 135. 1945, c. 220, § 2.)

Sec. 142. Such companies to make returns.—Every company or association which by the provisions of sections 137 and 139 is required to pay a tax shall, on or before the 1st day of each March, make a return under oath to the state tax assessor, stating the amount of all gross direct premiums written by said company, either in cash or otherwise, on risks located or resident in this state during the year ending on the 31st day of December previous, the amount of direct return premiums thereon and dividends paid to the policyholders on direct premiums during said year. (R. S. c. 14, § 136. 1947, c. 188, § 1.)

See § 155, re access to books by state tax assessor; c. 60, § 7, re annual statement of condition.

Sec. 143. Tax on mutual fire insurance companies transacting mill insurance; return to state tax assessor.—Mutual fire insurance companies incorporated under the laws of other states, which insure only factories or mills, or property connected with such factories or mills, admitted to do business in this state, shall comply with all the requirements of law except that in lieu of all other taxation upon premiums in this state, such companies shall annually pay a tax at the rate of 2% on gross premiums in force on risks in this state, after deducting the unabsorbed portion of such premium, computed at the rate of return actually made on annual policies expiring during the year by said insurance companies. Such companies shall, on or before the 1st day of each March, make a return, under oath, to the state tax assessor, showing the gross premiums in force on risks in this state on the 31st day of December previous and the unabsorbed portion of such premiums computed at the rate of return actually made on annual policies expiring during the year by said insurance companies. (R. S. c. 14, § 137. 1947, c. 188, § 2.)

See § 155, re access to books by state tax assessor; c. 60, § 47, re assets required of a mutual company.

Sec. 144. Neglect to make return, assessment; failure to pay.—If any insurance company or association refuses or neglects to make the return required by the 2 preceding sections, the state tax assessor shall make such assessment on such company or association as he deems just, and unless the same is paid on demand, the state tax assessor shall certify to the insurance commissioner that payment of such tax has not been made and such company or as-

sociation shall do no more business in the state, and the insurance commissioner shall give notice accordingly. Whoever, after such notice, does business in the state for such company or association is liable to the penalty provided in section 273 of chapter 60. (R. S. c. 14, § 138. 1947, c. 188, § 3.)

Sec. 145. Ratio of tax on certain foreign insurance companies; return and assessment of tax.—Any insurance company incorporated by a state of the United States or province of the Dominion of Canada whose laws impose upon insurance companies chartered by this state any greater tax than is herein provided shall pay the same tax upon business done by it in this state, in place of the tax provided in any other section of this chapter; and the state tax assessor may require the return upon which such tax may be assessed to be made to him, and may assess such tax; and if it is not paid as provided in section 148, the insurance commissioner shall suspend the right of said company to do business in this state. Any insurance company incorporated by another country shall be regarded for the purposes of this section as though incorporated by the state where it has elected to make its deposit and establish its principal agency in the United States. (R. S. c. 14, § 139. 1945, c. 118, § 3. 1947, c. 15, § 3.)

See § 153, re access to books by state tax assessor.

Sec. 146. Tax on reciprocal contracts of indemnity; return to state tax assessor.—Every attorney, agent or other representative by or through whom are issued policies or contracts of indemnity of the kind referred to in sections 236 to 243, inclusive, of chapter 60 in lieu of all other taxation, state, county or municipal, in this state, shall annually pay a tax at the rate of 2% on gross premiums or deposits actually received during the year after deducting amounts actually returned to policyholders as the unused part of such premium or deposit, or such part as may be credited on the renewal or extension of the indemnity. Such attorney, agent or other representative shall, on or before the 1st day of each March, make a return under oath, to the state tax assessor showing the gross premiums or deposits actually received during the preceding calendar year and such unused part of such premium or deposit as has been returned to policyholders or credited on renewal or extension of the indemnity. (R. S. c. 14, § 140. 1947, c. 188, § 4.)

See § 153, re access to books by state tax assessor.

Sec. 147. Power and authority of domestic insurance companies.—Every domestic insurance company and its officers, directors and agents and employees shall have power and authority to comply with any statute, ordinance or other law of any state, territory or political subdivision thereof, including the District of Columbia, imposing any license, excise, privilege, occupation, premium or other tax or fee or deposit requirement. No such company, officer, director, employee or agent shall be subject to liability by reason of any such compliance or payment either heretofore or hereafter made, if at a later date the supreme court of the United States declares such tax or deposit to be unconstitutional. (1945, c. 220, § 1; c. 378, § 9.)

Sec. 148. Assessment of tax; notice; suspension for non-payment.—The taxes imposed by sections 139, 143, 145 and 146, respectively, shall be assessed by the state tax assessor on or before the 15th day of April annually, and the same shall be paid to the state tax assessor on or before the 1st day of May following. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. The state tax assessor shall notify the several companies, and the agent, attorney or other representative mentioned in section 146, and unless the tax is paid as aforesaid, the insurance commissioner shall

suspend the right of the company, agent, attorney or other representative to do any further business in the state until the tax is paid. (R. S. c. 14, § 141. 1945, c. 42, § 20. 1947, c. 188, § 5.)

See c. 60, § 7, re annual statement of condition.

Taxation of Foreign Banking Associations and Corporations.

Sec. 149. Tax on foreign banking corporations.—Every banking association or corporation, not incorporated under the laws of this state or of the United States, that maintains a branch or agency in this state for the transaction of a banking business, shall pay to the treasurer of state a tax of ¾ of 1% a year on the amount of such business done in this state. One-half of said tax shall be paid on the amount of such business for the 6 months ending on the last Saturday of March, and the other half on the amount for the 6 months ending on the last Saturday of September, or for such portion of such periods as said association or corporation may transact business in this state. The amount of such business done in this state shall be ascertained by first computing the daily average for each month of the period of all the moneys outstanding upon loans and investments and of all other moneys received, used or employed in connection with such business, and by then dividing the aggregate of such monthly averages by the number of months covered by said return; and the quotient resulting shall be deemed the amount of such business. The amount of such tax so ascertained shall be paid to the treasurer of state semiannually within 10 days after the 1st Mondays in May and November. (R. S. c. 14, § 148.)

Sec. 150. Report to bank commissioner of amount of business transacted, etc.—Such association or corporation and the manager or agent of such branch or agency shall cause a written report to be made to the bank commissioner on or before the last Saturdays of April and October of each year, verified by the oath of such manager or agent, giving the amount of such business transacted in this state under the rule given in the preceding section and stating the amount of state tax which such branch or agency is liable to pay and setting forth in detail the daily average for each month preceding the last Saturdays of March and September; and also giving such further or additional information as to the business of such foreign banking association or corporation done in this state as may be required by the bank commissioner. (R. S. c. 14, § 149.)

Sec. 151. Account of money used and deposits made.—Every banking association or corporation taxed under the provisions of section 149, and its managers, agents and employees shall cause to be kept at all times in the office where such business is transacted in this state a full and accurate account of the moneys used or employed in such business and of the deposits therein, and such account together with the books, papers and records relating to the business done in this state shall be subject to the inspection and examination of the bank commissioner or of any clerk designated by him during business hours of any day on which business may legally be transacted. (R. S. c. 14, § 150.)

Sec. 152. Penalty.—Except as hereinbefore provided, no banking association, unless incorporated under the laws of this state or of the United States, shall maintain any branch or agency in this state for the transaction of banking business. Any officer, agent or employee of such association or corporation doing business in this state contrary to the provisions of the 3 preceding sections shall be punished by a fine of not less than $100, nor more than $500 for each offense, to be recovered by indictment to the use of the state. (R. S. c. 14, § 151.)

Failure to Make Returns and Pay Tax.

Sec. 153. Failure to make returns and pay tax; authority of state

tax assessor to examine books.—If any corporation, company, association or person fails to make the returns required by sections 123, 125, 134 and 154, the state tax assessor shall make an assessment of a state tax upon such corporation, company, association or person on such valuation, or on such gross receipts thereof, as the case may be, as he thinks just, with such evidence as he may obtain, and such assessment shall be final. The state tax assessor or his duly authorized agent shall have access to the books of any corporation, company, association or person required to make returns under the provisions of sections 123, 134, 142, 143, 145, 146 and 154, to ascertain if the required returns are correctly made. If any corporation, company, association or person fails to pay the taxes required or imposed by sections 115, 122, 127, 133 and 155, the state tax assessor shall forthwith commence an action of debt, in the name of the state, for the recovery of the same with interest at the rate of 10% a year. In addition to other remedies for the collection of state taxes upon any corporation, such taxes with interest at the rate of 10% a year may be recovered by an action of debt in the name of the state. (R. S. c. 14, § 155. 1945, c. 42, § 30. 1947, c. 188, § 6. 1949, c. 438, § 4. 1951, c. 406, § 4.)

Cross references.—See c. 44, §§ 80, 84, re penalty for failure to make returns required by § 116; c. 53, § 42, re penalty for failure to make returns required by § 106; c. 60, § 7, re penalty for failure to make returns required by §§ 137, 148; c. 112, § 15, re proceedings to enforce collection of taxes due the state.

Applied in State v. Waterville Savings Bank, 68 Me. 515.

Cited in Robinson v. Fidelity Trust Co., 140 Me. 302, 37 A. (2d) 273.

Taxation of Shares of Stock in Trust Companies and National Banking Institutions.

Sec. 154. List of common stockholders; real estate inventory, etc., with assessed value.—On or before April 15th of each year, the treasurer of every trust company organized under the laws of this state and the cashier of every banking institution formed under the laws of the United States, doing business in this state, shall send to the state tax assessor a list of all common stockholders and their residences, showing the number of shares owned by each on the 1st day of April, together with the value of the real estate, vaults and safe deposit plant owned by each trust company or banking institution, which is taxed as other real estate is taxed in the town in which it is located, and the amount for which said real estate, vaults and safe deposit plant was valued by the assessors of such municipality for the year previous. (R. S. c. 14, § 156. 1945, c. 42, § 31.)

Cross references.—See § 153, re failure to make returns and access to books by state tax assessor; § 157, re penalty.

Section governs place of assessment.—This section must govern, so far as place is concerned, in the assessment of taxes upon the shares in national banks. Packard v. Lewiston, 55 Me. 456.

Duty of tax assessor.—It is the duty of the state tax assessor under the provisions of this section and § 155 to determine the value of and assess an annual tax against shares of preferred stock issued by trust companies organized under the laws of this state and banking institutions organized under the laws of the United States and doing business in this state, when such stock is held by private individuals, private firms and private corporations not exempt from taxation thereon. Opinion of the Justices, 133 Me. 521, 177 A. 897.

Stock held by Reconstruction Finance Corporation not assessed.—It is not the duty of the state tax assessor under the provisions of this section and § 155 to determine the value of and assess an annual tax against shares of preferred stock issued by trust companies organized under the laws of this state and banking institutions organized under the laws of the United States and doing business in this state, when such stock is held by the Reconstruction Finance Corporation. Opinion of the Justices, 133 Me. 521, 177 A. 897.

Applicability of former statute. — For case discussing applicability of early tax statute (c. 193, Laws 1863) to particular shares of stock, see Abbott v. Bangor, 56 Me. 310.

Sec. 155. Tax on stock; payable to state tax assessor; appeal.— The state tax assessor shall determine the value of shares of stock reported, as provided for in the preceding section, and deduct therefrom the proportionate part of the assessed value of such real estate, vaults and safe deposit plant. Upon the value of said shares so determined after making said deductions, the said tax assessor shall assess an annual tax of 15 mills for each dollar of such assessed value so determined, and shall, on or before the 1st day of June, notify said trust companies and banking institutions. All taxes so assessed shall be paid by said trust companies and banking institutions to the state tax assessor on or before the 1st day of July, and said tax shall be in lieu of all municipal or other taxes upon said stock, and said trust companies and banking institutions may charge the tax so paid pro rata to the individual stockholders thereof. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily.

Any party in interest aggrieved by the valuation of the shares of any trust company or national banking institution made by the said state tax assessor may claim an appeal to the superior court at any time before said 1st day of July. Such appeal shall be filed in the office of the clerk of said court in the county where such trust company or banking institution is located and shall be heard and determined at the next term thereof held after said date. Notice and hearing of such appeal shall be given and held in the manner provided by section 44 of chapter 92. The decision of the court upon such appeal shall be certified by the clerk to the said state tax assessor who shall thereupon assess a tax of 15 mills upon the valuation of such shares as fixed by the court, and shall give notice thereof to the trust company or banking institution whose shares are affected thereby, and the tax so assessed, with interest at 6% from July 1st of the year for which the tax is assessed, shall be paid to the state tax assessor within 30 days thereafter. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 157. 1945, c. 42, § 32; c. 378, § 11.)

Cross references.—See § 153, re penalty; note to § 154, re duty of tax assessor and assessment of stock held by Reconstruction Finance Corporation.

Authority of state to tax shares in national banks.—By the decisions of the U. S. Supreme Court, it has been settled that shares in national banks may be taxed by state authority. Packard v. Lewiston, 55 Me. 456.

Sec. 156. Tax upon shares returned to municipalities.—The tax assessed under the provisions of the preceding 2 sections upon the shares of such trust company or banking institution owned by nonresidents or by corporations shall be returned by the treasurer of state, on or before the 1st day of August, to the municipality in which such trust company or banking institution is located; and the tax so assessed upon the shares of resident stockholders of such trust company or banking institution, except the tax so assessed upon the shares of stock of such trust company or banking institution owned by corporations, shall be returned by the treasurer of state, on or before the 1st day of August, to the municipality in which such stockholders reside. (R. S. c. 14, § 158.)

Sec. 157. Penalty. — Any trust company or national banking institution willfully neglecting to make returns according to section 154 forfeits $5 for every day's neglect, to be recovered by an action of debt in the name of the state. Any officer, agent or employee of such trust company or national banking institution who willfully violates any provision of section 154 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (1945, c. 42, § 33.)

Gasoline Tax.

Intent of legislature in enacting gasoline tax law.—The sections regarding gasoline tax (§§ 158-168), read together, manifest legislative intent to limit the tax to sales of combustion fuels, and to provide a system of checks and balances against sales escaping taxation. State v. Standard Oil Co., 131 Me. 63, 159 A. 116.

Sec. 158. Short title.—Sections 158 to 168, inclusive, shall be known as the "gasoline tax act" and the tax therein imposed shall be known as the "gasoline tax." (R. S. c. 14, § 168.)

Sec. 159. Definitions.—The terms used in sections 158 to 168, inclusive, shall be construed as follows:

"Distributor" shall mean any person, association of persons, firm or corporation, wherever resident or located, importing or causing to be imported for sale or for use in this state, with the exceptions hereinafter set forth, any internal combustion engine fuel as herein defined; or producing, refining, manufacturing or compounding within the state any internal combustion engine fuel as herein defined; or purchasing within the state in tank car or ship or barge lots, internal combustion engine fuel as herein defined, for the purpose of sale or use within the state; and also the persons, associations, firms and corporations described in section 164.

"Internal combustion engine" shall mean any engine operated by explosion or quick burning therein of gasoline, benzol or other product except kerosene,

"Internal combustion engine fuel" shall mean all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classification or uses; and any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) show not less than 10% distilled (recovered) below 347° Fahrenheit (175° Centigrade) and not less than 95% distilled (recovered) below 464° Fahrenheit (240° Centigrade); provided that the term "internal combustion engine fuel" shall not include commercial solvents or naphthas which distil, by American Society for Testing Materials Method D-86, nor more than 9% at 176° Fahrenheit and which have a distillation range of 150° Fahrenheit, or less, or liquefied gases which would not exist as liquids at a temperature of 60° Fahrenheit and a pressure of 14.7 pounds per square inch absolute. (R. S. c. 14, § 159.)

Cross reference.—See c. 100, § 199, re analysis of samples by Maine Agricultural Experiment Station.

The office of this section is only that of defining the terms employed in other sections. State v. Standard Oil Co., 131 Me. 63, 159 A. 116.

What constitutes "distributor".—A person operating numerous retail filling stations, in various parts of the state, but who is chiefly engaged in the sale of gasoline to dealers, who in turn sell the product to ultimate consumers is a "distributor" within the meaning of this section. State v. Standard Oil Co., 131 Me. 63, 159 A. 116.

Sec. 160. Tax levied; rebates.—An excise tax is levied and imposed at the rate of 6c per gallon upon internal combustion engine fuel sold or used within this state, including such sales when made to the state or any political subdivision thereof, for any purpose whatsoever, excepting, however, such internal combustion engine fuel sold or used in such form and under such circumstances as shall preclude the collection of this tax by reason of the provisions of the laws of the United States, or sold wholly for exportation from the state, or brought into the state in the ordinary standardized equipment fuel tank attached to and forming a part of a motor vehicle and used in the operation of such vehicle within the

state; provided, however, that on the same fuel only 1 tax shall be paid to the state, for which tax the distributor first receiving the fuel in the state shall be primarily liable to the state, except when such fuel has been sold and delivered to another distributor in the state, in which case the purchasing distributor shall be primarily liable to the state for the tax; and provided further, that 5c of the tax so paid, and no more, upon such internal combustion fuel used in motor boats, in tractors used for agricultural purposes not operating on public ways, or in such vehicles as run only on rails or tracks, or in stationary engines or in the mechanical or industrial arts, shall be refunded as hereinafter provided; and provided further, that 8 mills of the tax so paid on fuel used in motor boats, which is not refunded under the provisions of section 166, shall be paid to the treasurer of state, to be made available to the commissioner of sea and shore fisheries for the purpose of conducting research, development and propagation activities by the department.

It is the responsibility of said commissioner to select activities and projects that will be most beneficial to the commercial fisheries of the state. (R. S. c. 14, § 160. 1947, c. 247; c. 349, § 1; c. 379, § 1. 1949, c. 349, § 9.)

Cross references.—See § 166, re refund to users of aircraft; c. 32, § 315, re test measure for capacity of gasoline measuring devices.

Tax is upon fuel sales.—The tax imposed by this section is upon fuel sales for the internal-combustion-engine uses which the statutes define. State v. Standard Oil Co., 131 Me. 63, 159 A. 116.

And fuel used in distributor's vehicles not taxed.—The tax imposed by this section does not fall on motor fuel which the distributor used in propelling his own vehicles. State v. Standard Oil Co., 131 Me. 63, 159 A. 116.

Sec. 161. Distributors' certificates.—Every distributor of internal combustion engine fuel in the state, except distributors described in section 164, shall file an application for a certificate with the state tax assessor on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the state, the place or places of business, and location of distributing stations, and agencies of the distributor, the names and addresses of the several persons constituting the firm or partnership, and, if a corporation, its corporate name and the names and addresses of its principal officers and agents within the state. No such distributor shall sell or distribute any such internal combustion engine fuel until such certificate is furnished by the state tax assessor and displayed as required by this section. One copy of each such certificate, certified by the state tax assessor, shall be displayed in each place of business of such distributor. The state tax assessor, having reasonable cause to believe that the distributor has ceased to do business or that he has violated any of the provisions of this chapter or of the rules and regulations made thereunder, may on reasonable notice to the distributor suspend the distributor's certificate until satisfied to the contrary. In such case the distributor shall not act as a distributor until his certificate is restored by the state tax assessor either of his own initiative or at the request of the distributor and upon the state tax assessor being satisfied that cause for suspension no longer exists or upon order of court as hereinafter provided. In case of such suspension all certificates shall at once be surrendered to the state tax assessor upon his request. Notices shall be sufficient if sent by mail, addressed to the distributor at the address designated in the certificate and appeals may be taken in the same manner as provided in section 239 of chapter 59 for appeals from decisions of the bank commissioner. (R. S. c. 14, § 161. 1945, c. 31, § 1.)

Cross references.—See § 165, re penalty.

Every distributor must file an acknowledged certificate. His sworn statement as to who he is, where located and what he is doing becomes public record. State v. Standard Oil Co., 131 Me. 63, 159 A. 116.

Sec. 162. Distributor entitled to collect 6c additional. — Each distributor paying or becoming liable to pay the tax imposed by sections 158 to 168, inclusive, shall be entitled to charge and collect 6c per gallon only as a part of the selling price of the internal combustion engine fuels subject to the tax. (R. S. c. 14, § 162. 1947, c. 349, § 2.)

Stated in State v. Standard Oil Co., 131 Me. 63, 159 A. 116.

Sec. 163. Rules and regulations; reports; assessment of tax. — Every distributor shall on or before the last day of each month render a report to the state tax assessor stating the number of gallons of internal combustion engine fuel received, sold and used in the state by him during the preceding calendar month, on forms to be furnished by the state tax assessor. Such report shall contain such further information pertinent thereto as the state tax assessor shall prescribe and the state tax assessor may make such other reasonable rules and regulations regarding the administration and enforcement of the provisions of the gasoline tax act as he may deem necessary or expedient, copies of which shall be sent to distributors, and he or his duly authorized agent shall have access during reasonable business hours to the books, invoices and vouchers of the distributor which may show the fuel handled by the distributor. At the time of the filing of said report each distributor shall pay to the state tax assessor a tax of 6c upon each gallon so reported as sold, distributed or used and the state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. If such report is not filed by the last day of the month such distributor shall be liable to a penalty of $5 a day for each day in arrears, due on demand by the state tax assessor and recoverable in an action of debt. Each distributor shall, within 15 days after demand made on him by the state tax assessor, pay a tax of 6c per gallon upon each gallon of such fuel upon which the tax has not been paid, which upon an audit the state tax assessor may find to have been received into the state during the preceding year by the distributor and not properly accounted for in a distributor's report or in accordance with law. An allowance of not more than 1% from the amount of fuel received by the distributor, plus 1% on all transfers in vessels or tank cars by a distributor in the regular course of his business from one of his places of business to another within the state, may be allowed by the tax assessor to cover the loss through shrinkage, evaporation or handling sustained by the distributor; but the total allowance for such losses shall not exceed 2% of the receipts by such distributor and no further deduction shall be allowed unless the state tax assessor is satisfied on definite proof submitted to him that a further deduction should be allowed by him for a loss sustained through fire, accident or some unavoidable calamity. (R. S. c. 14, § 163. 1945, c. 31, § 2. 1947, c. 349, § 3; c. 379, § 2. 1949, c. 349, § 10.)

Cross reference.—See c. 23, § 131, re payment of tax to general highway fund.

Stated in State v. Standard Oil Co., 131 Me. 63, 159 A. 116.

Sec. 164. Application of the tax in certain special cases.—Whoever shall receive any such internal combustion engine fuel in such form and under such circumstances as shall preclude the collection of this tax from the distributors by reason of the provisions of the laws of the United States, and shall thereafter sell or use any such internal combustion engine fuel in such manner and under such circumstances as may subject such sale or use to the taxing power of this state, shall be considered as a distributor and shall make the same reports, pay the same taxes and be subject to all other provisions of sections 158 to 168, inclusive, relating to distributors of internal combustion engine fuel; provided, however, that no person shall be considered as a distributor with respect to internal combustion engine fuel brought into the state in the ordinary standardized

equipment fuel tank attached to and forming a part of a motor vehicle and used in the operation of such vehicle within the state. (R. S. c. 14, § 164.)

Sec. 165. Penalties; civil action for tax. — Any distributor or other person who shall willfully make any false or fraudulent report or return required by sections 158 to 168, inclusive, or who shall make any false statement in any claim or invoice presented to the state tax assessor, or who shall knowingly present to the state tax assessor any claim or invoice containing any false statement, or who shall knowingly and fraudulently collect or cause to be paid to him or to any other person any refund provided for by the provisions of the gasoline tax act without being entitled thereto, or who shall with intent to defraud, evade or violate any of the provisions of said sections, or any rules or regulations duly made thereunder, or who shall engage in the business in this state as a distributor without being the holder of an uncancelled certificate to engage in such business, shall be guilty of a misdemeanor and punished by a fine of not more than $2,000. Whenever any distributor shall fail to pay any tax or penalty due under the provisions of said sections within the time limited herein, the attorney general shall enforce payment thereof against such distributor in a court of appropriate jurisdiction. In any civil action the number of gallons held by the distributor at the beginning of the period covered by the state tax assessor's audit, plus the number of gallons received by such distributor during the period, less the number of gallons on hand at the close of the period, shall be prima facie evidence of the number of gallons sold, distributed or used by the distributor during the period covered by the distributor's report or the state tax assessor's audit, on which the tax with interest from the date when it was due shall be computed and collected and for which amount with costs judgment shall be rendered. The claims of the state for sums due from the distributor under the provisions of the gasoline tax act shall be preferred and priority claims in the event of the assignment, receivership or bankruptcy of the distributor and any distributor who has paid said tax to the state shall be subrogated to the state's priority in the event of the assignment, receivership or bankruptcy of anyone who is liable to such distributor for such tax. (R. S. c. 14, § 165.)

Applied in State v. Standard Oil Co., 131 Me. 63, 159 A. 116.

Sec. 166. Refund of 5/6 of tax collected in certain cases; time limit for application.—Any person, association of persons, firm or corporation who shall buy and use any internal combustion engine fuel as defined in sections 158 to 168, inclusive, for the purpose of operating or propelling motor boats, tractors used for agricultural purposes not operating on public ways, or in such vehicles as run only on rails or tracks, or in stationary engines, or in the mechanical or industrial arts, or for any other commercial use except in motor vehicles operated or intended to be operated upon any of the public highways of this state, or turnpikes operated and maintained by the Maine Turnpike Authority, or except, as provided in section 167, for the use in the operation of aircraft, and who shall have paid any tax on internal combustion engine fuel levied or directed to be paid as provided by sections 158 to 168, inclusive, either directly by the collection of such tax by the vendor from such consumer, or indirectly by adding the amount of such tax to the price of such fuel and paid by such consumer, shall be reimbursed and repaid to the extent of 5/6 of the amount of such tax paid by him upon presenting to the state tax assessor a sworn statement accompanied by the original invoices showing such purchases, which statement shall show the total amount of such fuel so purchased and used by such consumer other than in motor vehicles operated or intended to be operated upon any of the public highways of the state and in the operation of aircraft.

Provided that applications for refunds as provided herein must be filed with

the state tax assessor within 9 months from the date of purchase. (R. S. c. 14, § 166. 1945, c. 31, § 3. 1947, c. 101, § 1; c. 349, § 4. 1949, c. 349, § 11. 1951, c. 222.)

Sec. 167. Provision for refund of 1/3 of tax paid by users of aircraft.—Any person, association of persons, firm or corporation who shall buy and use any internal combustion engine fuel as defined in sections 158 to 168, inclusive, for the purpose of operating aircraft, and who shall have paid any tax on internal combustion engine fuel levied or directed to be paid as provided by sections 158 to 168, inclusive, either directly by the collection of such tax by the vendor from such consumer, or indirectly by adding the amount of such tax to the price of such fuel and paid by such consumer, shall be reimbursed and repaid to the extent of 1/3 of the amount of such tax paid by him upon presenting to the state tax assessor a statement accompanied by the original invoices showing such purchases. Provided that applications for refunds as provided herein must be filed with the state tax assessor within 9 months from the date of purchase. (1947, c. 349, § 4-A.)

Sec. 168. Aeronautical fund.—Every distributor of internal combustion fuels shall keep a record of sales of such fuels as are sold to be used for aeronautical purposes and shall render a report thereof as provided in section 163. To the aeronautical fund, as heretofore established, shall be credited the tax received by the state on internal combustion engine fuels which are sold to be used for aeronautical purposes. Provided, however, that the necessary expenses of the collection of the tax on such fuels, to be used for aeronautical purposes, shall be deducted. All fees from the registration of aircraft and pilots as provided for by law and all fines, penalties and costs as imposed under the provisions of law relating to aircraft and pilots shall accrue to the aeronautical fund. Any unexpended balance from the above apportionments shall not lapse but shall be carried forward to the same fund for the next fiscal year and be available for such uses as indicated in this section. The aeronautics commission is authorized and directed to expend so much of the aeronautical fund as may be necessary for the purposes of carrying out the duties imposed upon it by law and to expend any unexpended balance in such fund to assist in construction, repair and the maintenance of, and the removal of snow from, municipal, state and federal airports in this state, and assist in the construction and maintenance of a system of air marking, in such manner and in such amounts as it shall deem equitable. Such assistance may likewise be given for snow removal on a state, federal or municipal owned airport used by a commerical air carrier of passengers and freight operaing on a regular schedule, this assistance being extended to such carrier where the state, federal or municipal owner does not obligate itself, and provided that the airport is open to itinerant planes. The amounts in said fund are appropriated for the purposes set forth herein. (R. S. c. 14, § 167. 1947, c. 337. 1949, c. 245. 1951, c. 15.)

See c. 24, re aviation laws.

Use Fuel Tax.

Sec. 169. Short title.—Sections 169 to 187, inclusive, shall be known and may be cited as the "use fuel tax act". (R. S. c. 14, § 169.)

Sec. 170. Definitions.—The following words, terms and phrases as used in sections 169 to 185, inclusive, are for the purposes thereof defined as follows:

"Duly licensed user" shall mean and include any user holding an unrevoked license issued by this state.

"Fuels" shall mean and include all combustible gases and liquids used in an internal combustion engine for the generation of power to propel vehicles of any

kind or character on the public highways, except such fuels as are subject to the tax imposed by the gasoline tax act.

"Motor vehicles" shall mean and include all vehicles, engines, machines or mechanical contrivances which are propelled by internal combustion engines or motors.

"Person" shall mean and include natural persons and partnerships, firms, associations, corporations, both public and private, and municipalities.

"Public highways" shall mean and include every way or place, of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

"Use" shall mean and include, in addition to its original meaning, the receipt of fuel by any person into a motor vehicle or into a receptacle from which fuel is supplied by such person to his own or other motor vehicles.

"User" shall mean any person who uses and consumes fuel within this state in an internal combustion engine for the generation of power to propel vehicles of any kind or character on the public highways of this state, except in vehicles which are prohibited by law from operating on the public highways. (R. S. c. 14, § 170. 1951, c. 385.)

Sec. 171. Purpose.—The tax imposed by the provisions of sections 169 to 187, inclusive, is levied for the purpose of providing revenue to be used by this state to defray in whole or in part the cost of constructing, widening, reconstructing, maintaining, resurfacing and repairing the public highways of this state and the cost and expense incurred in the administration and enforcement of the provisions of sections 169 to 187, inclusive, and for no other purpose whatsoever. (R. S. c. 14, § 171.)

Sec. 172. Levy of tax and exemptions.—An excise tax is imposed on all users of fuel upon the use of such fuel by any person within this state, only when such fuel is used in an internal combustion engine for the generation of power to propel motor vehicles of any kind or character on the public highways or turnpikes operated and maintained by the Maine Turnpike Authority, at the rate of 6c per gallon, to be computed in the manner set forth in sections 173 to 187, inclusive; provided, however, that no tax is imposed upon the use of any fuel if the constitution of the United States or of this state precludes such tax. (R. S. c. 14, § 172. 1947, c. 101, § 2; c. 349, § 5. 1949, c. 349, § 12.)

See § 177, re penalty and interest on unpaid taxes.

Sec. 173. Application for license; contents; licensing of users.—It shall be unlawful for any user to use or consume any fuel within this state unless such user is the holder of an uncanceled license issued by the state tax assessor. To procure such license every user shall file with the state tax assessor an application in such form as the state tax assessor may prescribe setting forth the name and address of the user.

Concurrently with the filing of an application for a license, every user shall file with the state tax assessor a bond of the character stipulated and in the amount provided for in section 174. No license shall issue upon any application unless accompanied by such a bond.

In the event that any application for a license to use fuel as a user in this state shall be filed by any person whose license shall at any time theretofore have been canceled for cause by the state tax assessor, or in case the state tax assessor shall be of the opinion that such application is not filed in good faith or that such application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been canceled for cause by

the state tax assessor, then and in any of said events the state tax assessor, after a hearing of which the applicant shall have been given 5 days' notice in writing and in which said applicant shall have the right to appear in person or by counsel and present testimony, shall have the right and authority to refuse to issue to said person a license certificate in this state.

Upon the filing of the application for a license, a filing fee of $1 shall be paid to the state tax assessor.

The application in proper form having been accepted for filing, the bond having been accepted and approved, and the other conditions and requirements of this section having been complied with, the state tax assessor shall issue to such user a license certificate and such license shall remain in full force and effect until canceled as provided in sections 169 to 187, inclusive.

The license certificate so issued by the state tax assessor shall not be assignable and shall be valid only for the user in whose name issued and shall be displayed conspicuously by the user.

The state tax assessor shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed users. (R. S. c. 14, § 173. 1945, c. 31, § 4.)

See § 177, re penalty.

Sec. 174. Bond required of licensed users.—Every user, except a municipality, shall file with the state tax assessor a bond as follows:

I. In the minimum amount of $100 and a maximum amount of $10,000 on a form to be approved by the state tax assessor;

II. With a surety company authorized to do business within the state as surety thereon;

III. Upon which such user shall be the principal obligor and this state shall be the obligee; and

IV. Conditioned upon the prompt filing of true reports and the payment by such user to the state tax assessor of any and all fuel excise taxes which are now or which are hereafter levied or imposed by this state, together with any and all penalties and interest thereon and generally upon faithful compliance with the provisions of sections 169 to 187, inclusive.

In the event that the liability upon the bond thus filed by the user with the state tax assessor shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the state tax assessor any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the state tax assessor may require the user to file a new bond with satisfactory sureties in the same form and amount, failing which the state tax assessor shall forthwith cancel the license certificate of said user. If such new bond shall be furnished by such user as above provided, the state tax assessor shall cancel and surrender the bond of said user for which such new bond shall be substituted.

In the event that upon hearing, of which the user shall be given 5 days' notice in writing, the state tax assessor shall decide that the amount of the existing bond is insufficient to insure payment to this state of the amount of the tax and any penalties and interest for which said user is or may at any time become liable, then the user shall forthwith upon the written demand of the state tax assessor file an additional bond in the same manner and form with a surety company thereon approved by the state tax assessor in any amount determined by the state tax assessor to be necessary to secure at all times the payment by such user to this state of all taxes, penalties and interest due under the provisions of sections

169 to 187, inclusive, failing which, the state tax assessor shall forthwith cancel the license certificate of said user.

Any surety on any bond furnished by any user as heretofore provided shall be released and discharged from any and all liability to this state accruing on such bond after the expiration of 60 days from the date upon which such surety shall have lodged with the state tax assessor a written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release or discharge such surety from any liability already accrued or which shall accrue before the expiration of said 60-day period. The state tax assessor shall promptly, on receipt of notice of such request, notify the user to furnish such bond and unless such user shall, on or before the expiration of such 60-day period, file with the state tax assessor a new bond with a surety company satisfactory to the state tax assessor in the amount and form hereinbefore in this section provided, the state tax assessor shall forthwith cancel the license of said user. If such new bond shall be furnished by said user as above provided, the state tax assessor shall cancel and surrender the bond of said user for which such new bond shall be substituted.

In lieu of furnishing a bond executed by a surety company, as surety, as hereinbefore in this section provided, any user may furnish his bond not so executed, provided he shall concurrently therewith deposit and pledge with the state tax assessor direct obligations of the United States, or obligations of any agency of the United States fully guaranteed by it, or bonds of the state of Maine of equal full amount to the amount of the bond required by this section, as collateral security for the payment of such bond. (R. S. c. 14, § 174.)

Sec. 175. Tax reports; computation and payment of tax.—For the purpose of determining the amount of tax herein imposed, each user shall, not later than the 25th day of each calendar month, file with the state tax assessor on forms prescribed by said state tax assessor, monthly reports which shall include the total gallonage of fuels used within this state during the next preceding calendar month, together with the gallonage of such fuels purchased from retail dealers licensed in accordance with the provisions of section 182.

At the time of filing of each monthly report, each user shall pay to the state tax assessor the full amount of the fuel tax for the next preceding calendar month at the same rate as provided for in section 172. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 175. 1945, c. 31, § 5. 1949, c. 11. 1951, c. 289, § 1.)

See § 177, re penalty.

Sec. 176. Licenses canceled; bond surrendered.—If a user shall at any time file a false monthly report of the data or information required by sections 169 to 187, inclusive, or shall fail, refuse or neglect to file the monthly report required by said sections, or to pay the full amount of the tax as required by said sections, the state tax assessor may forthwith cancel the license of said user and notify such user in writing of such cancellation by registered mail to the last known address of such user appearing on the file of the state tax assessor.

Upon receipt of a written request from any user licensed under the provisions of sections 169 to 187, inclusive, to cancel the license issued to such user, the state tax assessor shall have the power to cancel such license effective 60 days from the date of such written request, but no such license shall be canceled upon the request of any user until and unless the user shall, prior to the date of such cancellation, have paid to this state all excise taxes payable under the laws of this state, together with any and all penalties, interest and fines accruing under any of the provisions of said sections, and until and unless the user shall have surrendered to the state tax assessor the license certificate theretofore issued to such

user. If upon investigation, the state tax assessor shall ascertain and find that any person to whom a license has been issued under the provisions of said sections is no longer engaged in the use of fuel and has not been so engaged for a period of 6 months, the state tax assessor shall have the power to cancel such license by giving such person 60 days' notice of such cancellation mailed to the last known address of such person, in which event the license certificate theretofore issued to such person shall be surrendered to the state tax assessor.

In the event that the license of any user shall be canceled by the state tax assessor as hereinbefore in this section provided and in the further event that said user shall have paid to this state all excise taxes due and payable by said user under the provisions of sections 169 to 187, inclusive, together with any and all penalties accruing under any of the provisions of said sections, then the state tax assessor shall cancel and surrender the bond and any collateral security theretofore filed by said user. (R. S. c. 14, § 176.)

Sec. 177. Failure to report and pay taxes.—When any user shall fail to file the monthly report with the state tax assessor on or before the time fixed for the filing thereof, or when such user fails to submit data outlined in section 175 in such monthly report, or when such user shall fail to pay to the state tax assessor the amount of excise taxes due this state when the same shall be paid, a penalty of 10% shall be added to the amount of the tax due, and such penalty of 10% shall immediately accrue and thereafter said tax and penalty shall bear interest at the rate of 1% per month until the same is paid. (R. S. c. 14, § 177. 1945, c. 31, § 6.)

Sec. 178. State tax assessor may estimate fuel used.—Whenever any user shall neglect or refuse to make and file any report for any calendar month as required by sections 169 to 187, inclusive, or shall file an incorrect or fraudulent report, the state tax assessor shall determine after an investigation, the number of gallons of fuel with respect to which the user has incurred liability under the provisions of said sections for any particular month or months and fix the amount of taxes and penalties payable by the user under the provisions of said sections accordingly. The state tax assessor shall forthwith proceed to collect the amount so fixed.

In any action or proceeding for the collection of the use fuel tax and any penalties or interest imposed in connection therewith, an assessment by the state tax assessor of the amount of the tax due and the interest or penalties due to the state shall constitute prima facie evidence of the claim of the state and the burden of proof shall be upon the user to show the assessment was incorrect and contrary to law. (R. S. c. 14, § 178. 1945, c. 31, § 7.)

Sec. 179. Retention of records by users.—Each user shall maintain and keep for a period of 2 years, such record or records of fuel used within this state by such user, together with invoices, bills of lading and other pertinent records and papers as may be required by the state tax assessor for the reasonable administration of the provisions of sections 169 to 187, inclusive. Any person willfully violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be sentenced to pay a fine of not more than $2,000. (R. S. c. 14, § 179.)

Sec. 180. Inspection of records; civil action for tax; forms; rules and regulations.—The state tax assessor or any deputy, employee or agent authorized shall have authority to examine the records, books, papers and any other equipment of the user pertaining to fuel used, to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the tax imposed by the provisions of sections 169 to 187, inclusive, has been paid, and

further to examine the records, books, papers and any other equipment of the user to determine the financial responsibility of the user for the payment of the taxes imposed by the provisions of said sections.

The state tax assessor shall have the power to institute legal proceedings by the attorney general in a court of appropriate jurisdiction for the purpose of ascertaining the amount due and enforcing the collection thereof, with penalties and interest thereon and for the purpose of enjoining the business of the delinquent. The claims of the state for sums due under the provisions of sections 169 to 187, inclusive, shall be preferred and priority claims in the event of the assignment, receivership or bankruptcy of any user.

The state tax assesssor shall have the authority to prescribe all forms upon which reports shall be made to the state tax assessor and any other forms required for the proper administration of the provisions of sections 169 to 187, inclusive, and shall prescribe and publish all needful rules and regulations for the enforcement of the provisions of said sections. (R. S. c. 14, § 180.)

Sec. 181. Discontinuance as a licensed user.—Whenever a user ceases to engage in business as a user of fuel within this state, it shall be the duty of such user to notify the state tax assessor in writing within 15 days after discontinuance. All taxes, penalties and interest under the provisions of sections 169 to 187, inclusive, not yet due and payable under the provisions of said sections shall, together with any and all interest accruing or penalties imposed under the provisions of said sections, notwithstanding any provisions thereof, become due and payable concurrently with such discontinuance. It shall be the duty of said user to make a report and pay all such taxes, interest and penalties and to surrender to the state tax assessor the license certificate theretofore issued to such user by the state tax assessor.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be sentenced to pay a fine of not less than $50, nor more than $300. (R. S. c. 14, § 181.)

See § 179, re keeping of records, etc., for 2 years.

Sec. 182. Use fuel dealer license; reports; tax.—Every person selling at retail and delivering fuels directly into the fuel tanks of motor vehicles shall, before selling or delivering such fuels, first obtain a license as a "use fuel dealer" from the state tax assessor.

Such use fuel dealer shall on or before the last day of each month render a report to the state tax assessor stating the number of gallons of fuels received, sold and used in the state by him during the preceding calendar month with respect to each retail outlet delivering fuels directly into the fuel tanks of motor vehicles, on forms to be furnished by the state tax assessor. Such report shall contain such further information pertinent thereto as the state tax assessor shall prescribe, and the state tax assessor may make such other reasonable rules and regulations regarding the administration and enforcement of the provisions of this section as he may deem necessary or expedient, copies of which shall be sent to licensed use fuel dealers and he or his duly authorized agent shall have access during reasonable business hours to the books, invoices and vouchers of the use fuel dealer which may show the fuels handled by the dealer.

At the time of the filing of said report each use fuel dealer shall pay to the state tax assessor a tax of 6c upon each gallon so reported as sold or used, and the state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. If such report is not filed by the last day of the month such dealer shall be liable to a penalty of $5 a day for each day in arrears, due on demand by the state tax assessor and recoverable in an action of debt.

Each dealer shall, within 15 days after demand made on him by the state tax

assessor, pay a tax of 6c per gallon upon each gallon of such fuels upon which the tax has not been paid which, upon an audit, the state tax assessor may find to have been received into the state during the preceding year by the dealer and not properly accounted for in a dealer's report or in accordance with law.

Each dealer paying or becoming liable to pay the tax imposed by this section shall be entitled to charge and collect 6c per gallon only as a part of the selling price of the fuels subject to the tax. (1951, c. 289, § 2.)

Sec. 183. Refund of taxes erroneously or illegally collected. — In the event it shall appear to the state tax assessor that any taxes or penalties imposed by the provisions of sections 169 to 187, inclusive, have been erroneously or illegally collected from any user, the state tax assessor shall certify the amount thereof to the controller, who shall thereupon draw his warrant for such certified amount on the treasurer of state to such user. Such refund shall be paid by the treasurer of state to such user forthwith from the general highway fund.

No refunds shall be made under the provisions of this section unless a written claim therefor setting forth the circumstances by reason of which such refund shall be allowed, which claim shall be in such form as the state tax assessor shall prescribe and shall be filed with the state tax assessor within 9 months from the date of the payment of the taxes erroneously or illegally collected. (R. S. c. 14, § 182. 1945, c. 31, § 8.)

Sec. 184. Failure to file statement; false statement. — Any person who shall refuse or neglect to make any statement, report or return required by the provisions of sections 169 to 187, inclusive, or who shall knowingly make, or shall aid or assist any other person in making a false statement in a return or report to the state tax assessor, or in connection with an application for refund of any tax, or who shall knowingly collect or attempt to collect, or cause to be paid to him or to any other person, either directly or indirectly, any refund of such tax without being entitled to the same, or who shall use fuel without being the holder of an uncanceled license, shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than $2,000. Each day or part thereof during which any person shall engage in business as a user without being the holder of an uncanceled license shall constitute a separate offense within the meaning of this section. (R. S. c. 14, § 183.)

Sec. 185. Additional penalty.—Any user, or any agent or employee of any user, who shall consume any fuel in a motor vehicle on a public highway or on a turnpike operated and maintained by the Maine Turnpike Authority, when such user is not the holder of an uncanceled license as required by sections 169 to 187, inclusive, or when such user has failed to file any report required by said sections, shall be punished by a fine of not less than $10, nor more than $300. (1953, c. 36, § 1.)

Sec. 186. Tax credited to general highway fund.—All taxes collected under the provisions of section 172 shall be credited to the general highway fund. (R. S. c. 14, § 184. 1945, c. 297, § 1.)

Sec. 187. Exchange of information among the states.—The state tax assessor shall, upon request duly received from the officials to whom are entrusted the enforcement of the fuel tax laws of any other state, forward to such officials any information which he may have in his possession relative to the manufacture, receipt, sale, use, transportation and shipment of fuel by any person. (R. S. c. 14, § 185.)

Gasoline Road Tax on Motor Vehicles.

Sec. 188. Definition.—The term "motor carrier" as used in sections 188

to 199, inclusive, means every person, firm or corporation which is engaged in intrastate or interstate commerce, or both, and which operates or causes to be operated on any way in this state any motor vehicle for the transportation of property or passengers for hire as a contract or common carrier for which a certificate or permit is required under the provisions of chapter 48 for the operation of such motor vehicle.

The term "motor carrier" shall not include any person, firm or corporation engaged in the taxicab business within the limits of this state or any person, firm or corporation employed by or under contract to the state or any of its governmental agencies. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 266, § 9.)

Sec. 189. Public utilities commission to furnish names of certificate and permit holders.—The public utilities commission shall, within 7 days after issuing a certificate or permit to a motor carrier under the provisions of chapter 48, furnish to the state tax assessor the name of each such motor carrier, together with such other information relative to such motor carrier as the state tax assessor may require. (1947, c. 362, § 1. 1949, c. 349, § 13.)

Sec. 190. Taxes levied.—Every motor carrier shall pay a road tax equivalent to the existing rate of taxation per gallon, calculated on the amount of motor fuel used in its operations within this state. Every motor carrier subject to the tax imposed shall be entitled to a credit on such tax equivalent to the existing rate of taxation per gallon on all motor fuel purchased by such carrier within this state for use in its operations, either within or without this state, and upon which motor fuel the tax imposed by the laws of this state has been paid by such carrier. Evidence of the payment of such tax, in such form as may be required by or is satisfactory to the state tax assessor, shall be furnished by each such carrier claiming the credit herein allowed. When the amount of the credit herein provided, to which any motor carrier is entitled for any quarter, exceeds the amount of the tax for which such carrier is liable for the same quarter, such excess may, under regulations of the state tax assessor, be allowed as a credit on the tax for which such carrier would be otherwise liable for another quarter or quarters; or upon application within 90 days from the end of any quarter, duly verified and presented in accordance with regulations promulgated by the state tax assessor and supported by such evidence as may be satisfactory to the state tax assessor, such excess may be refunded if it shall appear that the applicant has paid to another state of the United States under a lawful requirement of such jurisdiction a tax, similar in effect to the road tax herein provided, on the use or consumption of the same motor fuel without this state, to the extent of such payment in such other jurisdiction, but in no case to exceed the rate per gallon of the then current Maine state motor fuel tax. Upon receipt of such application, the state tax assessor, if satisfied after investigation that a refund is justified, shall so certify to the state controller and it shall be paid out of the general highway fund. (1947, c. 362, § 1. 1949, c. 349, § 13.)

Sec. 191. Computation of tax.—The tax imposed by the provisions of section 190 shall be calculated upon the amount of motor fuel used by each such motor carrier within this state during the quarters of a year ending on the last days of March, June, September and December of each year. The amount of motor fuel used in the operations of any motor carrier within this state shall be such proportion of the total amount of such motor fuel used in such motor carrier's entire operations within and without this state, as the total number of miles traveled within this state bears to the total number of miles traveled within and without this state. Such tax shall be paid by each motor carrier quarterly to the state tax assessor on or before the last day of April, July, October and January of each year. All taxes and penalties received under the provisions of

sections 188 to 199, inclusive, shall be paid by the state tax assessor to the treasurer of state daily and shall be credited to the general highway fund. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 266, §§ 9, 10.)

Sec. 192. Reports.—Every motor carrier subject to the tax imposed by sections 188 to 199, inclusive, shall on or before the last day of April, July, October and January of each year make to the state tax assessor such reports of its operations, including the amount of motor fuel used within and without this state and the total number of miles traveled within and without this state and the make and type of vehicle used, during the quarter ending the last day of the preceding month as the state tax assessor may require and such other reports from time to time as the state tax assessor may deem necessary. Motor carriers using only motor fuel purchased within the state during any quarterly period may, subject to the approval of the state tax assessor, in lieu of filing the quarterly report required by this section, file a signed statement certifying that no motor fuel used in its operations was purchased without the state during the quarter. Motor carriers operating exclusively within the state and using only motor fuel purchased within the state, upon which the state has received the motor fuel tax, may be exempted at the discretion of the state tax assessor from filing reports under the provisions of sections 188 to 199, inclusive. The state tax assessor and his authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by sections 188 to 199, inclusive. (1947, c. 362, § 1. 1949, c. 349, § 13; c. 373. 1951, c. 266, §§ 9, 11.)

Sec. 193. Collection of tax.—If any motor carrier subject to the provisions of sections 188 to 199, inclusive, and not exempted under the provisions of section 192, fails to make the returns herein required, the state tax assessor shall make an assessment of the tax upon such calculation of the amount of motor fuel used by such motor carrier within this state as he thinks just, with such evidence as he may obtain, and such assessment shall be final. If any motor carrier fails to pay such tax, the state tax assessor may forthwith commence an action of debt in the name of the state for the recovery of the tax with interest at the rate of 10% per year. In addition to such action or without bringing such action, the state tax assessor may recommend to the public utilities commission that the certificate or permit of such motor carrier be suspended or revoked. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 266, §§ 9, 12.)

Sec. 194. Penalties.—Any motor carrier subject to the provisions of section 188 to 199, inclusive, that willfully fails to file the reports herein required shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $500 for each such failure.

Any motor carrier, or any private carrier included within the provisions of section 199, or any agent or employee of either of them, who shall operate a motor vehicle which operation renders such motor carrier or private carrier liable to the provisions of sections 188 to 199, inclusive, at any time when such motor carrier or private carrier has failed to file any report required by sections 188 to 199, inclusive, shall be punished by a fine of not less than $10, nor more than $300. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 266, § 9. 1953, c. 36, § 2.)

Sec. 195. Appeals from decisions of assessor. — Any motor carrier aggrieved because of any action or decision of the state tax assessor under the provisions of sections 188 to 199, inclusive, may appeal therefrom to the superior court in Kennebec county. Any person desiring to appeal from any such action or decision 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 said superior court shall issue a citation to the tax

assessor or his duly authorized representative to appear before said court at the return day of the case. 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. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 266, § 9.)

Sec. 196. Rules and regulations.—The state tax assessor is empowered to promulgate such rules and regulations as are consistent with and will aid in carrying out the provisions of sections 188 to 199, inclusive. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 266, § 9.)

Sec. 197. Additional tax.—The taxes imposed on motor carriers by the provisions of sections 188 to 199, inclusive, are in addition to any taxes of whatever character imposed on such carriers by any other provision of law. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 266, § 9.)

Sec. 198. Enforcement.—There shall be assigned to the bureau of taxation an officer of the state police to assist in the enforcement of the provisions of sections 188 to 199, inclusive. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 266, § 9.)

Sec. 199. Application to certain carriers.—The provisions of sections 188 to 199, inclusive, shall also include motor vehicles, including trucks, tractors and semi-trailers or any combination thereof, not operated as common and contract carriers and which are licensed for a load of in excess of over 10,000 pounds or for a gross weight of in excess of over 20,000 pounds. Such vehicles shall not be required to secure a permit from the public utilities commission. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 214; c. 266, § 9.)

Cigarette, Cigar and Tobacco Products Tax.

Sec. 200. Definitions.—Whenever used in sections 200 to 221, inclusive, unless the context shall otherwise require, the following words and phrases shall have the following meanings:

"Dealer" shall mean any person other than a distributor, as defined herein, who is engaged in this state in the business of selling cigarettes, cigars and tobacco products;

"Distributor" shall mean any person engaged in this state in the business of producing or manufacturing cigarettes, cigars and tobacco products or importing into the state cigarettes, cigars and tobacco products at least 75% of which are purchased directly from the manufacturers thereof;

"Licensed dealer" shall mean a dealer licensed under the provisions of said sections;

"Licensed distributor" shall mean a distributor licensed under the provisions of sections 200 to 221, inclusive;

"Person" shall mean any individual, firm, fiduciary, partnership, corporation, trust or association, however formed;

"Sale" or "sell" shall include or apply to gifts, exchanges and barter;

"Sub-jobber" shall mean a wholesale dealer who does not qualify as a distributor;

"Tax assessor" or "assessor" shall mean the state tax assessor;

"Tobacco products" shall include perique, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, the refuse of fine-cut chewing, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chew-

ing or smoking in a pipe or to be made into cigarettes or otherwise, or both for chewing and smoking, and substitutes therefor;

"Unclassified importer" shall mean any person, firm, corporation or association within the state, other than a licensed distributor, sub-jobber or dealer as defined, who shall import, receive or acquire from without the state, cigarettes, cigars and tobacco products for use or consumption within the state. (R. S. c. 14, § 186. 1945, c. 89, § 1. 1947, c. 377, § 1. 1953, c. 308, § 10.)

Cited in W. S. Libbey Co. v. Johnson, 148 Me. 410, 94 A. (2d) 907.

Sec. 201. Dealers, unclassified importers and distributors to be licensed.—Each person engaging in the business of selling cigarettes, cigars and tobacco products in this state, including any distributor or dealer, shall secure a license from the tax assessor before engaging in such business. A separate application and license shall be required for each wholesale outlet and for each retail outlet when a person shall own or control more than 1 place of business dealing in cigarettes, cigars and tobacco products. Each vending machine shall be considered a retail outlet. Such license shall be issued on forms prescribed by the assessor, and shall contain the name and address of the applicant, the address of the place of business and such other information as the assessor may require for the proper administration of the provisions of sections 200 to 221, inclusive. Each application for a wholesale outlet license shall be accompanied by a fee of $25 and each such application for a retail outlet license shall be accompanied by a fee of $1. Each application for a sub-jobber's license, to be known as a "wholesale dealer's license," shall be accompanied by a fee of $10. Each license so issued shall be prominently displayed on the premises covered by the license and in the case of vending machines there shall be attached to the same a disc or marker to be furnished by the assessor showing it to have been licensed. Each unclassified importer shall, before importing, receiving or acquiring cigarettes, cigars and tobacco products from without the state, secure a license from the tax assessor. There shall be no charge for a license issued to an unclassified importer. Any person who shall sell, offer for sale or possess with intent to sell any cigarettes, cigars and tobacco products, without a license as provided in this section, shall be punished by a fine of not more than $25 for the 1st offense and not less than $25, nor more than $200, for each subsequent offense. Any unclassified importer who shall import, receive or acquire from without the state cigarettes, cigars and tobacco products for use or consumption within the state without a license as provided in this section shall be punished by a fine of not more than $25 for the 1st offense and not less than $25, nor more than $200, for each subsequent offense. (R. S. c. 14, § 187. 1947, c. 377, § 2. 1949, c. 171, § 1; c. 409, § 1. 1953, c. 308, § 10.)

Sec. 202. Validity of license. — Each distributor's license issued under the provisions of section 201 shall expire on the 31st day of July next succeeding the date of issuance unless sooner revoked by the assessor as provided in section 203, or unless the business with respect to which such license was issued shall be transferred, in either of which cases the holder of the license shall immediately return it to the assessor. In the event that the holder of a license shall remove his business to another location within the state, the license with respect to the former place of business shall be reissued for the new location without the payment of an additional fee for the unexpired term. The holder of each distributor's license on application to the assessor, accompanied by the fee prescribed in section 201, may annually before the expiration date of the license then held by him renew his license for a further period of 1 year.

Each wholesale dealer's license issued shall be for the period ending the 31st day of July next succeeding the date of issuance. Such license may be revoked

for cause at any time pursuant to the provisions of section 203 and, if the business of said licensee shall be transferred, the license of such person shall thereupon become void. All revoked and void licenses shall be returned forthwith to the assessor.

Each retail dealer's license issued shall be good indefinitely, unless revoked as provided for in section 203, or unless there is a change in ownership of the business for which the license was issued. Each disc or marker required to be affixed to each vending machine, as provided for in section 201, shall be considered a retail dealer's license. In the event that the holder of a retail dealer's license or a wholesale dealer's license shall remove his business to another location within the state, the license with respect to the former place of business shall be reissued for the new location without the payment of an additional fee. In the event of mutilation, loss or destruction of such retail dealer's license, wholesale dealer's license or vending machine disc or marker, a duplicate copy, marked as such, will be issued by the assessor upon application accompanied by a fee of $1.

Each unclassified importer's license shall expire on the 31st day of July next succeeding the date of issuance unless sooner revoked by the tax assessor. The holder of each unclassified importer's license, on application to the assessor, may annually before the expiration date of his license renew the license for a further period of 1 year. (R. S. c. 14, § 188. 1945, c. 89, § 2. 1947, c. 377, § 3. 1949, c. 171, §§ 2, 3; c. 409, § 2. 1953, c. 308, § 11.)

Sec. 203. Revocation of license.—The assessor may revoke or suspend the license of any dealer, unclassified importer or distributor for failure to comply with any provisions of sections 200 to 221, inclusive, or if the person licensed has ceased to act in the capacity for which the license was issued. Any person aggrieved by such revocation or suspension may apply to the assessor for a hearing as provided in section 216, and may further appeal to the courts as provided in section 217. (R. S. c. 14, § 189. 1947, c. 377, § 4. 1953, c. 308, § 10.)

Sec. 204. Tax imposed.—A tax is imposed on all cigarettes, cigars and tobacco products held in this state by any person for sale, said tax to be at the rate of 2 mills for each cigarette and at the rate of 20% upon the value of all cigars and tobacco products sold at retail, measured by the usual selling price, and the payment thereof to be evidenced by the affixing of stamps to the packages containing the cigarettes, cigars and tobacco products, as hereinafter provided. Any cigarette, cigar or tobacco product on which a tax has been paid, such payment being evidenced by the affixing of such stamp, shall not be subject to a further tax under the provisions of sections 200 to 221, inclusive. Nothing contained in said sections shall be construed to impose a tax on any transaction, the taxation of which by this state is prohibited by the constitution of the United States.

Each unclassified importer shall, within 24 hours after receipt of any unstamped cigarettes, cigars and tobacco products in this state, notify the tax assessor of the number of cigarettes, cigars and tobacco products received, and the name and address of consignor. The tax assessor thereupon shall notify the unclassified importer of the amount of the tax due thereon, which shall be at the rate of 2 mills per cigarette and at the rate of 20% of the retail value of all cigars and tobacco products. Payment of the amount due the state shall be made within 10 days from mailing date of notice thereof. (R. S. c. 14, § 190. 1947, c. 377, § 5. 1949, c. 409, § 3. 1953, c. 308, § 10.)

Sec. 205. Assessor to provide stamps.—The tax assessor shall secure stamps, of such design and denomination as he shall prescribe, suitable to be affixed to packages of cigarettes, cigars and tobacco products as evidence of the payment of the tax imposed by the provisions of sections 200 to 221, inclusive. To licensed distributors he shall sell such cigarette stamps at a discount of 4%

of their face value and stamps for cigars and tobacco products at a discount of 7% of their face value. To licensed dealers he shall sell all stamps at face value. The face value of the stamps when affixed shall be considered as part of the cost of the merchandise. The assessor may, in his discretion, permit a licensed distributor or licensed dealer to pay for such stamps within 30 days after the date of purchase, provided a bond satisfactory to the assessor in an amount not less than the sale price of such stamps shall have been filed with the assessor conditioned upon payment for such stamps. He shall keep accurate records of all stamps sold to each distributor and dealer and shall pay over all receipts from the sale of stamps to the treasurer of state daily. (R. S. c. 14, § 191. 1947, c. 377, § 6. 1951, c. 409. 1953, c. 308, § 10; c. 408.)

See § 219, re metering machines.

Sec. 206. Dealers and distributors not to resell stamps; redemption.—No distributor or dealer shall sell or transfer any stamps issued under the provisions of sections 200 to 221, inclusive. The assessor shall redeem any unused, uncanceled stamps presented by any licensed distributor or dealer, at a price equal to the amount paid therefor by such dealer or distributor and the said assessor may, upon proof satisfactory to him and in accordance with regulations promulgated by him, redeem, at a price equal to the amount paid therefor, Maine cigarette or tobacco tax stamps affixed to packages of cigarettes, cigars and tobacco products which have become unfit for use and consumption, or unsalable, and the treasurer of state shall provide, out of money collected hereunder, the funds necessary for such redemption. (R. S. c. 14, § 192. 1947, c. 377, § 7. 1953, c. 308, § 10.)

Sec. 207. Distributors to affix stamps.—Each distributor shall affix, or cause to be affixed, in such manner as the assessor may specify in regulations issued pursuant to the provisions of sections 200 to 221, inclusive, to each individual package of cigarettes, cigars and tobacco products sold or distributed by him, stamps of the proper denominations, as required by section 204. Such stamps may be affixed by a distributor at any time before the cigarettes, cigars or tobacco products are transferred out of his possession. (R. S. c. 14, § 193. 1947, c. 377, § 8. 1953, c. 308, § 10.)

Sec. 208. Dealers to affix stamps.—Each dealer shall, within 72 hours after coming into possession of any cigarettes, cigars and tobacco products not bearing proper stamps evidencing payment of the tax imposed by sections 200 to 221, inclusive, and before selling such cigarettes, cigars and tobacco products, affix or cause to be affixed, in such manner as the assessor may specify in regulations issued pursuant to the provisions of said sections, to each individual package of cigarettes, cigars and tobacco products, stamps of the proper denomination as required by section 204. (R. S. c. 14, § 194. 1947, c. 377, § 9. 1953, c. 308, § 10.)

Sec. 209. Sale of unstamped cigarettes, cigars and tobacco products prohibited.—No distributor shall sell, and no other person shall sell, offer for sale, display for sale or possess with intent to sell, any cigarettes, cigars and tobacco products which do not bear stamps evidencing the payment of the tax imposed by sections 200 to 221, inclusive, provided a licensed dealer may keep on hand unstamped cigarettes, cigars and tobacco products for a period not exceeding 72 hours. Any unstamped cigarettes, cigars and tobacco products in the possession of a dealer shall be presumed to have been held by him for more than 72 hours unless proof be shown to the contrary. Any person who shall violate any provision of this section shall be punished by a fine of not more than $100 for the 1st offense and, for each subsequent offense, shall be punished by a fine

of not less than $200, nor more than $1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. (R. S. c. 14, § 195. 1947, c. 377, § 10. 1953, c. 308, § 10.)

Sec. 210. Possession of unstamped cigarettes, cigars and tobacco products prima facie evidence.—The possession by any person, other than a licensed distributor or licensed dealer of cigarettes, cigars or tobacco products which do not bear stamps, shall be prima facie evidence that the cigarettes, cigars or tobacco products have been imported and that they are intended for use or consumption within the state. (1949, c. 409, § 4.)

Sec. 211. Unstamped cigarettes, cigars and tobacco products subject to confiscation.—Any cigarettes, cigars and tobacco products found at any place in this state without stamps affixed thereto as required by sections 200 to 221, inclusive, unless such cigarettes, cigars and tobacco products shall be in the possession of a licensed distributor, or unless they shall be in course of transit from without this state and consigned to a licensed distributor or licensed dealer, or unless they shall have been received by a licensed dealer within 72 hours, or unless they shall have been imported, received or acquired within 24 hours by a licensed unclassified importer who has notified the tax assessor as provided in section 204, are declared to be contraband goods and are subject to forfeiture to the state; and sheriffs, deputy sheriffs, police officers and duly authorized agents of the said assessor shall have the power to seize the same with or without process. In case such cigarettes, cigars and tobacco products are seized without a warrant, they shall be kept in some safe place for a reasonable time until a warrant can be procured. When such cigarettes, cigars and tobacco products are seized as provided herein, the officer or agent seizing them shall immediately file with the magistrate before whom such warrant is returnable, a libel against such cigarettes, cigars and tobacco products setting forth the seizure and describing the cigarettes, cigars and tobacco products, their containers and the place of seizure in sufficient manner to reasonably identify them, and that they were kept or intended for unlawful sale or use in violation of law and pray for a decree of forfeiture thereof; and such magistrate shall fix a time for the hearing of such libel and shall issue his monition and notice of the same to all persons interested, citing them to appear at the time and place appointed to show cause why such cigarettes, cigars and tobacco products and their containers should not be declared forfeited, by causing true and attested copies of said libel and monition to be posted in 2 public and conspicuous places in the town or place where such cigarettes, cigars and tobacco products were seized, 10 days at least before said libel is returnable; provided, however, that in lieu of forfeiture proceedings, title to such seized, unstamped cigarettes, cigars and tobacco products may be transferred to the state of Maine by the owner thereof. If title to and ownership in such cigarettes, cigars and tobacco products is transferred to the state, a receipt for the cigarettes, cigars and tobacco products shall be given to the former owner by the state tax assessor or his authorized agent. (R. S. c. 14, § 196. 1947, c. 377, § 11. 1953, c. 308, § 10.)

Sec. 212. Forfeiture proceedings.—If no claimant appears, such magistrate shall, on proof of notice as aforesaid, declare the same to be forfeited to the state. If any person appears and claims such cigarettes, cigars and tobacco products, or any part thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with the magistrate such claim in writing, stating specifically the right so claimed, the foundation thereof, the items so claimed, the time and place of the seizure and the name of the officer or duly authorized agent of the said assessor by whom the same were seized, and in it declare that they were not so kept or deposited for unlawful sale and use as al-

leged in said libel and monition, and also state his business and place of residence and shall sign and make oath to the same before said magistrate. If any person so makes claim, he shall be admitted as a party to the process; and the magistrate shall proceed to determine the truth of the allegations in said claim and libel, and may hear any pertinent evidence offered by the libelant or claimant. If the magistrate is, upon hearing, satisfied that said cigarettes, cigars and tobacco products were not so kept or deposited for unlawful sale or use, and that the claimant is entitled to the custody of any part thereof, he shall give him an order in writing, directed to the officer or duly authorized agent of the said assessor having the same in custody, commanding him to deliver to said claimant the cigarettes, cigars and tobacco products to which he is so found to be entitled, within 48 hours after demand. If the magistrate finds the claimant entitled to no part of said cigarettes, cigars and tobacco products, he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such magistrate, and issue execution thereon, and shall declare said cigarettes, cigars and tobacco products forfeited to the state. The claimants may appeal and shall recognize with sureties as on appeals in civil causes from a magistrate. All cigarettes, cigars and tobacco products declared forfeited to the state, or title to which has been transferred to the state in lieu of forfeiture proceedings, shall be sold by the treasurer of state at the approximate wholesale price thereof, and the funds derived from such sales shall be paid into the state treasury. (R. S. c. 14, § 197. 1947, c. 377, § 12.)

Sec. 213. Fraudulent stamps.—Any person who shall fraudulently make or utter or shall forge or counterfeit any stamp prescribed by the tax assessor under the provisions of sections 200 to 221, inclusive, or who shall cause or procure the same to be done, or who shall willfully utter, publish, pass or render as true, any false, altered, forged or counterfeited stamp, or who shall knowingly possess any such false, altered, forged or counterfeited stamp, or who shall use more than once any stamp provided for and required by said sections, for the purpose of evading the tax imposed by said sections, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than 1 year, nor more than 2 years, or by a fine of not less than $500, nor more than $1000, or by both such imprisonment and fine. (R. S. c. 14, § 198. 1953, c. 308, § 10.)

Sec. 214. Taxpayers to keep records; assessor may examine. — Each distributor and each dealer shall keep complete and accurate records of all cigarettes, cigars and tobacco products manufactured, produced, purchased and sold. Such records shall be of such kind and in such form as the tax assessor may prescribe and shall be safely preserved for 2 years in such manner as to insure permanency and accessibility for inspection by the assessor and his authorized agents. The assessor and his authorized agents may examine the books, papers and records of any distributor or dealer in this state for the purpose of determining whether the tax imposed by sections 200 to 221, inclusive, has been fully paid, and may investigate and examine the stock of cigarettes, cigars and tobacco products in or upon any premises where such cigarettes, cigars and tobacco products are possessed, stored or sold for the purpose of determining whether the provisions of said sections are being obeyed. (R. S. c. 14, § 199. 1947, c. 377, § 13. 1953, c. 308, § 10.)

Sec. 215. Oaths and subpoenas.—The assessor and any agent of the assessor duly authorized to conduct any inquiry, investigation or hearing hereunder shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the assessor, the assessor or his agent authorized to conduct such hearing and having authority

by law to issue such process may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. If any person shall disobey such process or, having appeared in obedience thereto, shall refuse to answer any pertinent question put to him by the assessor or his authorized agent or to produce any books and papers pursuant thereto, the assessor or such agent may apply to the superior court of the county wherein the taxpayer resides or wherein the business has been conducted, or to any justice of said court if the same shall not be in session, setting forth such disobedience to process or refusal to answer, and said court or said justice shall cite such person to appear before said court or such justice to answer such question or to produce such books and papers, and, upon his refusal to do so, may commit him to jail until he shall testify, but not for a longer period than 60 days. Notwithstanding the serving of the term of such commitment by any person, the assessor may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the assessor or under his authority and witnesses attending hearing conducted by him hereunder shall receive fees and compensation at the same rates as officers and witnesses in the courts of this state, to be paid on vouchers of the assessor on warrant of the controller from the proper appropriation for the administration of the provisions of sections 200 to 221, inclusive. (R. S. c. 14, § 200. 1953, c. 308, § 10.)

Sec. 216. Hearings by assessor.—Any person aggrieved by any action under the provisions of sections 200 to 221, inclusive, of the assessor or his authorized agent for which hearing is not elsewhere provided may apply to the assessor, in writing, within 10 days after the notice of such action is delivered or mailed to him, for a hearing, setting forth the reasons why such hearing should be granted and the manner of relief sought. The assessor shall promptly consider each such application and may grant or deny the hearing requested. If the hearing be denied, the applicant shall be notified thereof forthwith; if it be granted, the assessor shall notify the applicant of the time and place fixed for such hearing. After such hearing, the assessor may make such order in the premises as may appear to him just and lawful and shall furnish a copy of such order to the applicant. The assessor may, by notice in writing, at any time, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of information concerning any manufacture, importation or sale of cigarettes, cigars and tobacco products which have escaped taxation to appear before him or his duly authorized agent with any specific books of account, papers or other documents for examination relative thereto. (R. S. c. 14, § 201. 1947, c. 377, § 14. 1953, c. 308, § 10.)

See c. 184, § 6, re unfair sales practices in cigarettes.

Sec. 217. Appeals from decisions of assessor.—Any person aggrieved because of any action or decision of the assessor under the provisions of sections 200 to 221, inclusive, may appeal therefrom within 20 days to the superior court. Not less than 14 days before the sitting of said superior court, the appellant shall serve upon the state tax assessor or his duly authorized representative a copy of the said petition stating the reasons for the appeal and notifying the tax assessor when the appeal is to be heard. Pending judgment of the court, the decision of the tax assessor shall remain in full force and effect. (R. S. c. 14, § 202. 1949, c. 73. 1953, c. 308, § 10.)

See c. 184, § 6, re unfair sales practices in cigarettes.

Sec. 218. Administration by assessor; rulings and regulations. — The administration of the provisions of sections 200 to 221, inclusive, is vested in

the state tax assessor. All forms necessary and proper for the enforcement of the provisions of said sections shall be prescribed and furnished by the assessor. The assessor shall appoint such agents, clerks, stenographers and other assistants as he may deem necessary for effecting the purpose of said sections, subject to the provisions of the personnel law. The tax assessor may prescribe regulations and rulings, not inconsistent with law, to carry into effect the provisions of said sections, which regulations and rulings, when reasonably designed to carry out the intent and purpose of said sections, shall be prima facie evidence of its proper interpretation. The assessor shall, at least annually, and oftener in his discretion, publish for distribution all regulations prescribed hereunder and such rulings as appear to him to be of general interest. (R. S. c. 14, § 203. 1953, c. 308, § 10.)

Sec. 219. Use of metering machines. — The tax assessor, if he shall determine that it is practicable to stamp by impression packages of cigarettes, cigars and tobacco products by means of a metering machine, may, in lieu of selling stamps under the provisions of section 205, authorize any licensed distributor or licensed dealer to use any metering machine approved by him, such machine to be sealed by the assessor before being used in accordance with regulations prescribed by him. Any licensed distributor or licensed dealer authorized by the tax assessor to affix stamps to packages by means of a metering machine shall file with the assessor a bond issued by a surety company licensed to do business in this state, in such amount as the tax assessor may fix, conditioned upon the payment of the tax upon cigarettes, cigars and tobacco products so stamped. The bond shall be in full force and effect for a period of 1 year and a day after the expiration of the bond, unless a certificate be issued by the tax assessor to the effect that all taxes due to the state have been paid. In the discretion of the tax assessor, cash may be accepted in lieu of a surety bond, such cash to be paid over by the tax assessor to the treasurer of state, who may deposit or hold the same subject to further order of the tax assessor. The tax assessor shall cause each metering machine approved by him to be read and inspected at least once a month and shall determine as of the time of each inspection the amount of tax due from the distributor or dealer using such machine after allowing for the discount, if any, provided for in section 205, which tax shall be due and payable upon demand of the tax assessor or his duly authorized agent. (R. S. c. 14, § 204. 1947, c. 377, § 15.)

Sec. 220. Tax credited to general fund.—The revenue derived from the tax imposed by the provisions of sections 200 to 221, inclusive, shall be credited to the general fund of the state. (R. S. c. 14, § 205. 1945, c. 297, § 30. 1947, c. 377, § 16. 1953, c. 308, § 10.)

Sec. 221. Tax is levy on consumer.—The liability for, or the incidence of, the tax on cigarettes, cigars and tobacco products is declared to be a levy on the consumer. The distributors shall add the amount of the tax on cigarettes, cigars and tobacco products presently levied to the price of the cigarettes, cigars and tobacco products and the distributor may state the amount of the taxes separately from the price of such cigarettes, cigars and tobacco products on all price display signs, sales or delivery slips, bills and statements which advertise or indicate the price of such cigarettes, cigars and tobacco products. The provisions of this section shall in no way affect the method of collection of such taxes on cigarettes, cigars and tobacco products as now provided by existing law. (1949, c. 8.)

Cited in W. S. Libbey Co. v. Johnson, 148 Me. 410, 94 A. (2d) 907.

Potato Tax.

Purpose of potato tax law is public.—The primary purpose of the enactment of the potato tax law is the promotion of the welfare of the people of the state as a whole; it is enacted for a public purpose and the fact that those engaged in raising potatoes may be incidentally benefited thereby does not change the purpose of the law from a public one to a private one. State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

The excise tax under §§ 222-233 is levied for a public purpose and the act imposing the same is constitutional. State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

The potato tax was imposed for a public purpose, and because in the opinion of the legislature the public exigencies required it; at least it should be so held where the industry for the benefit of which the tax is levied is as important and as basic as is the potato industry to the State of Maine which imposes the tax. The mere fact that the proceeds of this tax are to be expended primarily for the benefit of the industry on which the tax is levied does not of itself render the law constitutional; for such an argument would justify almost any tax so long as the particular industry for whose benefit the tax is primarily enacted pays the bill. What justifies the tax is that the money expended for the promotion of the potato industry is not primarily expended for the benefits of those individuals engaged therein but for the benefit of the people as a whole by making available to any and all who may wish to enter into the industry the specialized knowledge and information that will enable them to carry the same on, and prospects of a market for that which they produce. The line of demarcation between the expenditure of public funds for the benefit of the individual in order to get an indirect resultant benefit to the people as a whole, and the expenditure of public funds for the benefit of the people as a whole with incidental benefits accruing to individuals may be extremely delicate and hard to discover. To formulate a general rule to cover all situations is neither possible nor do we attempt to do so. State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Where the industry involved has been of sufficient size and importance, and especially where the welfare of agriculture has been concerned, a tax levied for its support such as that imposed by the potato tax law, to wit, a tax for the benefit of agriculture as an industry, as distinguished from grants to those engaged therein, has almost invariably been held as levied for a public use. State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

And the law is constitutional.—The potato tax law is a valid enactment under both the state and federal constitutions. State v. Vahlsing, Inc., 149 Me. 38, 98 A. (2d) 559.

And does not interfere with interstate commerce.—A tax such as the potato tax is not an unwarranted interference with interstate commerce. State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

The enforcement of the potato tax act does not cast such a burden on interstate commerce as is prohibited by Section VIII, Article I, of the Constitution of the United States giving to congress the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

History of potato tax law.—See State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 222. Purpose.—The production of potatoes is one of the most important agricultural industries of this state and sections 222 to 233, inclusive, were enacted into law to conserve and promote the prosperity and welfare of this state and of the potato industry of this state by fostering and promoting better methods of production, merchandising, and advertising the said potato industry of this state. (R. S. c. 14, § 206.)

Cross reference.—See c. 32, §§ 320, 335, re Maine Potato Marketing Act.

This section expresses in straight forward language the honest purpose of the legislature in enacting the potato tax law. The act needs no interpretation by the court. State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 223. Definitions.—The terms used in sections 222 to 233, inclusive, shall be construed as follows:

"Barrel" shall mean 165 pounds of potatoes;

"Potatoes" shall mean and include all potatoes of the grades as recommended by the bureau of agricultural economics of the United States department of

agriculture and such other grades as may from time to time be promulgated by the department of agriculture of the state of Maine. The records of the department of agriculture of the state of Maine of the grades recommended by said bureau of agricultural economics of the United States department of agriculture shall be prima facie evidence of such grades;

"Shipment" shall be deemed to take place when the potatoes are located within the state in the car, boat, truck or other conveyance in which the potatoes are to be transported;

"Shipper" shall mean any person, partnership, association, firm or corporation engaged in the shipping of potatoes or transporting his own potatoes, whether as owner, agent or otherwise. (R. S. c. 14, § 207.)

Cited in State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 224. Tax on potatoes.—A tax is levied and imposed at the rate of 1¢ per barrel on all potatoes raised in this state, except that no tax shall be imposed upon any potatoes which are retained by the grower to be used by him for seed purposes or for home consumption. (R. S. c. 14, § 208.)

Section imposes excise tax.—The potato tax is not a tax assessed on an ad valorem basis on the value of potatoes owned, but like the gasoline tax, the use fuel tax, the cigarette tax, and the oleomargarine tax, on the amount of business done in the particular commodity within the state. It is an excise tax and not a property tax and is clearly imposed as an excise tax. Being an excise tax it may be assessed in addition to a property tax. State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 225. When tax due.—The tax imposed by section 224 shall be due upon any particular lot or quantity of potatoes under the provisions of section 228. (R. S. c. 14, § 209.)

Stated in State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 226. Shippers to file applications with state tax assessor; shippers not to ship until certificate is issued.—Every shipper of potatoes, as defined in section 223, shall file an application with the state tax assessor, on forms prescribed and furnished by the state tax assessor which shall contain the name under which such shipper is transacting business within the state, the place or places of business and location of loading and shipping places and agents of the shipper; the names and addresses of the several persons constituting a firm or partnership and, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The state tax assessor will then issue a certificate to the shipper and no shipper shall sell or ship any potatoes, as defined in section 223, until such certificate is furnished as required by this section. (R. S. c. 14, § 210. 1945, c. 30, § 1.)

Stated in State v. Vahlsing, Inc., 147 Me. 417, 88 A (2d) 144.

Sec. 227. Shipper entitled to deduct tax from selling price.—Each shipper purchasing potatoes and paying, or becoming liable to pay, the tax imposed by section 224 shall charge and collect from the seller a tax at the rate of 1¢ per barrel, to be deducted from the purchase price of all potatoes subject to the tax so purchased by such shipper. (R. S. c. 14, § 211.)

Quoted in State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 228. Report of shipments; time tax due.—Every shipper shall keep as a part of his permanent records a record of all purchases, sales and shipments of potatoes, which said records shall be open for inspection at all times as hereinafter provided and every shipper shall, on or before the 15th day of each month, render a report to the state tax assessor stating the quantity of potatoes

received, sold or shipped by him during the preceding calendar month, on forms to be furnished by said tax assessor, and said report shall contain such further information pertinent thereto as said state tax assessor shall prescribe. On or before the 1st day of the calendar month succeeding the filing of said report, each shipper shall pay to the state tax assessor a tax at the rate of 1¢ per barrel upon all potatoes so reported as purchased, sold or shipped, as determined by the state tax assessor. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 212. 1945, c. 30, § 2.)

Stated in State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 229. Authority to inspect.—The state tax assessor or his duly authorized agent shall have authority to enter any place of business of any shipper, or any car, boat, truck or other conveyance in which potatoes are to be transported and to inspect any books or records of any shipper for the purpose of determining what potatoes are taxable under the provisions of sections 222 to 233, inclusive, or for the purpose of determining the truth or falsity of any statement or return made by any shipper and he shall have authority to delegate such power to the commissioner of agriculture, his deputies, agents, servants or employees. (R. S. c. 14, § 213. 1945, c. 30, § 3.)

Stated in State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 230. False return or violation of provisions; tax may be collected by civil action; jurisdiction.—Any shipper of potatoes, as defined in section 223, who shall make any false or fraudulent report or return required by sections 222 to 233, inclusive, or who shall evade or violate any of the provisions of said sections, shall be punished by a fine of not more than $500. Whenever any shipper shall fail to pay any tax due under the provisions of said sections, within the time limited herein, the attorney general shall enforce payment of such tax by civil action against such shipper for the amount of such tax, either in the superior court or municipal court in and for the county in which such shipper has his residence or established place of business. (R. S. c. 14, § 214.)

Cited in State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 231. Appropriation of moneys received. — Moneys received through the provisions of sections 222 to 233, inclusive, by the treasurer of state shall be appropriated and used for the following purposes:

I. For the collection of the tax provided for by section 224 and the enforcement of all the provisions of sections 222 to 233, inclusive.

II. A sum which shall equal at least 25% of the money collected shall be used and applied for the purpose of investigating and determining better methods of production, shipment and merchandising of potatoes, and for the manufacture and merchandising of potato by-products by the Maine agricultural experiment station under the supervision of the Maine development commission.

III. A sum which shall equal at least 25% of the money collected shall be used for the general purpose of merchandising and advertising Maine potatoes for food and for seed purposes under the direction of the Maine development commission.

IV. The funds remaining over and above the expenses of carrying out the provisions of sections 222 to 233, inclusive, including the expenditures authorized under the provisions of subsections II and III, may be expended by the commission to carry out the purposes outlined in said subsections as it may

determine. The commission may expend annually a sum of money not in excess of $10,000 for the purpose of enforcing laws relating to the branding of potatoes. [1953, c. 360]. (R. S. c. 14, § 215. 1953, c. 360.)

Cross reference.—See c. 32, § 151, re seed potato board appropriation.

Expenditure of tax funds.—The entire amount received from this tax beyond that required for expenses of collection of the tax, and for administration purposes, is to be used for the purpose of investigating and determining better methods of production, shipment, and merchandising of potatoes and for the manufacture and merchandising of potato by-products by the Maine agricultural experiment station under the supervision of the Maine development commission; and for merchandising and advertising Maine potatoes for food and for seed purposes under the direction of the Maine development commission. In other words, these funds are to be used for agricultural research and education in the state of Maine, and for advertising Maine potatoes, a distinctive and substantial Maine product. True the subject matter of this research is specialized and confined to a single crop. That crop, however, is of such magnitude that there cannot be any doubt that it affords a proper field for specialized research and education. The allocation of a portion of the funds raised by the tax to advertising the product is but a method of assuring to those taking advantage of the research a market for the product. State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 232. Maine potato tax committee.—The Maine potato tax committee, as heretofore established, shall consist of 5 members to be appointed by the commissioner of agriculture from representatives of the potato industry in this state. Four of these members shall be residents of Aroostook county and one a resident of central Maine, so called. Each member shall be appointed for a term of 2 years or until his successor is duly appointed and qualified. In case of a vacancy caused by death, resignation or otherwise, the vacancy shall be filled by the commissioner for the unexpired period of the term. The said committee shall work with the Maine development commission in an advisory capacity to assist the commission in the carrying out of the provisions of sections 222 to 233, inclusive. The members of the committee shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties. (R. S. c. 14, § 216.)

Stated in State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Sec. 233. Tax in addition to other taxes.—All taxes imposed and collected under the provisions of sections 222 to 233, inclusive, shall be in addition to any other taxes legally imposed or collected under any other provision of the law of the state now or hereafter in force. (R. S. c. 14, § 217.)

Stated in State v. Vahlsing, Inc., 147 Me. 417, 88 A. (2d) 144.

Fertilizer Tax.

Sec. 234. Fee on commercial fertilizer sold.—Any person, firm or corporation who shall manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation in this state any mixed fertilizer shall on or before September 1st in each year file with the state tax assessor a sworn statement, in such form as the state tax assessor may prescribe, listing exactly the number of net tons of mixed fertilizer sold by him in the state during the 12 months preceding July 1 of the current year. With the filing of said statement, each such person, firm or corporation shall pay to the state tax assessor a fee of 1¢ a ton of 2,000 pounds for mixed fertilizer so sold. Whenever a statement has been filed and the fee required by this section has been paid, no other person shall be required to pay the fee. The state tax assessor or his agents shall be authorized to examine the books of the person, firm or corporation filing the statement for the purpose of verifying the same. (1949, c. 378.)

Sec. 235. Disposition of fees.—The fees so collected by the state tax assessor shall be deposited with the treasurer of state and appropriated for carrying out the provisions of sections 184 and 186 of chapter 32, including the cost of inspection, sampling and analysis of commercial fertilizer. Such funds shall not lapse but shall remain a continuing carrying account. (1949, c. 378.)

Sec. 236. Penalty.—Whoever sells, offers or exposes for sale a mixed fertilizer without having filed the statement and paid the fee required by section 234 shall be punished by a fine of not more than $100 for the 1st offense nor more than $200 for each subsequent offense. (1949, c. 378.)

Sec. 237. Tonnage filed with commissioner of agriculture.—Each such person, firm or corporation shall on or before September 1st in each year file with the commissioner of agriculture, on forms prescribed by him, the number of tons of each grade sold during the 12 months preceding July 1 of the current year. (1949, c. 378.)

Blueberry Tax.

Sec. 238. Purpose.—The production of blueberries is one of the most important agricultural industries of the state, and sections 238 to 249, inclusive, are enacted into law to conserve and promote the prosperity and welfare of the state and of the blueberry industry of the state by conducting scientific investigations and extension work relating to the production, processing and marketing of blueberries grown in the state. (1945, c. 281.)

Sec. 239. Definitions.—The terms used in sections 238 to 249, inclusive, shall be construed as follows:

"Blueberries" shall mean and include all blueberries grown, purchased, sold or handled for commercial purposes in this state;

"Processor" shall mean any person, firm, partnership, association or corporation engaged in the canning, freezing or dehydrating of blueberries whether as owner, agent or otherwise;

"Seller" shall mean any person, firm, partnership, association or corporation offering fresh blueberries for sale, either to themselves or to others; and

"Shipper" shall mean any person, firm, partnership, association or corporation engaged in the shipping, transporting, storing, selling or otherwise handling of blueberries either in processed form or as fresh fruit, whether as owner, agent or otherwise. (1945, c. 281.)

Sec. 240. Tax on blueberries.—There is levied and imposed a tax at the rate of 1¼ mills per pound of fresh fruit on all blueberries grown, purchased, sold, handled or processed in this state. The tax shall be computed on a fresh fruit basis, regardless of how the blueberries are processed. (1945, c. 281.)

Sec. 241. When tax due.—The tax imposed by section 240 shall be due upon any particular lot or quantity of blueberries under the provisions of section 244. (1945, c. 281.)

Sec. 242. Processors or shippers to be registered.—Every processor or shipper of blueberries as herein defined shall each year before processing or shipping blueberries obtain from the state tax assessor a license. The state tax assessor shall provide the applications for said licenses, which shall contain the name under which such processor or shipper is transacting business within the state, the place or places of business, the names and addresses of the several persons constituting a firm or partnership, and, if a corporation, the corporate name and names and addresses of its principal officers and agents within the state. No processor or shipper as herein defined shall process or ship any blueberries as herein defined until such license has been issued. Licenses may

be suspended or revoked for cause after due hearing by the state tax assessor and all licenses shall expire July 1st, annually. (1945, c. 281.)

Sec. 243. Processor or shipper required to deduct tax from purchase price.—Each processor or shipper, purchasing blueberries and paying or becoming liable to pay the tax imposed by section 240, shall charge and collect from the seller a tax at the rate of 1¼ mills per pound, to be deducted from the purchase price of all blueberries subject to the tax so purchased by such processor or shipper. (1945, c. 281.)

Sec. 244. Report of sales or purchases; when tax due. — Every processor or shipper shall keep as a part of his permanent records a record of all sales or purchases of blueberries and said records shall be open for inspection at all times as hereinafter provided, and every processor or shipper shall, on or before November 1st of each year, render a report to the state tax assessor, stating the quantity of blueberries purchased or sold by him during the current season, on forms to be furnished by said state tax assessor; and said report shall contain such further information pertinent thereto as said state tax assessor shall prescribe. With said report, each processor or shipper shall forward payment of the tax at the rate of 1¼ mills per pound upon all blueberries so reported as sold or purchased. All such money so collected shall be transmitted forthwith by the state tax assessor to the treasurer of state. (1945, c. 281.)

Sec. 245. Authority to inspect.—The state tax assessor or his duly authorized agents shall have authority to enter any place of business of any processor or shipper or any car, boat, truck or other conveyance in which blueberries are to be transported and to inspect any books or records of any processor or shipper, or any premises where blueberries are stored, handled, transported or merchandised, for the purpose of determining what blueberries are taxable under the provisions of sections 238 to 249, inclusive, or for the purpose of determining the truth or falsity of any statement or return made by any processor or shipper, and he shall have authority to delegate such power to the commissioner of agriculture, his deputies, agents, servants or employees. (1945, c. 281.)

Sec. 246. False return or violation of provisions; tax may be collected by civil action.—Any processor or shipper of blueberries as herein defined, who shall make any false or fraudulent report or return required by sections 238 to 249, inclusive, or who shall evade or violate any of the provisions of such sections, shall be punished by a fine of not more than $50 per ton of fresh blueberries involved or fraction thereof. Whenever any processor or shipper shall fail to pay any tax due under the provisions of sections 238 to 249, inclusive, within the time limited herein, the attorney general shall enforce payment of such tax by civil action against such processor or shipper for the amount of such tax, either in the superior court in and for the county of Kennebec or the superior court in and for the county in which such processor or shipper has his residence or established place of business. (1945, c. 281.)

Sec. 247. Appropriation of moneys received. — Moneys received through the provisions of sections 238 to 249, inclusive, by the treasurer of state shall be appropriated and used for the following purposes:

I. For the collection of the tax provided for by section 240 and the enforcement of all the provisions of sections 238 to 249, inclusive, and actual expenses of the advisory committee.

II. The remainder for the purpose of conducting scientific research and extension work relating to the production, processing and marketing of blueberries through the Maine agricultural experiment station and the agricultural extension service of the University of Maine, in such manner and amounts as the trustees of the university shall determine. Any unexpended balance

from the above apportionment shall not lapse but shall be carried forward to the same fund for the next fiscal year. (1945, c. 281.)

Sec. 248. Advisory committee. — A blueberry industry advisory committee of 7 members, as heretofore established, shall be appointed by the president of the University of Maine. Each member shall be appointed for a term of 5 years. Vacancies shall be filled for unexpired terms and no member of said committee may succeed himself. Their duty shall be to work with the director of the Maine agricultural experiment station and the director of the agricultural extension service in an advisory capacity. (1945, c. 281. 1951, c. 189.)

Sec. 249. Tax in addition to other taxes.—All taxes imposed and collected under the provisions of sections 238 to 249, inclusive, shall be in addition to any other taxes legally imposed or collected under any other provision of the law of the state now or hereafter in force. (1945, c. 281.)

Sweet Corn Tax.

Sec. 250. Definitions.—As used in sections 250 to 259, inclusive, the following terms shall have the following meanings:

I. "Contractor" shall mean a commercial canner or freezer of sweet corn and shall include a canner or freezer who may grow either all or a portion of that which he cans or freezes.

II. "Grower" shall mean any person growing sweet corn for commercial canning or freezing under contract with any contractor or who grows and sells sweet corn for canning. (1945, c. 125; c. 378, §§ 12, 29.)

Sec. 251. Tax on sweet corn.—A tax is levied and imposed on all sweet corn in the husk grown under contract in this state for commercial canning and freezing at a rate no greater than 30¢ per ton in the discretion of the tax committee, as hereinafter provided. (1945, c. 125; c. 378, §§ 12, 29.)

Sec. 252. Tax committee; appointment; powers.—A tax committee consisting of 3 members, as heretofore established, appointed annually in the following manner, shall serve for 1 year and until their successors shall be appointed. The commissioner of agriculture shall appoint 1 member from the department of agriculture and 1 member who shall be a grower; the Maine Canners' Association shall appoint the 3rd member. The tax committee is authorized to determine the amount of the tax to be levied and imposed each year. (1945, c. 125; c. 378, §§ 12, 29.)

Sec. 253. Contractor, duty.—The contractor shall, within 30 days after making a contract with a grower, file with the commissioner of agriculture a statement giving the name of the contractor and the grower. (1945, c. 125; c. 378, §§ 12, 29.)

Sec. 254. Tax committee, duty.—The tax committee shall, not later than the 1st day of September in each year, give notice to the contractors and growers of the rate of tax to be levied during that year and shall publish same once in the state paper, which shall be sufficient notice. (1945, c. 125; c. 378, §§ 12, 29.)

Sec. 255. Tax; on whom imposed, and collection.—The tax levied and imposed by the provisions of section 251 shall be paid, ½ by the contractor and ½ by the grower, unless the contractor is also the grower, in which event he shall pay to the state tax assessor the whole tax on or before November 1st of the tax year. The proceeds of such tax received by the state tax assessor shall be paid forthwith to the treasurer of state. The contractor shall deduct from the moneys due the grower the tax due from the grower and shall transmit the

same, together with the tax payable by the contractor, to the state tax assessor within 30 days from the date payment is made to the grower. Payment to the state tax assessor shall be accompanied by a statement in writing showing the total tonnage on which a tax is paid and such other information as the commissioner of agriculture may prescribe, which statement shall be signed by the president or treasurer or authorized agent, if a corporation; and if a partnership, by one of the members thereof; and by the individual, if neither a partnership nor a corporation. Whoever intentionally makes a false statement with the remittance of the tax as aforesaid shall be punished as hereinafter provided. (1945, c. 125; c. 378, §§ 12, 29.)

Sec. 256. Use of funds.—The moneys received through the provisions of sections 250 to 259, inclusive, by the treasurer of state shall be appropriated to suppress the European corn borer. Any unexpended balances shall not lapse but shall remain a continuing carrying account. (1945, c. 125; c. 378, §§ 12, 29.)

Sec. 257. Failure to pay over tax.—The money withheld by the contractor from the grower as provided in section 255 shall be held in trust, and the failure to pay it over to the state tax assessor within 10 days after a demand by the state tax assessor shall be punished by a fine of not more than $500, or by imprisonment for not more than 30 days in the county jail, or by both such fine and imprisonment. A contractor or grower violating any of the foregoing provisions shall be punished by imprisonment in the county jail for a period not in excess of 30 days, or by a fine of not more than $500, or by both such fine and imprisonment. (1945, c. 125; c. 378, §§ 12, 29.)

Sec. 258. Action of assumpsit.—If said tax is not paid within the times herein prescribed, it shall be recoverable from the contractor by the state tax assessor in an action of assumpsit in the name of the state. (1945, c. 125; c. 378, §§ 12, 29.)

Sec. 259. Power of commissioner of agriculture.—The commissioner of agriculture is vested with the power and authority to enact such rules and regulations as in his judgment will best serve to carry out the provisions of sections 250 to 259, inclusive. (1945, c. 125; c. 378, §§ 12, 29.)

Sardine Tax.

Sec. 260. Purpose.—The packing of sardines is one of the most important industries of the state, and sections 260 to 269, inclusive, will protect the public health and welfare, stabilize the industry and conserve and promote the prosperity and welfare of the state by fostering and promoting better methods of production, packing, merchandising and advertising in the sardine industry of this state. (1951, c. 2.)

Sec. 261. Definitions.—For the purpose of sections 260 to 269, inclusive:

The term "sardine" shall be held to include any canned, clupeoid fish being the fish commonly called herring, particularly the clupea harengus.

A "case" of sardines shall mean:

I. 100 one-quarter size cans of sardines packed in oil, mustard or tomato sauce, or any other packing medium;

II. 48 three-quarter size cans packed in tomato or mustard sauce;

III. 48 cans of 15-ounce oval cans packed in mustard or tomato sauce, or any other packing medium.

"Packer" shall mean any person, partnership, association, firm, corporation or entity engaged in packing sardines for sale. (1951, c. 2.)

The legislature clearly intended to tax cases of sardines in three instances only, based upon the number and size of the cans in the case. The cans were to be

cans built for, and capable of containing, approximately one pound (subsection III), or approximately twelve ounces (subsection II), and approximately four ounces (subsection I) whatever they may have been labeled and whatever (more or less) net amounts of fish were actually contained in the respective cans. State v. Vogl, 149 Me. 99, 99 A. (2d) 66.

Cans packed and sold as 1-pound cans are "15-ounce oval cans" within the meaning of subsection III of this section. State v. Vogl, 149 Me. 99, 99 A. (2d) 66.

The sardine tax law, requiring the assessment of a tax upon processed cases of "15-ounce oval cans" cannot be avoided by putting an extra ounce into the contents of each can, since it was intended by the legislature to place the tax upon cans built for, and capable of containing, approximately one pound. State v. Vogl, 149 Me. 99, 99 A. (2d) 66.

Sec. 262. Excise tax on sardines.—The packing of sardines is declared to constitute the introduction of sardines into the channels of trade.

An excise tax of 25¢ per case, as defined in subsections I, II and III of section 261, is levied and imposed upon the privilege of packing sardines; provided, however, that if on April 1st of any year there shall remain unexpended in the hands of the treasurer of state from excise taxes collected under the provisions of sections 260 to 269, inclusive, the sum of $500,000, then such excise tax shall not be levied and imposed upon the privilege of packing sardines during the 12 months following such April 1st. (1951, c. 2. 1953, c. 199, § 1.)

The excise tax of twenty-five cents is per case. It was not a tax on all sardines or all cases of sardines, but only on sardines that were packed in certain types of containers. State v. Vogl, 149 Me. 99, 99 A. (2d) 66.

Tax limited to cases mentioned in § 261. —It is plain that the legislature did not intend to tax the cases of sardines made up of sizes other than mentioned in subsections I, II and III of § 261, whatever may have been its reason for omission to tax them. State v. Vogl, 149 Me. 99, 99 A. (2d) 66.

Sec. 263. Packers to file application with state tax assessor.—Every packer shall file an application with the state tax assessor on forms prescribed and furnished by the state tax assessor, which shall contain the name under which such packer is transacting business within the state, the place or places of business where packing is taking place, the names and addresses of the several persons constituting a firm or partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The state tax assessor will then issue a certificate to the packer and no packer shall pack any sardines until such certificate is furnished as required by this section. (1951, c. 2.)

Sec. 264. Reports of production and payment of tax.—Every packer shall keep as a part of his permanent records, a record of all sardines packed, which said records shall be open for inspection at all times as hereinafter provided, and every packer shall on or before the 10th day of each month render a report to the state tax assessor, stating the quantity of sardines packed by him during the preceding calendar month, on forms to be furnished by said state tax assessor, and at the same time shall pay to the state tax assessor the tax of 25¢ per case on all sardines so reported as packed. If it appears to the state tax assessor from inspection of records or otherwise that an additional tax is due or overpayment of tax has been made, additional assessments or refunds shall be made by the state tax assessor. Such additional assessments shall be due upon certification to the taxpayer. Provided, nevertheless, any packer may pay to the state tax assessor in advance a sum of money based on an estimate of his tax for a given number of months, and this sum shall be a credit against future monthly reports of that packer. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (1951, c. 2. 1953, c. 199, § 2.)

Sec. 265. Authority to inspect.—The state tax assessor or his duly au-

thorized agent shall have authority to enter any place of business of a packer, or any car, boat, truck or other conveyance in which sardines are to be transported, and duly inspect any books or records of any packer for the purpose of determining what sardines are taxable under this law, or for the purpose of determining the truth or falsity of any statement or return made by any packer, and he shall have authority to delegate such powers to the commissioner of agriculture, his deputies, agents, servants or employees, and to the commissioner of sea and shore fisheries, his deputies, agents, servant or employees. (1951, c. 2.)

Sec. 266. False return or violation of provisions.—Any packer who shall make any false or fraudulent report or return required by sections 260 to 269, inclusive, or who shall evade or violate any of the provisions of said sections shall be punished by a fine of not more than $500, and his wholesale sea food dealer's and processor's license shall be suspended by the commissioner of sea and shore fisheries, his state license to pack sardines shall be suspended by the commissioner of agriculture and his packer's certificate shall be suspended by the state tax assessor until such fine and all payments due the state on the aforesaid sardine tax are paid in full. Whenever any packer shall fail to pay any tax due under the provisions of said sections within the time limited herein, the attorney general shall enforce payment of such tax by civil action against the packer for the amount of such tax in either the superior court in Kennebec county or in a municipal court in the county in which such packer has his residence or established place of business. (1951, c. 2.)

Sec. 267. Appropriation and use of moneys received.—Money received under the provisions of sections 260 to 269, inclusive, by the treasurer of state shall be appropriated and used for the following purposes:

I. For the collection of the tax and enforcement of all provisions of sections 260 to 269, inclusive.

II. The balance in such amounts as shall be from time to time determined by the Maine sardine tax committee:

A. For the purpose of merchandising and advertising Maine sardines for food, under the joint direction of the Maine development commission and the Maine sardine tax committee.

B. For conducting research and investigation of methods of propagating and conserving clupeoid fish, particularly the clupea harengus, with a view of improving both the quality and quantity of the same in Maine waters, and for the implementation of all feasible methods of improving, propagating and conserving the same, under the joint direction of the commissioner of sea and shore fisheries and the Maine sardine tax committee. (1951, c. 2.)

Sec. 268. Maine sardine tax committee.—The Maine sardine tax committee, as heretofore established, shall consist of 7 members to be appointed by the commissioner of sea and shore fisheries. Five members of said committee shall constitute a quorum for the transaction of all business and the carrying out of the duties of the committee. Such members shall be practical sardine packers, operating within the state, who shall have been actively engaged in packing sardines for not less than 5 years and each shall be so actively engaged during his continuance in office. A person shall be considered actively engaged in packing sardines if he has during the period derived a substantial portion of his income therefrom, or has been the directing or managing head of an entity that derives a substantial portion of its income from packing sardines.

Regular appointments shall be for a term of 5 years and each member shall serve until his successor is duly appointed and qualified. In the case of a vacancy

caused by death, resignation or otherwise, the vacancy shall be filled promptly by the commissioner of sea and shore fisheries for the unexpired period of the term.

The members of the committee shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties. They are authorized to select and employ an executive secretary-advertising and merchandising manager to administer the advertising, merchandising, research and development program, in concurrence with the Maine development commission and the commissioner of sea and shore fisheries, and to fix his salary. The executive secretary, with the consent of the committee, is authorized, subject to the provisions of the personnel law, to engage sufficient clerical personnel and other employees for the efficient performance of his duties. (1951, c. 2. 1953, c. 214.)

Sec. 269. Tax in addition to other taxes.—The excise tax imposed and collected under the provisions of sections 260 to 269, inclusive, shall be in addition to other taxes legally imposed or collected under any other provisions of the law of the state now or hereafter in force. (1951, c. 2.)

Milk Tax.

Director's note.—Sections 270 to 281, inclusive, effective until Sept. 1, 1955.

Sec. 270. Purpose.—The production of milk is one of the most important agricultural industries of this state, and sections 270 to 281, inclusive, are enacted into law to promote the prosperity and welfare of this state and of the dairy industry of the state by the fostering of promotional, educational, advertising and research programs of the said dairy industry of the state. (1953, c. 393, § 1.)

Sec. 271. Terms defined.—The terms used in sections 270 to 281, inclusive, shall be construed as follows:

"Handler" means any person who purchases or receives milk for sale as a consignee or agent of a producer or handles for sale, shipment, storage or processing any milk produced in the state, and shall include a producer-dealer as hereinafter defined.

"Milk" means cows' milk and shall include cream in the proportion that 1 quart of cream shall be considered the equivalent of 4 quarts of milk.

"Producer-dealer" means any dealer who himself produces a part or all of his milk and sells milk other than to the handler.

"Producer" means any person who produces milk and sells said milk to a handler as defined above. (1953, c. 393, § 1.)

Sec. 272. Tax of 2¢ per hundredweight on milk.—A tax is levied and imposed at the rate of 2¢ per hundredweight on all milk produced in this state except that no tax shall be imposed upon any milk used on the farm where produced. (1953, c. 393, § 1.)

Sec. 273. Handler entitled to deduct tax from purchasing price.—Each handler purchasing milk and paying, or becoming liable to pay, the tax imposed by section 272 shall charge and collect from the producer a tax at the rate of 2¢ per hundredweight to be deducted from the purchase price of all milk received or so purchased by such handler.

Producer-dealers shall pay a tax of 2¢ per hundredweight on all milk produced and sold other than to a handler. (1953, c. 393, § 1.)

Sec. 274. Handlers to file applications with state tax assessor; contents of applications; handlers not to receive or sell until certificate is issued.—Each handler, as defined in section 271, shall file an application with

the state tax assessor, on forms prescribed and furnished by the state tax assessor which shall contain the name under which such handler is transacting business within the state, the place or places of business and location of said handler's plants. The state tax assessor will then issue a certificate to the handler and no handler shall receive or sell any milk until such certificate is furnished as required by this section. Such certificate shall remain in force until surrendered or revoked as hereinafter provided. Every handler who shall cease to receive or sell milk shall surrender such certificate to the state tax assessor.

Any handler who shall receive or sell any milk without a currently valid handler's certificate, as provided in these sections, may be enjoined from further receiving or selling any milk until he has acquired such a certificate. Jurisdiction is granted to the supreme judicial court and superior court to hear such cases in term time or vacation and to enter such orders and decrees as the nature of the case may require. (1953, c. 393, § 1.)

Sec. 275. Report of shipments to be made on 20th of each month for preceding month; tax to be paid on filing of report.—Every handler shall keep as a part of his permanent records a record of all purchases, sales and shipments of milk, which said records shall be open for inspection at all times as hereinafter provided, and every handler shall, on or before the 20th day of each month, render a report to the state tax assessor stating the quantity of milk received by him during the preceding calendar month, and every handler who is a producer-dealer shall include in such report the quantity of milk produced and sold by him other than to a handler, except that upon application to the state tax assessor, handlers who sell less than 100 quarts of milk per day may be permitted by the assessor to file reports quarterly upon the 20th day of the month following the quarter. Such reports shall be on forms to be furnished by said tax assessor, and shall contain such further information as said state tax assessor shall prescribe. On the filing of said report, each handler shall pay to the state tax assessor a tax at the rate of 2¢ per hundredweight upon all milk so reported. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (1953, c. 393, § 1.)

Sec. 276. State tax assessor or his agent to have authority to inspect.—The state tax assessor or his duly authorized agent shall have authority to enter any place of business of any handler and to inspect any books and records of any handler for the purpose of determining what milk is taxable under the provisions of sections 270 to 281, inclusive, or for the purpose of determining the truth or falsity of any statement or return made by any handler, and he shall have authority to delegate such power to the commissioner of agriculture, his deputies, agents, servants or employees. (1953, c. 393, § 1.)

Sec. 277. Determination of tax by assessor.—If any handler, whether the holder of a certificate or not, shall neglect or refuse to make and file any report as required by section 275, or shall file an incorrect or fraudulent report, the state tax assessor shall determine after an investigation the tax liability of such handler for any particular month or months, and the state tax assessor shall assess the tax due the state, giving notice of such assessment to the handler liable therefor, and make demand upon him for payment thereof.

In any action or proceeding for the collection of the milk tax, the assessment by the state tax assessor of the tax due to the state shall constitute prima facie evidence of the claim of the state and the burden of proof shall be upon the handler to show the assessment was incorrect. (1953, c. 393, § 1.)

Sec. 278. Penalty for false return or violations of provisions; tax may be collected by civil action; jurisdiction.—Any handler of milk, as defined in section 271, who shall make any false or fraudulent report or return required by sections 270 to 281, inclusive, or who shall evade or violate any of

the provisions of said sections, shall be punished by a fine of not more than $500. Whenever any handler shall fail to pay any tax due under the provisions of said sections, within the time limited herein, the attorney general shall enforce payment of such tax by civil action against such handler for the amount of such tax, either in the superior court or municipal court in and for the county in which such handler has his residence or established place of business or in the superior court for Kennebec county.

Whenever any handler shall fail to pay any tax due, or shall fail to file any report at the time it is required to be filed, for 2 consecutive reporting periods, the state tax assessor may revoke the handler's certificate of such handler; and such revocation shall become effective upon notice to the handler. Any handler aggrieved by such revocation may apply in writing, within 15 days after notice thereof, to the state tax assessor for a hearing, setting forth the reasons for the hearing, and the manner of relief sought. Upon receipt of such application the assessor shall set a time and place for such hearing and give the handler 10 days' notice thereof. After such hearing the assessor may make such order as may appear to him just and lawful and shall give notice by furnishing a copy of such order to the applicant. Any handler aggrieved by such order of the assessor may appeal therefrom within 20 days after notice of such order to the superior court. Not less than 14 days before the sitting of said superior court, the appellant shall serve upon the state tax assessor or his duly authorized representative a copy of said petition stating the reasons for the appeal and notifying the state tax assessor when the appeal is to be heard. Pending judgment of the court, the order of the state tax assessor shall remain in full force and effect. Any notice required to be given by the state tax assessor under this section may be given in hand or by registered mail. (1953, c. 393, § 1.)

Sec. 279. Appropriation of moneys received. — Moneys received through the provisions of sections 270 to 281, inclusive, by the treasurer of state shall be appropriated and used for the following purposes:

I. For the collection of the tax provided for by section 272 and the enforcement of all the provisions of sections 270 to 281, inclusive.

II. The remaining sum shall be used for such purposes as are defined in section 270 or for carrying out the provisions of sections 270 to 281, inclusive. The committee may cooperate with similar committees in other states and is authorized to pay to a New England committee such part of its receipts as it deems for the best interests of the dairy industry of Maine. (1953, c. 393, § 1.)

Sec. 280. Maine milk tax committee.—The Maine milk tax committee, as heretofore established, shall consist of the following 5 members: the commissioner of agriculture and 4 producers as defined herein, to be appointed by the commissioner of agriculture on recommendation of the various producer associations, individuals or unorganized groups of producers in the state. Each appointed member shall serve for 2 years, or until his successor is duly appointed and qualified. In case of a vacancy caused by death, resignation or otherwise, the vacancy shall be filled by the commissioner for the unexpired period of the term. The appointed members shall receive the same compensation as the members of the Maine milk commission and be reimbursed for expenses incurred in the performance of their duties. (1953, c. 393, § 1.)

See c. 33, re Maine Milk Commission.

Sec. 281. Tax in addition to other taxes.—All taxes imposed and collected under the provisions of sections 270 to 281, inclusive, shall be in addition to any other taxes legally imposed or collected under any other provision of the law of the state now or hereafter in force. (1953, c. 393, § 1.)