

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1369

S. P. 437

In Senate, February 24, 1965

Referred to Committee on Taxation. Sent down for concurrence and ordered printed.

EDWIN H. PERT, Secretary

Presented by Senator Carter of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT Eliminating Use of Stamps Under Cigarette Law.

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

Sec. 1. R. S., T. 36, § 4365, amended. The first paragraph of section 4365 of Title 36 of the Revised Statutes is amended to read as follows:

'A tax is imposed on all cigarettes held in this State by any person for sale, said tax to be at the rate of 3 mills for each cigarette ~~and the payment thereof to be evidenced by the affixing of stamps to the packages containing the cigarettes.~~ Any cigarette 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 this chapter. Nothing contained in this chapter 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.'

Sec. 2. R. S., T. 36, § 4365, amended. The first sentence of the 2nd paragraph of section 4365 of Title 36 of the Revised Statutes is amended to read as follows:

'Each unclassified importer shall, within 24 hours after receipt of any ~~unstamped~~ cigarettes in this State, notify the Tax Assessor of the number of cigarettes received, and the name and address of consignor.'

Sec. 3. R. S., T. 36, §§ 4365-A - 4365-C, additional. Title 36 of the Revised Statutes is amended by adding 3 new sections 4365-A - 4365-C, to read as follows:

'§ 4365-A. Returns to be filed; payment of tax; examination of carriers' and wholesalers' records

Every licensed distributor shall, on or before the 20th day of each calendar month, file with the Tax Assessor, on a form prescribed by him, a return under the penalties of perjury for each place of business maintained, stating the number of cigarettes sold by such licensee in the State during the preceding calendar month and such return shall contain or be accompanied by such further information as the Tax Assessor shall require. If a licensee ceases to sell cigarettes within the State he shall forthwith file with the Tax Assessor such a return for the period ending with such cessation. Such licensee shall, at the time of filing such return, pay to the Tax Assessor the tax provided by section 4365 during the calendar month covered by the return. Cigarettes with respect to which the tax under this chapter has once been imposed and has not been refunded if paid, shall not be subject upon a subsequent sale to the tax imposed by this chapter. The Tax Assessor may, in his discretion, require reports from any common carrier who transports cigarettes to any point or points within the State and from any other person who, under contract, so transports cigarettes, and from any bonded warehouseman or bailee who has in his possession any cigarettes, such reports to contain such information concerning shipments of cigarettes as the Tax Assessor shall determine. All such carriers, bailees, warehousemen and other persons shall permit the examination by the Tax Assessor or his duly authorized agent of any records relating to the shipment of cigarettes into or from, or the receipt thereof within, the State.

§ 4365-B. Penalty for incorrect returns or failure to file return or make report

If any person required to file a return with the Tax Assessor under section 4365-A, having failed to file a return, or having filed an incorrect or insufficient return, fails to file within 20 days after mailing, postage prepaid, of notice to him by the Tax Assessor of his delinquency, a correct and sufficient return, and to pay the amount shown to be due with interest at 6% from the date when the tax was due under section 4365-A, the Tax Assessor at any time within 3 years from the date when the return should have been filed, may determine the amount of tax due under this chapter according to his best information and belief and assess the same at not more than double the amount so determined. Such licensee may within 2 years after mailing, postage prepaid, of notice of the assessment, and any licensee who shall discover that an overpayment of the tax has been made under section 4365-A may within 2 years of the date of overpayment, apply to the Tax Assessor upon a form prescribed by it for an abatement or refund. The Tax Assessor having made such determination, shall give notice in writing to the delinquent licensee of the amount determined to be due and the licensee shall, forthwith after the mailing or delivery of such notice pay to the Tax Assessor the amount so determined with interest at 6% from the 20th day of the month in which the return is required to be made pursuant to section 4365-A. Any person required to file a return with the Tax Assessor under section 4365-A, who fails to file a return or a corrected return as required by this section, or shall forfeit to the State and pay to the Tax Assessor on demand the sum of \$5 for each day of delay. The Tax Assessor may for cause remit the whole or part of the amount so forfeited.

§ 4365-C. Prosecution for illegal possession, etc.

Sheriffs, deputy sheriffs, police officers and duly authorized agents of the Tax

Assessor may without a warrant arrest any person whom he finds in the act of illegally transporting, delivering or possessing cigarettes, which have not been returned and are not returnable under section 4365-A, by a licensed distributor, and seize the said cigarettes, the vending machines, receptacles, boxes or cartons in which the same are contained, hereinafter called the container or containers, in the possession of such person, any vehicle used in the illegal transportation of cigarettes and any records relating to the purchase and sale of cigarettes, and detain them until a warrant for the arrest of such person, and a warrant for the seizure of said cigarettes, vehicle, the container or containers and the records, can be procured. Such cigarettes, vehicle, the container or containers and the records shall be forfeited to the State and proceedings shall be had as provided hereinafter. Such officers shall enforce or cause to be enforced the penalties provided by law against every person who is guilty of a violation of any law relative to the possession of such cigarettes, vehicle and container or containers of which they can obtain reasonable proof.

If the Tax Assessor, his authorized agents, or other police officers shall make complaint to a District Court, that he has reason to believe and does believe that cigarettes, which have not been returned and are not returnable under section 4365-A, by a licensed distributor and which are described in the complaint, are kept or deposited by a person named therein in a store, shop, warehouse, building, vehicle, steamboat, vessel or place, such court, if it appears that there is probable cause to believe said complaint to be true, shall issue a search warrant to an officer qualified to serve criminal process, commanding him to search the premises in which it is alleged that such cigarettes are kept or deposited, and to seize such cigarettes and vehicle, and the container or containers, and securely keep such cigarettes, vehicle, container or containers and the records until final action thereon, and to return the warrant with his doings thereon, as soon as may be, to a District Court having jurisdiction in the place in which such cigarettes, vehicle, container or containers and the records are alleged to be kept or deposited.

The complaint shall particularly designate the building, structure or other place to be searched, the cigarettes, vehicle, container or containers and the records to be seized, the person by whom they are owned, kept or possessed and shall allege that such cigarettes are illegally kept or possessed. The warrant shall allege that probable cause has been shown for the issuing thereof, and the place to be searched, the cigarettes, vehicle, container or containers and the records to be seized, and the person believed to be the owner, possessor or keeper of such cigarettes, vehicle, container or containers and the records, shall be designated therein with the same particularity as in the complaint and the complainant shall be summoned to appear as a witness.

The officer to whom the warrant is committed shall search the premises and seize the cigarettes, vehicle, container or containers and the records described in the warrant, if they are found in or upon said premises, and shall convey the same to some other place of security, where he shall keep the cigarettes, vehicle, container or containers and the records until final action is had thereon.

The court before whom the warrant is returned shall, within 48 hours after

the seizure thereunder of the cigarettes, vehicle, container or containers, and the records, issue a notice, under seal, and signed by the clerk of said court, commanding the person complained against as the keeper of the cigarettes, vehicle, container or containers and the records seized and all other persons who claim any interest therein to appear before said court, at a time and place therein named, to answer to said complaint and show cause why such cigarettes, vehicle, container or containers and the records should not be forfeited.

The notice shall contain a description of the number and kind of container or containers, the quantity and kind of cigarettes, the vehicle and the records seized, as nearly as may be, and shall state when and where they were seized. It shall, not less than 14 days before the time appointed for the trial, be served by a sheriff, deputy sheriff, constable or police officer upon the person charged with being the keeper thereof by leaving an attested copy thereof with him personally or at his usual place of abode, if he is an inhabitant of the State, and by posting an attested copy on the building in which the cigarettes, vehicle, container or containers and the records were seized, if they were found in a building; otherwise in a public place in the municipality in which they were seized.

At the time and place designated in the notice, the person complained against, or any person claiming an interest in the cigarettes, vehicle, container or containers and the records seized, or any part thereof, may appear and make his claim orally or in writing, and a record of his appearance and claim shall be made, and he shall be admitted as a party to the trial. Whether or not a claim as aforesaid is made, the court shall proceed to try, hear and determine the allegations of such complaint, and whether said cigarettes, vehicle and container or containers, records or any part thereof, are forfeited. If it appears that the cigarettes, vehicle, container or containers and the records or any part thereof, were at the time of making the complaint owned or kept by the person alleged therein in violation of law, the court shall render judgment that such and so much of the cigarettes so seized as were so unlawfully kept, and the vehicle, container or containers and the records, shall, except as otherwise provided, be forfeited to the State.

If it is not proved on the trial that all or part of the cigarettes seized were kept contrary to law, the court shall issue a written order to the officer having the same in custody to return so many thereof as were not proved to be so kept or deposited, the container or containers in which such cigarettes were contained, and the vehicle and the records seized, to the place as nearly as may be from which they were taken, or to deliver them to the person entitled to receive them. After executing such order, the officer shall return it to the court with his doings endorsed thereon.

If no person appears and is admitted as a party as aforesaid, or if judgment is rendered in favor of all the claimants who appear, the cost of the proceedings shall be paid as in other criminal case. If only one party appearing fails to sustain his claim, he shall pay all the costs except the expense of seizing and keeping the cigarettes, the container or containers, vehicle, and the records, and an execution shall be issued against him therefor. If judgment is rendered against 2 or more claimants of distinct interests in the cigarettes, container or containers, vehicle,

or records, the costs shall, according to the discretion of the court be apportioned among such parties, and executions shall be issued against them severally. If any such execution is not forthwith paid, the defendant therein named shall be committed to jail, and shall not be discharged therefrom until he has paid the same and the costs of commitment, or until he has been imprisoned 30 days.

A claimant whose claim is not allowed and the person complained against, shall each have the same right of appeal to the Superior Court as if he had been convicted of crime; but before his appeal is allowed he shall recognize to the State in the sum of \$200 with sufficient surety or sureties, to prosecute his appeal to the Superior Court and to abide the sentence of the court thereon. Upon such appeal, any question of fact shall be tried by a Jury.'

Sec. 4. R. S., T. 36, §§ 4366 - 4374, repealed. Sections 4366 to 4374 of Title 36 of the Revised Statutes are repealed.

Sec. 5. R. S., T. 36, § 4380, repealed. Section 4380 of Title 36 of the Revised Statutes is repealed.