

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1742

House of Representatives, June 28, 1967

Filed by Mr. Levesque of Madawaska. Printed under House Rule 33.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

HOUSE AMENDMENT "G" to S. P. 597, L. D. 1575, Bill, "An Act to Appropriate Moneys for the Expenditures of State Government and for Other Purposes for the Fiscal Years Ending June 30, 1968 and June 30, 1969."

Amend said Bill by adding at the end, before the emergency clause, the following:

Section C

Sec. 1. R. S., T. 36, c. 365, additional. Title 36 of the Revised Statutes is amended by adding a new chapter 365, to read as follows:

**CHAPTER 365
SOFT DRINK TAX**

§ 2751. Definitions

1. Soft drink. "Soft drink" shall mean any carbonated beverage including carbonated water; but not including any beverage containing more than $\frac{1}{2}$ of 1% of alcohol by volume. "Soft drink" shall also include any prepared beverage which contains artificial coloring or flavoring, and any other prepared beverage which does not consist of at least 30% by volume of fruit or vegetable juices. "Soft drink" shall not include any prepared beverage consisting of 30% or more by volume of milk.

2. Soft drink distributor. "Soft drink distributor" shall mean any person, association of persons, firm or corporation, importing soft drinks or syrups into this State for resale; or manufacturing soft drinks or syrups in this State.

3. Syrup. "Syrup" shall mean the basic ingredient used in the making of soft drinks as by mixing the same with carbonated water.

§ 2752. Tax imposed

For the privilege of engaging in the business of a soft drink distributor, there is levied a tax on all soft drinks and syrups. The tax shall be based upon soft drinks distributed, at the rate of 1c for each 12 fluid ounces or fraction thereof in each bottle, can or other container; and upon all syrup distributed, at the rate of \$1 per gallon.

Soft drinks or syrups shall be considered distributed at the time title or possession passes from the distributor to another.

§ 2753. Nontaxable distribution

Delivery by a distributor to a point outside this State, or sale to a licensed soft drink distributor, shall be exempt from the tax imposed by this chapter.

§ 2754. Reporting and payment of tax

Every soft drink distributor shall file with the State Tax Assessor on or before the 20th day of each month a report stating under the pains and penalties of perjury, the quantity of soft drinks and syrups distributed during the preceding calendar month. Such report shall be in the form, and shall contain such other information, as prescribed by the State Tax Assessor. At the time of filing such report the distributor shall pay to the State Tax Assessor the tax levied herein and the State Tax Assessor shall pay over all receipts from such tax to the Treasurer of State daily. Such receipts shall be credited to the General Fund.

§ 2755. Registration of distributors

Every soft drink distributor shall register with the State Tax Assessor.

§ 2756. Maintenance and examination of records

Every soft drink distributor shall keep records, the kind and form of which shall be adequate to enable the Tax Assessor to determine tax liability under this chapter. All such records shall be preserved for 3 years, and shall be available for inspection by the Tax Assessor or by any of his employees engaged in the administration of this chapter.

§ 2757. Deficiency assessments

If any soft drink distributor fails to make a report as required, the Tax Assessor may make an estimate of the taxable liability of such distributor from any information he may obtain, and according to such estimate so made by him, assess the taxes, interest and penalties due the State from such distributor, give notice of such assessment to the distributor and make demand upon him for payment, but no such assessment can be made after 6 years from the date the transactions upon which liability is based were required to be reported. After a report is filed under this chapter, the Tax Assessor shall cause the same to be examined, and may make such further audits or investigations as he may deem necessary and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under this chapter, he shall assess the taxes and interest due the State, give notice of such assessment to the person liable, and make

demand upon him for payment but no such assessment can be made after 2 years from the date the transactions upon which liability is based were required to be reported.

§ 2758. Reconsideration of assessment

Any person against whom an assessment shall be made by the Tax Assessor under this chapter may petition for a reconsideration of assessment within 15 days after notice shall have been given such person as provided in section 2760. If a petition for a reconsideration of assessment is not filed within said 15-day period, the amount of the assessment becomes final at the expiration thereof as to law and fact. If a petition for a reconsideration of assessment is filed within said 15-day period, the Tax Assessor shall reconsider the assessment and, if the petitioner has so requested in this petition, shall grant said petitioner an oral hearing and shall give the petitioner 10 days' notice of the time and place thereof. For cause shown the Tax Assessor may extend the time for filing such petition. If appeal is not taken as provided in section 2759, the amount of the assessment upon consideration becomes final as to law and fact at the expiration of the 30-day period therein allowed for the taking of appeals.

§ 2759. Appeals

Any taxpayer aggrieved by the decision upon such petition may, within 30 days after notice thereof from the Tax Assessor, appeal therefrom to the Superior Court in any county where he has a regular place of business, or, if he has no such place of business within the State, to the Superior Court in Kennebec County. The appellant shall, when such appeal is taken, file an affidavit stating his reasons of appeal and serve a copy thereof on the Tax Assessor, and in the hearing of the appeal shall be confined to the reasons of appeal set forth in such affidavit. Jurisdiction is granted to the Superior Court to hear and determine such appeals and to enter such order and decrees as the nature of the case may require. The decision upon all questions of fact shall be final. An appeal may be taken to the law court as in other actions. Decisions shall be certified forthwith by the clerk of courts to the Tax Assessor.

§ 2760. Notices

Any notice required to be given by the Tax Assessor pursuant to this chapter may be served personally, or by sending the same by registered or certified mail to the person for whom it is intended, addressed to such person at the address given in the last report filed by him pursuant to this chapter, or if no report has been filed, then to the address of his last known abode; or in the case of other than an individual to the last known business address.

§ 2761. Penalties and interest

Whenever the Tax Assessor shall determine that any tax assessed under section 2757 was unpaid due to negligence or intentional disregard of this chapter or of any ruling, rule or regulation of the Tax Assessor issued pursuant to this chapter but without intent to defraud, a penalty of 10% of the amount of such tax as determined by the Tax Assessor shall be added to said assessment. Whenever any tax assessed under section 2757 was unpaid due to fraud with intent to evade the tax imposed by this chapter, a penalty of 25% of the amount

of such tax as determined by the Tax Assessor shall be added to said assessment. Such penalties shall be in addition to any interest and other penalties provided by law but interest shall not accrue on said penalties. For cause, the Tax Assessor may waive or abate all or any part of said penalties. Any person who shall fail to pay any tax imposed by this chapter on or before the day when the same shall be required to be paid shall pay interest on said tax at the rate of $\frac{1}{2}$ of 1% each month or fraction thereof that the same remains unpaid, to be calculated from the date the tax was required to be paid. All such interest shall be payable to, and recoverable by, the Tax Assessor in the same manner as if it were a tax imposed by this chapter. If the failure to pay such tax when required to be paid is explained to the satisfaction of the Tax Assessor, he may abate or waive the payment of the whole or any part of such interest and, for cause may abate the whole or any part of such tax.

The Tax Assessor shall pay over all penalties and interest to the Treasurer of State daily and such receipts shall be credited to the General Fund.

§ 2762. Tax a debt; recovery; preference

The taxes, interest and penalties imposed by this chapter, from the time the same shall be due, shall be a personal debt of the soft drink distributor to the State of Maine, recoverable in any court of competent jurisdiction in a civil action in the name of the State of Maine, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise.

§ 2763. Criminal penalties

Any violation of any provision of this chapter for which a penalty is not provided by any other Title may be punished by a fine of not less than \$20 nor more than \$500, or by imprisonment for not more than 11 months, or by both. For the purpose of this section, every person required to register under this chapter who shall engage in the business of soft drink distributor, without being the holder of a currently valid registration certificate, shall commit a separate offense for each calendar week or part thereof during which he shall be so engaged.

Sec. 2. **Effective date.** Section C of this Act shall be effective August 1, 1967.

Section D

Sec. 1. R. S., T. 36, § 4365, amended. The first sentence of section 4365 of Title 36 of the Revised Statutes, as amended by section 1 of chapter 343 of the public laws of 1965, is further 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 $\neq 5\frac{1}{2}$ mills for each cigarette and the payment thereof to be evidenced by the affixing of stamps to the packages containing the cigarettes.

Sec. 2. R. S., T. 36, § 4365, amended. The next to the last sentence of section 4365 of Title 36 of the Revised Statutes, as amended by section 2 of chapter 343 of the public laws of 1965, is further amended to read as follows:

The Tax Assessor thereupon shall notify the unclassified importer of the amount of the tax due thereon, which shall be at the rate of $5\frac{1}{2}$ mills per cigarette.

Sec. 3. Cigarettes on hand; stamping or accounting; waiver provision. The State Tax Assessor may by regulation waive for a period of not over 7 days following the effective date of this Act, payment of additional tax by retail dealers with respect to stocks of cigarettes properly stamped at the rate of 4 mills per cigarette sold during such period, provided such stocks were on hand as of the effective date of this Act; and pursuant thereto, the State Tax Assessor may also waive for the same period the application to retail dealers of the Revised Statutes, Title 36, section 4369, 4370 and 4372 as respects such cigarettes.

Nothing herein shall be construed to authorize any distributor or subjobber to distribute to any retail outlet cigarettes not properly stamped at the rate of $5\frac{1}{2}$ mills per cigarette.

Cigarettes in the hands of retail dealers subsequent to the period of waiver provided for above, not properly stamped at the rate of $5\frac{1}{2}$ mills per cigarette, shall be subject to confiscation under the provisions of the Revised Statutes, Title 36, section 4372; and such retailer shall be subject to any other penalties by law provided.

Section E

Sec. 1. R. S., T. 36, c. 712, additional. Title 36 of the Revised Statutes is amended by adding a new chapter 712, to read as follows:

CHAPTER 712

REAL ESTATE TRANSFERS

§ 4641. Definitions

1. **Consideration.** "Consideration" means the total price or amount paid, or required to be paid, for real property valued in money, whether received in money or otherwise; and shall include the amount of any mortgages, liens or encumbrances thereon.

2. **Deed.** "Deed" means a written instrument whereby the grantor conveys to the grantee title in whole or in part to real property.

§ 4642. Rate of tax

There is imposed a tax upon the transfer of title to real property, at the rate of \$1 for consideration between \$251 and \$500 and 55c for each \$500 or fraction thereof above \$500. The grantee shall be liable for payment of such tax.

§ 4643. Collection

The State Tax Assessor shall provide for the collection of the tax by each register of deeds, and for that purpose may provide for the installation of a meter machine in each registry office.

When any deed is offered for recordation, the register of deeds shall ascertain and compute the amount of tax due thereon and shall collect such amount as prerequisite to the acceptance of the deed for recordation.

The amount of tax shall be computed on the consideration for the deed, as set forth in the "declaration of value" prescribed by section 4645.

Payment of tax shall be evidenced by affixing such indicia of payment as shall be prescribed by the State Tax Assessor to the declaration of value provided for in section 4645.

Each register of deeds shall, on or before the 10th day of each month, pay over to the State Tax Assessor 90% of tax collected during the previous month. The remaining 10% shall be retained for the county by the register of deeds and accounted for to the county treasurer as reimbursement for services rendered by the county in collecting the tax.

The State Tax Assessor shall pay over all receipts to the Treasurer of State daily and such receipts shall be credited to the General Fund.

§ 4644. Exemptions

1. Exemptions. The following deeds shall be exempt from the tax imposed by this chapter:

- A. Deeds to property acquired by or from the United States of America, the State of Maine or any of their instrumentalities, agencies or subdivisions;
- B. Mortgage deeds and discharges of mortgage deeds;
- C. Deeds of partition;
- D. Deeds made pursuant to mergers of corporations;
- E. Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock.

§ 4645. Declaration of value

Each deed, except conveyances to the United States of America, the State of Maine or any of their instrumentalities, agencies or subdivisions, mortgages or mortgage discharges, when offered for recording shall be accompanied by a statement or declaration prepared in duplicate and signed, subject to the penalties of perjury, by the grantee or his authorized representatives declaring the consideration for the property thereby transferred. If the transfer is declared not subject to the tax, the reason therefor shall be stated.

The declaration shall be in the form prescribed by the State Tax Assessor, who shall provide an adequate supply of such forms to each register of deeds in the State.

The register of deeds shall transmit both copies of the declaration of value to the State Tax Assessor no later than 40 days from the date of recordation

of the deed subject to the tax. The State Tax Assessor shall, on or before the 20th day of each month, transmit one copy of each declaration of value to the assessors of the municipality in which the real estate is situated.

The information contained in the "declaration of value" prescribed by this section shall be used only in connection with the administration of taxes.

§ 4646. Powers and duties of State Tax Assessor

The State Tax Assessor is authorized to prescribe such rules and regulations as he may deem necessary to carry out the purposes of this chapter.

Within 2 years of the recording of a deed subject to the tax imposed by this chapter, the State Tax Assessor may examine any books, papers, records or memoranda of this grantor or grantee bearing upon the amount of tax payable, and may enforce by subpoena his right to such examination. If therefrom he shall determine there is a deficiency of taxes due under this chapter, he shall assess such deficiency, together with interest at the rate of 6% per year from the date of recording, giving notice to the persons liable, but no such assessment can be made more than 2 years after date of recording.

§ 4647. Petition for reconsideration of assessment

Any person against whom an assessment shall be made by the State Tax Assessor under section 4646 may petition for a reconsideration of assessment within 15 days after notice shall have been given such person. If a petition for a reconsideration of assessment is not filed within said 15-day period, the amount of the assessment becomes final at the expiration thereof as to law and fact. If a petition for reconsideration is filed within said 15-day period, the State Tax Assessor shall reconsider the assessment and, if the petitioner has so requested in his petition, shall grant said petitioner an oral hearing and shall give the petitioner 10 days' notice of the time and place thereof. For cause shown the State Tax Assessor may extend the time for filing such petition. If appeal is not taken as provided in section 4648, the amount of the assessment upon reconsideration becomes final as to law and fact at the expiration of the 30-day period therein allowed for the taking of appeals.

§ 4648. Appeals

Any taxpayer aggrieved by the decision upon such petition may, within 30 days after notice thereof from the State Tax Assessor, appeal therefrom to the Superior Court in the county wherein the deed has been recorded. The appellant shall, when such appeal is taken, file an affidavit stating his reasons of appeal and serve a copy thereof on the State Tax Assessor, and in the hearing of the appeal shall be confined to the reasons of the appeal set forth in such affidavit. Jurisdiction is granted to the Superior Court to hear and determine such appeals and to enter such order and decrees as the nature of the case may require. The decision upon all questions of fact shall be final. An appeal may be taken to the law court as in other actions. Decisions shall be certified forthwith by the clerk of courts to the State Tax Assessor.

§ 4649. Notices

Any notice required to be given by the State Tax Assessor pursuant to this chapter to any person may be served personally, or by sending the same by registered or certified mail to the person for whom it is intended, addressed to such person at the address given in the declaration of value or his last known abode.

§ 4050. Enforcement; priority of tax

The tax and interest imposed by this chapter shall be recoverable by a civil action in the name of the State of Maine, and shall have preference in any distribution of the assets of the taxpayer.

§ 4651. Penalty for recording without tax

Any register of deeds who shall record any deed upon which a tax is imposed by this chapter without collecting tax or obtaining the declaration of value required by this chapter shall, upon conviction, be punished by a fine of not over \$200.

§ 4652. Penalty for falsifying declaration of value

Any person who willfully falsifies the consideration prescribed by section 4645 or refuses to permit the State Tax Assessor, or any of his agents or representatives to inspect such property, books, papers, records or memoranda within 2 years after recording, or alters, cancels or obliterates any part thereof, or makes any false entry therein shall be punished by a fine of not more than \$1,000, or by imprisonment for less than one year, or by both.

Sec. 2. Effective date. Section E of this Act shall become effective on January 1, 1968 except as to deeds acknowledged or recorded prior to that date.