

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1448

H. P. 1127

House of Representatives, April 15, 1969

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Bragdon of Perham.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Providing for a Tax on Soft Drinks.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the essential needs of State Government require that additional revenue be raised by the Legislature; and

Whereas, the revenue to be collected under this Act may not be sufficient to provide for said needs during the next fiscal biennium unless the tax is imposed on and after June 1, 1969; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

R. S., T. 36, c. 716, additional. Title 36 of the Revised Statutes is amended by adding a new chapter 716, to read as follows:

CHAPTER 716
SOFT DRINK TAX

§ 4761. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

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 drinks 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.

§ 4762. 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 1¢ 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.

§ 4763. 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.

§ 4764. 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 in this chapter 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.

§ 4765. Registration of distributors

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

§ 4766. 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.

§ 4767. 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.

§ 4768. 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 4770. 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 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 Tax Assessor may extend the time for filing such petition. If appeal is not taken as provided in section 4769, 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.

§ 4769. 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.

§ 4770. 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.

§ 4771. Penalties and interest

Whenever the Tax Assessor shall determine that any tax assessed under section 4767 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 4767 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.

§ 4772. 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.

§ 4773. Criminal penalties

Any violation of any provision of this chapter for which a penalty is not provided by any other Title of the Revised Statutes shall 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 registra-

tion certificate, shall commit a separate offense for each calendar week or part thereof during which he shall be so engaged.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect June 1, 1969.