

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1021

H. P. 752

House of Representatives, February 19, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Finemore of Bridgewater.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

**AN ACT Relating to Clarifying the Sales Tax Law as It Relates to
Gratuities and Service Charges in Eating Establishments.**

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

Sec. 1. R. S., T. 36, § 1752, sub-§ 14, amended. The 3rd sentence of subsection 14 of section 1752 of Title 36 of the Revised Statutes is amended to read as follows:

“Sale price” shall not include allowances in cash or by credit made upon the return of merchandise pursuant to warranty, or the price of property returned by customers when the full price thereof is refunded either in cash or by credit, nor shall “sale price” include the price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated, nor shall “sale price” include that amount charged or collected for gratuities and service charges, that are to be disbursed by hotels, motels, restaurants and other eating establishments as part of a person’s wages, nor shall a sales tax be charged or collected on that part of a person’s wages that the employer is allowed as a credit towards an employee’s wages for room and board connected with his employment.

Sec. 2. R. S., T. 36, § 1760, sub-§ 3, amended. Subsection 3 of section 1760 of Title 36 of the Revised Statutes is amended by adding at the end the following new paragraph:

“Food products” shall not include that amount charged or collected for gratuities and service charges that are to be distributed by hotels, motels, restaurants and other eating establishments as part of an employee’s wages, nor shall a sales tax be charged or collected on that part of a person’s wages

that the employer is allowed as a credit towards an employee's wages for room and board connected with his employment.

STATEMENT OF FACT

The purpose of this bill is to request a change in the section that the State Tax Assessor ruled recently that service charges and gratuities received by an operator should be included in the total amount of the sale, and thus subject to a sales tax. Our contention is that gratuities and service charges are a part of wages as defined in the Federal Fair Labor Standards Act and the Maine Minimum Wage Law, that part of both laws that pertains to tips and service charges. The State Tax Assessor after a hearing, ruled that as long as tips or service charges were voluntary on the customer's part, then they would not be subject to a sales tax. The purpose of this bill will spell this out in the law.