

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(EMERGENCY)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1192

H. P. 863

House of Representatives, February 25, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Bernier of Westbrook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Imposing Tax on Cigars and Tobacco Products.

Emergency preamble. Whereas, due to increased cost of labor and materials, the cost of State Government in administering the services required by law has increased; and

Whereas, further revenue is necessary in order to carry out the functions of government as provided by law; and

Whereas, orderly procedure of administering the essential duties required by the people of the State of Maine necessitates further moneys; 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:

Sec. 1. R. S., T. 36, § 1760, sub-§ 10, amended. Subsection 10 of section 1760 of Title 36 of the Revised Statutes is amended to read as follows:

10. **Cigars, tobacco and cigarettes.** Sales of cigars, tobacco and cigarettes, subject to other taxes imposed by chapter 703.

Sec. 2. R. S., T. 36, § 4361, amended. Section 4361 of Title 36 of the Revised Statutes is amended to read as follows:

§ 4361. **Definitions**

Whenever used in this chapter, unless the context shall otherwise require, the following words and phrases shall have the following meanings:

1. **Dealer.** "Dealer" shall mean any person other than a distributor, who is engaged in this State in the business of selling cigarettes, **cigars and tobacco products**.

2. **Distributor.** "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.

3. **Licensed dealer.** "Licensed dealer" shall mean a dealer licensed under this chapter.

4. **Licensed distributor.** "Licensed distributor" shall mean a distributor licensed under this chapter.

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

6. **Sale or sell.** "Sale" or "sell" shall include or apply to gifts, exchanges and barter.

7. **Sub-jobber.** "Sub-jobber" shall mean a wholesale dealer who does not qualify as a distributor.

8. **Tax Assessor.** "Tax Assessor" shall mean the State Tax Assessor.

8-A. **Tobacco products.** "Tobacco products" shall include perigue, 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 chewing or smoking in a pipe or to be made into cigarettes or otherwise, or both for chewing and smoking, and substitutes therefor.

9. **Unclassified importer.** "Unclassified importer" shall mean any person, firm, corporation or association within the State, other than a licensed distributor, sub-jobber or dealer who shall import, receive or acquire from without the State, cigarettes, **cigars and tobacco products** for use or consumption within the State.

Sec. 3. R. S., T. 36, § 4362, amended. Section 4362 of Title 36 of the Revised Statutes is amended to read as follows:

§ 4362. Licenses

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 one 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 Tax Assessor, and shall contain the name and address of the applicant, the address of the place of business and such other information as the Tax Assessor may require for the proper administration of this chapter. Each application for a wholesale outlet license shall be accompanied by a fee of \$25 and each 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 Tax 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 or tobacco products, without a license as provided in this section, shall be punished by a fine of not more than \$25 for the first 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 first offense and not less than \$25, nor more than \$200, for each subsequent offense.

Sec. 4. R. S., T. 36, § 4365, amended. Section 4365 of Title 36 of the Revised Statutes, as amended, is further amended to read as follows:

§ 4365. Rate of tax

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 6 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. Any cigarettes, 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 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.

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 6 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.

Sec. 5. R. S., T. 36, § 4366, amended. The first sentence and the 2nd sentence, as repealed and replaced by section 50 of chapter 504 of the public laws of 1969, of section 4366 of Title 36 of the Revised Statutes are amended to read as follows:

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 this chapter. To licensed distributors he shall sell such cigarette stamps at a discount of 2¼% of their face value and tobacco stamps at a discount of 7% of their face value.

Sec. 6. R. S., T. 36, §§ 4367 - 4369, amended. Sections 4367 to 4369 of Title 36 of the Revised Statutes are amended to read as follows:

§ 4367. Resale of stamps prohibited; redemption

No distributor or dealer shall sell or transfer any stamps issued under this chapter. The Tax 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 Tax 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 cigarettes 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.

§ 4368. Stamps affixed by distributors

Each distributor shall affix, or cause to be affixed, in such manner as the Tax Assessor may specify in regulations issued pursuant to this chapter, to each individual package of cigarettes, **cigars and tobacco products** sold or distributed by him, stamps of the proper denominations, as required by section 4365. Such stamps may be affixed by a distributor at any time before the cigarettes, **cigars and tobacco products** are transferred out of his possession.

§ 4369. Stamps affixed by dealers

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 this chapter, and before selling such cigarettes, **cigars and tobacco products**, affix or cause to be affixed, in such manner as the Tax Assessor may specify in regulations issued pursuant to this chapter, to each individual package of cigarettes, **cigars and tobacco products**, stamps of the proper denomination as required by section 4365.

Sec. 7. R. S., T. 36, § 4370, amended. The first sentence, as amended by chapter 62 of the public laws of 1967, and the 2nd sentence of section 4370 of Title 36 of the Revised Statutes are amended to read as follows:

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 prod-**

ucts which do not bear stamps evidencing the payment of the tax imposed by this chapter, provided a licensed dealer may keep on hand unstamped cigarettes, **cigars and tobacco products** for a period not exceeding 72 hours, and provided a distributor may sell to another distributor, subject to regulations prescribed by the State Tax Assessor, cigarettes, **cigars and tobacco products** stamped with the indicia of another state. 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.

Sec. 8. R. S., T. 36, §§ 4371 and 4372, amended. Sections 4371 and 4372 of Title 36 of the Revised Statutes are amended to read as follows:

§ 4371. 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 and tobacco products** which do not bear stamps, shall be prima facie evidence that the cigarettes, **cigars and tobacco products** have been imported and that they are intended for use or consumption within the State.

§ 4372. Unstamped cigarettes, cigars and tobacco products to be confiscated

Any cigarettes, **cigars and tobacco products** found at any place in this State without stamps affixed thereto as required by this chapter, 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 4365, are declared to be contraband goods and are subject to forfeiture to the State. Sheriffs, deputy sheriffs, police officers and duly authorized agents of the said Tax 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, the officer or agent seizing them shall immediately file with the judge 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. Such judge 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. 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.

Sec. 9. R. S., T. 36, § 4373, amended. Section 4373 of Title 36 of the Revised Statutes, as amended by chapter 4 of the public laws of 1969, is further amended to read as follows:

§ 4373. Forfeiture proceedings

If no claimant appears, such judge shall, on proof of notice, 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 judge such claim in writing, stating specifically the rights 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 Tax 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 alleged in said libel and monition, and state his business and place of residence and shall sign and make oath to the same before said judge. If any person so makes claim, he shall be admitted as a party to the process; and the judge 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 judge 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 Tax 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 judge 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 judge, 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 actions from a judge. 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. In the case of cigarettes, **cigars and tobacco products** seized from any licensed dealer because of insufficient stamps, the owner from whom they are seized shall be reimbursed within 30 days of forfeiture for the face value of any Maine cigarette, **cigar and tobacco product** tax stamps affixed to the packages, provided the face value of such stamps exceeds \$1. The Treasurer of State shall provide, out of money collected under this chapter, the funds necessary for such reimbursement.

Sec. 10. R. S., T. 36, § 4375, amended. Section 4375 of Title 36 of the Revised Statutes is amended to read as follows:

§ 4375. Records; examination by Tax Assessor

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 Tax Assessor and his authorized agents. The Tax 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 this chapter 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 this chapter is being obeyed.

Sec. 11. R. S., T. 36, § 4377, amended. The last sentence of section 4377 of Title 36 of the Revised Statutes is amended to read as follows:

The Tax 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.

Sec. 12. R. S., T. 36, § 4380, amended. The first 2 sentences of section 4380 of Title 36 of the Revised Statutes are amended to read as follows:

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 section 4366, authorize any licensed distributor or licensed dealer to use any metering machine approved by him, such machine to be sealed by the Tax 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 Tax 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.

Sec. 13. R. S., T. 36, § 4382, amended. Section 4382 of Title 36 of the Revised Statutes is amended to read as follows:

§ 4382. 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 distributor 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**. 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.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect on July 1, 1971.

FISCAL NOTE

It is estimated that this Act will produce revenue in the amount of \$1,000,000 per year.

STATEMENT OF FACT

It is the intent of this Act to impose a tax on cigars and tobacco products for purposes reflected in the emergency preamble.