

MAINE STATE LEGISLATURE

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CORRECTED DOCUMENT

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1149

H. P. 819 House of Representatives, February 22, 1973
Referred to Committee on Taxation. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Emery of Rockland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Providing for a Tax on Petroleum Products and Refineries to Promote Environmental Protection.

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

Sec. 1. R. S., T. 36, c. 719, additional. Title 36 of the Revised Statutes is amended by adding a new chapter 719 to read as follows:

CHAPTER 719

PETROLEUM PRODUCTS TAX

§ 4901. Findings; purpose

The Legislature finds and declares that the refining of oil, petroleum products and their by-products within the jurisdiction of the State is a hazardous undertaking; that spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the refining of such products pose threats of great danger and damage to the marine, estuarine and territorial environment of the State; to owners and users of property; to public and private recreation; to citizens of the State, and other interests deriving livelihood from the land or sea; and to the beauty of Maine generally; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as set forth in this chapter and that such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in refining oil, petroleum products and their by-products and related activities.

The Legislature further finds and declares that the preservation of the public uses referred to is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety and that, in view of the State's interest in such preservation, the tax burden imposed by this legislation upon those who refine oil, petroleum products and their by-products in this State is a fair and reasonable method for taxing them for the use of the sea, land and air of the State for their operations and is further a fair and reasonable method of providing funds by which the State may be ready and able to cope with any of the aforesaid problems caused by such activities.

§ 4902. Definitions

The following words and phrases when used in this chapter shall have the following meanings, unless a different meaning is clearly required by the context.

1. Barrell. "Barrell" shall mean 42 U.S. Gallons at 60° Fahrenheit.
2. Oil, petroleum products and their by-products. "Oil, petroleum products and their by-products" shall mean any form of liquid hydrocarbon regardless of its specific gravity.
3. Person. "Person" shall mean any individual, partnership, joint venture, corporation or any group of the foregoing organized or united for a business purpose.
4. Refiner. "Refiner" shall mean any person who engages in the business of refining oil, petroleum products or their by-products within the State.
5. Refining. "Refining or refine" shall mean any process by which any liquid hydrocarbon is transmuted into any other chemically distinguishable liquid hydrocarbon.

§ 4903. Tax additional

The excise tax imposed and collected under this chapter shall be in addition to other taxes, licenses, fees or impositions legally imposed or collected under any other law of the State now or hereafter in force.

§ 4904. Rate of tax

An excise tax of 2¢ per barrel is levied and imposed upon the privilege of refining oil, petroleum products and their by-products within the State.

§ 4905. Refiners' applications

Every refiner shall file an application with the State Tax Assessor on forms prescribed and furnished by the State Tax Assessor, which shall contain the name under which such refiner is transacting business within the State, the place or places of business where refining is taking place, the names and addresses of the several persons constituting a firm or partnership, or, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the State. The State Tax Assessor will then issue a certificate to the refiner and no refiner shall refine petroleum products or

their by-products in the State until such certificate is furnished as required by this section.

§ 4906. Reports of quantities refined and payment of tax; refunds

Every refiner shall keep, as a part of his records, a record of the quantity of all oil, petroleum products and their by-products refined, which records shall be open for inspection at all times, and every refiner shall, on or before the 10th day of each month, render a report to the State Tax Assessor, stating the quantity of oil, petroleum products and their by-products refined by him during the preceding calendar month, on forms furnished by said State Tax Assessor, and, at the same time, shall pay to the State Tax Assessor the tax of 2¢ per barrel on all oil, petroleum products and their by-products so reported as refined. If it appears to the State Tax Assessor, from inspection of records or otherwise, that an additional tax is due or overpayment of tax has been made, additional assessments or refunds shall be made by the State Tax Assessor. Such additional assessments shall be due upon certification to the taxpayer. Any refiner may pay to the State Tax Assessor, in advance, a sum of money based upon an estimate of his tax for a given number of months, and this sum shall be a credit against future monthly reports of that refiner. The State Tax Assessor shall pay over all receipts from such tax to the Treasurer of State daily.

§ 4907. Inspections

The State Tax Assessor, or his duly authorized agent, shall have authority to enter any place of business of a refiner, or any car, boat, truck or other conveyance in which oil, petroleum products or their by-products are to be transported, and duly inspect any books or records of any refiner for the purpose of determining what oil, petroleum products and their by-products are taxable, or for the purpose of determining the truth or falsity of any statement or return made by any refiner.

§ 4908. Appropriation and use of moneys received

Money received under this chapter by the Treasurer of State shall be appropriated and used for the following purposes:

1. Collection and enforcement. For the collection of the tax imposed by this chapter and the enforcement thereof;
2. Balance of funds. The balance of such amounts shall be disbursed from time to time to the Department of Environmental Protection, upon its request, for use in the prevention or abatement of the threats, dangers and hazards referred to in section 4901.

§ 4909. False returns or violations

Any refiner who shall make any false or fraudulent report or return required by this chapter or who shall evade or violate any of the provisions of this chapter shall be punished by a fine of not more than \$500, and his refiner's certificate shall be suspended by the State Tax Assessor until such fine and all payments due the State on the tax imposed under this chapter are paid in full. Whenever any refiner shall fail to pay any tax due under

this chapter, within the specified time, the Attorney General shall enforce payment of such tax by civil action against the refiner for the amount of such tax in either the Superior Court in Kennebec County or in the District Court in the division in which such refiner has his residence or established place of business. Each day that a violation or evasion shall continue shall be considered a separate offense.

Sec. 2. R. S., T. 36, § 501, sub-§ 5-A, additional. Section 501 of Title 36 of the Revised Statutes is amended by adding a new subsection 5-A, to read as follows.

5-A. Petroleum refinery. "Petroleum refinery" shall mean any location or facility at which the process of refining is carried on.

Sec. 3. R. S., T. 36, § 501, sub-§ 8-A, additional. Section 501 of Title 36 of the Revised Statutes is amended by adding a new subsection 8-A, to read as follows:

8-A. Refining. "Refining" shall mean any process by which any liquid hydrocarbon is transmuted into any other chemically distinguishable liquid hydrocarbon.

Sec. 4. R. S., T. 36, § 655, sub-§ 1, ¶ O, additional. Subsection 1 of section 655 of Title 36 of the Revised Statutes, as amended, is further amended by adding a new paragraph O, to read as follows:

O. As of the date on which the construction of a petroleum refinery commences, all personal property located within the confines of such refinery and used in connection therewith, provided that such construction has commenced on or before the first day of April next following the filing of the certificate of intent required by section 1582.

Sec. 5. R. S., T. 36, § 656, sub-§ 1, ¶ G, additional. Subsection 1 of section 656 of Title 36 of the Revised Statutes, as amended, is further amended by adding a new paragraph G, to read as follows:

G. As of the date on which the construction of a petroleum refinery commences, all real property located within the confines of such refinery, provided that such construction has commenced on or before the first day of April next following the filing of the certificate of intent required by section 1582.

Sec. 6. R. S., T. 36, c. 115, additional. Title 36 of the Revised Statutes is amended by adding a new chapter 115, to read as follows:

CHAPTER 115
PETROLEUM REFINERY TAX
SUBCHAPTER I
GENERAL PROVISIONS

§ 1581. Definitions

The following words and phrases when used in this chapter shall have the following meanings, unless a different meaning is clearly required by the context.

1. Petroleum refinery. "Petroleum refinery" shall mean any location or facility at which the process of refining is carried on.

2. Refining. "Refining" shall mean any process by which any liquid hydrocarbon is transmuted into any other chemically distinguishable liquid hydrocarbon.

§ 1582. Certificate of intent

The construction of a petroleum refinery in the State shall not be commenced until the owner of the property on which said refinery is to be located files with the State Tax Assessor a certification to the fact that said owner intends to commence construction of a petroleum refinery on or before the first day of April next following the filing of said certificate.

SUBCHAPTER II

REAL PROPERTY TAXES

§ 1583. Taxation by State; petroleum refinery tax

Real estate that is exempt from taxation under paragraph G of subsection 1 of section 656 shall be taxed at the rate used by the municipality in which said real estate is located for the tax year for which the assessment is made applied to a 100% valuation as determined by the State Tax Assessor.

§ 1584. Notice of assessment; unknown owners; interest

When any taxes are assessed as provided for in section 1583, the State Tax Assessor shall, on or before the first day of July thereafter, notify in writing the owners of real estate so assessed, by sending to each by mail at his last known address, a statement containing a brief description of the real estate assessed, the date when payment is required, and the amount due from each such owner of all such taxes. Whenever such taxes are assessed on a biennial basis, he shall send like statements of such taxes for the 2nd year of the biennium on or before the first day of July of such 2nd year. In case the owners of any such real estate are unknown, instead of sending the notices by mail he shall, on or before the first day of August, cause the lists of assessments on such real estate to be advertised in the state paper and in some newspaper, if any, published in the county in which the real estate lies and shall cause like advertisement of the lists of such taxes for the following year to be made on or before the first day of August of that year. Such a statement or advertisement shall be sufficient legal notice of such assessment. Such real estate is held to the State for payment of such taxes, with interest thereon at the rate of 6% per year to commence on October 1st upon the taxes for the year in which such assessment is made. Whenever such taxes are assessed on a biennial basis, interest on taxes for the 2nd year of the biennium shall commence on October 1st of such 2nd year.

§ 1585. Payment of taxes; delinquent taxes; publication; certificate filed in registry

Taxes on real estate mentioned in section 1583 shall be delinquent on the first day of February next following the date of assessment. On or before the 20th day of February annually, the State Tax Assessor shall send by mail to the last known address of each owner of such real estate upon which taxes remain unpaid a notice in writing, containing a description of the real estate assessed, the amount of unpaid taxes, interest to the first day of February, and publication costs of \$3, and alleging that a lien is claimed on such real estate for payment of such taxes, interest and costs, with a demand that payment be made by the first day of March, following. On or before the 20th day of February annually, the State Tax Assessor shall publish in the state paper and in some newspaper, if any, published in the county where the real estate lies, a list, containing the name or names of the owners, the amount of unpaid taxes, together with interest and costs, and a description of the real estate upon which taxes remain unpaid. If such taxes and interest to date of payment and costs are not paid by such first day of March, the State Tax Assessor shall record between the first and 15th days of March in the registry of deeds of the county or registry district where such real estate lies a certificate signed by the State Tax Assessor, setting forth the name or names of the owners, the description of such real estate, the amount of unpaid taxes, interest to the first day of March, the amount of costs, and a statement that demand for payment and publication of such taxes has been made, and that such taxes, interest and costs remain unpaid. Interest shall accrue on the unpaid balance of tax secured by such mortgage, at the rate of 6% per year. The costs to be charged by the register of deeds for such filing shall not exceed \$1.

§ 1586. Filing of certificate to create mortgage; foreclosure provisions; notice; discharge

The filing of the certificate provided for in section 1585 in the registry of deeds shall be deemed to create and shall create a mortgage on such real estate to the State, having priority over all other mortgages, liens, attachments and encumbrances of any nature, and shall give to the State all the rights usually incident to a mortgage, except that the mortgagee shall not have any right of possession of such real estate until the right of redemption shall have expired.

Part payments accepted during the redemption period shall not interrupt or extend the redemption period or in any way affect the foreclosure proceedings. If the total amount necessary for redemption is not paid before the mortgage is foreclosed, the mortgagor shall be entitled to a refund of such part payments made after the filing of the certificate provided for in section 1585.

If said mortgage, together with interest and costs, shall not be paid by the 30th day of March of the year following the filing of such certificate in the registry of deeds as provided for in this section and section 1585, the said mortgage shall be deemed to have been foreclosed and the right of redemption to have expired.

The filing of such certificate in the registry of deeds shall be sufficient notice of the existence of the mortgage.

In the event that such tax, interest and costs, together with \$1 for recording the discharge, shall be paid within the period of redemption, the State Tax Assessor shall discharge said mortgage in the same manner as is now provided for the discharge of real estate mortgages and shall record such discharge in the appropriate registry of deeds.

Each owner may pay for his proportionate ownership in any tract of land whether in common or not, and upon filing with the State Tax Assessor a certificate containing a suitable description of the property on which he desires to pay the taxes and where the same is located, and paying the amount due, together with interest and costs, shall receive a certificate from the State Tax Assessor discharging the taxes on the fractional part or ownership upon which such payment is made.

§ 1587. Supervision, administration and sale of real estate

A copy of the lien certificate shall be filed in the office of the State Tax Assessor. On the 30th day of March annually, whenever the State shall have acquired title to real estate assessed for any state, county and forestry district taxes, the State Tax Assessor shall certify to the State Controller the amount of unpaid taxes, interest and costs then outstanding. Unpaid taxes and interest and costs on the books of the State shall be charged against the General Fund.

The State Tax Assessor shall, whenever the State acquires title to such real estate, cause an inventory to be made of all such real estate. Such inventory shall contain a description of the real estate, amount of accrued taxes by years and such other information as may be necessary in the administration and supervision of such real estate. A copy of such inventory shall be furnished to the Forest Commissioner prior to the convening of the Legislature. The State Tax Assessor shall biennially make a report to the Legislature not later than 15 days after such Legislature convenes. Such report shall contain a copy of the inventory of real estate then owned by the State and such recommendations as to the disposition of this real estate as the State Tax Assessor and the Forest Commissioner may wish to make.

The State Tax Assessor shall, after authorization by the Legislature, sell and convey any such real estate; but shall in all cases of sales, except sales to the former owners of the real estate, give public notice of the proposal to sell such real estate and shall ask for competitive bids and shall sell to the highest bidder, with the right of rejecting all bids. No sales of such real estate or any stumpage thereon shall be made by the State Tax Assessor except by authorization of the Legislature.

The supervision, administration, utilization and vindication of the rights of the State in such real estate shall be vested in the State Tax Assessor until title is conveyed or otherwise disposed of by the Legislature.

All moneys received from the sale or use of such real estate shall be credited to the fund established under section 1594.

This section shall apply to real estate acquired through tax sales and owned by the State.

§ 1588. Action to recover taxes

The State Tax Assessor may bring a civil action in his own name to enforce the lien on real estate created by section 552, to secure the payment of taxes assessed under section 1583. Such action shall be begun after the expiration of 8 months and within one year after August 1st following the date such taxes were assessed. The proceedings shall be in accordance with section 941, except that the preliminary notice and demand for payment of said tax as provided in said section shall not be required.

§ 1589. Collection of taxes

In addition to the methods of collecting the taxes provided by this chapter, owners of real estate subject to such tax shall be liable to pay such taxes to the State Tax Assessor upon demand. If such taxes shall not be paid within 30 days after such demand, the State Tax Assessor may collect the same, with interest as provided by law, by a civil action in the name of the State. Such action shall be brought in the Superior Court in the county where such unorganized townships are located, and the Attorney General may begin and prosecute such actions when requested by the State Tax Assessor. The demand shall be sufficient if made by a writing mailed to such owner or his agent at his usual post-office address. In case such owner resides without the State and has no agent within the State known to the State Tax Assessor, such demand shall be sufficient if made upon the Forest Commissioner. Such action shall be brought not less than 30 days after the giving or mailing of the demand. The beginning of such action, obtaining execution and collecting the same shall be deemed a waiver of the rights of the State under sections 1585 and 1586.

§ 1590. Limitation on recovery of tax sold lands

When the State has taxed lands under this chapter, and the Treasurer of State has conveyed it, or part of it, for nonpayment of tax, by deed purporting to convey the interest of the State by forfeiture for such nonpayment, or it or a part of it has been conveyed under authority given by the Legislature by a deed purporting to convey the interest of the State acquired under sections 1585 to 1587, and the pertinent records of the Treasurer of State or the State Tax Assessor show that the grantee, his heirs or assigns, has paid the taxes thereon, or on his acres or interest therein, as stated in the deed, continuously for the 20 years subsequent to such deed; and when a person claims under a recorded deed describing land taxed by the State under this chapter, and the pertinent records of the Treasurer of State or the State Tax Assessor show that he has, by himself or by his predecessors under such deed, paid the state and county taxes thereon, or on his acres or interest therein as stated in the deed, continuously for 20 years subsequent to recording such deed, and whenever, in either case, it appears that the person claiming under such a deed, and those under whom he claims, have, during such period, held such exclusive, peaceable, continuous and adverse possession thereof, and it further appears that during such period no former owner, or person claiming under him, has paid any such tax, or done any other act indicative of ownership, no action shall be maintained by a former owner, or those claiming under him, to recover such land or to avoid such deed, unless commenced within said 20 years. Such payment shall give such grantee or person claiming, his heirs or as-

signs, a right of entry and seizing in the whole, or such part, in common and undivided, or the whole tract as the deed states, or as the number of acres in the deed is to the number of acres assessed.

This section shall apply to rights and interests acquired under tax sales made by the Treasurer of State for the nonpayment of taxes.

SUBCHAPTER III PERSONAL PROPERTY TAXES

§ 1591. Returns to State Tax Assessor

Each owner of personal property that is exempt from taxation under paragraph O of subsection 1 of section 655 shall, on or before the first day of May in each year, return to the State Tax Assessor a complete list of such property upon blanks furnished by said Tax Assessor. Such property shall be assessed by the State Tax Assessor at the rate used by the municipality in which said real estate is located for the tax year for which the assessment is made applied to a 100% valuation as determined by the State Tax Assessor.

Any such owner or person who willfully make a fraudulent return under this section shall be punished by a fine of not less than \$100 nor more than \$500 for each offense, to be recovered by indictment to the use of the State.

§ 1592. Due dates; proceedings on delinquency

Taxes levied under section 1591 shall be paid to the State Tax Assessor on or before October 1st of each year. Interest on such state and county taxes shall be charged at the rate of 6% per year after the first day of October following the date of the assessment. A lien is created on all personal property for such taxes and expenses incurred in accordance with section 1593, and such property may be sold for the payment of such taxes and expenses at any time after October 1st. When the time for the payment of the tax to the State Tax Assessor has expired, and it is unpaid, the State Tax Assessor shall give notice thereof to the delinquent property owner, and unless such tax shall be paid within 60 days, the State Tax Assessor may issue his warrant to the sheriff of the county, requiring him to levy by distress and sale upon the personal property of said property owner, and the sheriff or his deputy shall execute such warrants. Any balance remaining after deducting taxes and necessary additions made in accordance with this subchapter shall be returned to the owner or person in possession of such property or the State Tax Assessor may certify such unpaid taxes to the Attorney General, who shall bring a civil action in the name of the State.

§ 1593. Failure to make return; penalty

Should any owner or person having in his charge or control personal property taxable by said State Tax Assessor, as provided in section 1591, neglect or refuse to comply with the requirements of this subchapter, the State Tax Assessor may secure the necessary information by such methods as he deems advisable, and the necessary expense incurred in securing such information shall be added to the tax assessed against the property of such owner or person and paid to the State Tax Assessor with the tax.

SUBCHAPTER IV DISTRIBUTION OF TAX

§ 1594. Distribution of tax for municipalities; appropriation and use of balance

The State Tax Assessor shall pay the taxes assessed under this chapter, when collected, to the Treasurer of State. The Treasurer of State shall, as soon as practicable after said receipt, distribute to the municipality in which the real estate upon which said tax has been paid is located, a sum equal in amount to the loss of taxes to said municipality resulting from said real estate being exempted from municipal taxation under paragraph G of subsection 1 of section 656. Such loss of taxes shall be the average of the annual municipal tax assessments for the 5 years immediately prior to the tax year in which construction of a petroleum refinery is commenced on said real estate.

The amount of said taxes remaining after said distribution to the municipality shall be appropriated and used as follows:

1. Collection and enforcement. For the collection of the taxes imposed by this chapter and the enforcement thereof;
2. Balance of funds. The balance of such amount shall be disbursed from time to time to the Department of Environmental Protection, upon its request, for use in the prevention or abatement of the threats, dangers and hazards referred to in section 4901.

Each municipality eligible for a distribution of tax under this section shall, upon request of the Treasurer of State, provide a certification of the tax assessments on the real estate involved for the 5 years immediately prior to the tax year in which construction of a petroleum refinery is commenced on said real estate.

STATEMENT OF FACT

This proposal would impose an excise tax of 2¢ per barrel on products of any petroleum refinery in the State. It will generate tax revenues to the State of Maine which will be dedicated to the Department of Environmental Protection for their use in the prevention and abatement of any threats, dangers and hazards occasioned by the operation of oil refineries in the State of Maine. The real estate and personal property taxes associated with the refinery will be assessed by the State and the Treasurer of the State will distribute to the municipality in which the refinery is located a sum equal in amount to the loss in taxes to the municipality as a result of the real estate being taxed by the State. The loss of taxes shall be the average of the annual municipal tax assessments for the 5 years immediately prior to the tax year in which the construction of the refinery is commenced. Any remaining taxes will be primarily utilized by the Department of Environmental Protection as above.

This taxing proposal is an attempt to anticipate any costs which may accrue to the sovereign as a result of the construction of an oil refinery in the State of Maine.