

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1799

H. P. 1394

House of Representatives, April 7, 1975

On Motion of Mr. Drigotas of Auburn, referred to the Committee on Taxation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Morton of Farmington.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Impose a Tax on Tobacco Products other Than Cigarettes.

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

Whereas, immediate tax revenues are of great importance to the State's ability to provide governmental services to its citizens; and

Whereas, the administrative needs of a tobacco products tax necessitate that its date of implementation be close to its date of passage, thus insuring that current buying patterns are not unduly disturbed by anticipation of the tax; 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. I. 36 MRSA c. 704 is enacted to read:

CHAPTER 704

TOBACCO PRODUCTS TAX

§ 4401. Definitions

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

1. **Business.** "Business" shall mean any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this State.

2. **Distributor.** "Distributor" shall mean any person engaged in the business of producing or manufacturing tobacco products in this State for sale in this State, any person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State any tobacco products for sale to a retailer or any person engaged in the business of selling tobacco products who ships or transports tobacco products to retailers for sale in this State.

3. **Manufacturer.** "Manufacturer" shall mean a person who manufactures and sells tobacco products.

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

5. **Place of business.** "Place of business" shall mean any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine.

6. **Retailer.** "Retailer" shall mean any person engaged in the business of selling tobacco products to ultimate consumers.

7. **Retail outlet.** "Retail outlet" shall mean a place of business from which tobacco products are sold to consumers. Vending machines shall be considered a retail outlet.

8. **Sale.** "Sale" shall mean any transfer, exchange, barter or gift in any manner or by any means whatsoever, for a consideration. It shall include a gift for advertising by a person engaged in the business of selling tobacco products.

9. **Subjobber.** "Subjobber" shall mean any person other than a manufacturer or distributor who buys from a distributor tobacco products upon which a tax imposed by this chapter has been paid and sells them to persons other than the ultimate consumers.

10. **Tax assessor.** "Tax assessor" shall mean the State Tax Assessor.

11. **Tobacco products.** "Tobacco products" shall mean cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; finecut and other chewing tobaccos; shorts; 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 otherwise, or both for chewing and smoking; but shall not include tobacco products which are subject to the tax provided by chapter 703.

12. **Unclassified importer.** "Unclassified importer" shall mean any person, firm, corporation or association within this State, other than a distributor, as defined, who shall import, receive or acquire from without the State, tobacco products for use or consumption within the State.

13. Wholesale sales price. "Wholesale sales price" shall mean the established price for which a manufacturer sells tobacco products to a distributor, exclusive of any discount or other reduction.

§ 4402. Licenses

Every person engaging in the business of selling tobacco products as a distributor shall secure a license from the tax assessor before engaging in such business. Every application for such license shall be made on a form prescribed by the tax assessor and shall state the name and address of the applicant, address of his or her principal place of business, and such other information as the tax assessor may require for the proper administration of this chapter. The application shall be accompanied by a fee of \$25, except that there shall be no fee required for distributors or unclassified importers licensed under chapter 703. A person without the State who ships or transports tobacco products to retailers in this State shall make application as a distributor and be granted by the tax assessor such license subject to all the provisions of this chapter; such person shall agree, upon applying for a license, to submit his or her books, accounts and records to examination by the Bureau of Taxation during reasonable business hours, and to accept service of process by mail when such service is made in any proceeding involving enforcement of this chapter.

Each unclassified importer before importing, receiving or acquiring tobacco products from without the State shall secure a license from the tax assessor. There shall be no fee for such license.

Each license issued shall expire on July 31st of each year unless sooner revoked by the tax assessor. Such license shall be prominently displayed on the premises covered by the license and no license shall be transferable to any other person.

The tax assessor may revoke or suspend the license or licenses of any person for violation of this chapter applicable to the sale of tobacco products. However, no license shall be revoked, canceled or suspended until after notice and hearing by the tax assessor.

§ 4403. Tax on tobacco products

A tax is hereby imposed on all tobacco products as defined in this chapter at the rate of 45% of the wholesale sales price of such tobacco products. Such tax shall be imposed:

1. At the time the distributor or unclassified importer brings or causes to be brought into this State tobacco products that are for sale to consumers or to retailers or for use;
2. At the time tobacco products are manufactured or fabricated in this State for sale in this State.

The tax imposed on tobacco products shall not apply to those products exported from this State or to any tobacco products which under laws of the United States may not be subject to taxation by this State. The State of Maine or any of its agencies, instrumentalities, or governmental subdi-

visions shall not be exempted from the tobacco products tax unless such tobacco products shall be purchased for subsequent distribution by the State Bureau of Purchases.

§ 4404. Returns; payment of tax and penalty

Every distributor, or unclassified importer shall on or before the last day of each month render, on forms to be furnished by the tax assessor, a report together with payment of the tax due under this chapter to the tax assessor stating the quantity and the wholesale sale price of all tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the State or shipped or transported to retailers within the State during the preceding calendar month. Every distributor or unclassified importer shall keep a complete and accurate record at his principal place of business to substantiate all receipts of tobacco products; this record shall be preserved for a period of 2 years in such manner as to insure permanency and accessibility for inspection.

Such monthly reports shall contain such further information as the tax assessor shall prescribe and shall show a credit for any tobacco products exempted as provided in section 4403. Records shall be maintained to substantiate such exemption. Tobacco products previously taxed which are returned to a manufacturer because such product has become unfit for use or consumption or unsalable may be taken as a credit on a subsequent return upon receipt of the credit notice from the original supplier.

If the monthly report required by this chapter is not filed, or such payment is not rendered by the last day of the month such distributor or unclassified importer shall be liable to a penalty of \$1 a day for each day in arrears or 10% of the tax liability, whichever is the greater, together with interest at the rate of 1% per month or fraction thereof due on demand by the tax assessor, and recoverable in a civil action. The tax assessor may waive the penalty for cause. The tax assessor shall pay over all receipts from such tax to the Treasurer of State daily.

§ 4405. The tax assessor may estimate liability

Whenever any distributor or unclassified importer shall neglect or refuse to make and file any report required by this chapter or shall file an incorrect or fraudulent report, the tax assessor shall from such information as he or she may obtain fix the amount of taxes, penalties and interest payable and forthwith proceed to collect the amount so fixed.

In any action or proceeding for the collection of the tobacco products tax, any penalties and interest imposed in connection with an assessment by the tax assessor of the tax, penalty or interest due the State shall constitute prima facie evidence of the claim of the State. The burden of proof shall be upon the distributor or unclassified importer to show that the assessment was incorrect and contrary to law.

§ 4406. Inspection of records; civil action for tax; rules and regulations

The tax assessor or his duly authorized agents shall have authority during reasonable business hours to examine the records, books, papers and any

other records of the distributor, unclassified importer, retailer or subjobber to verify the truth and accuracy of any statement, report or return and whether the tax imposed by this chapter has been fully paid.

The tax assessor shall have the power to recommend legal proceedings by the Attorney General for the purpose of ascertaining the amount due under this chapter and enforcing the collection of tax, penalties and interest thereof.

§ 4407. Appeal procedure

Any person aggrieved by any action under this chapter because of license suspension or revocation or because of assessment of tax, penalty or interest may apply to the tax assessor, in writing, within 10 days after notice of action is delivered or mailed to him or her, requesting a hearing and setting forth the reason why such hearing should be granted and the manner of relief sought. The tax assessor shall promptly consider such application and may grant or deny the hearing request. If the hearing is denied the applicant shall be promptly notified in writing of the reasons for the denial; if it is granted the tax assessor shall notify the applicant of the time and place fixed for such hearing. After such hearing the tax assessor may make such order as may appear to him or her just and lawful and shall furnish a copy of such order to the applicant. The tax assessor may, by notice in writing, at any time, order a hearing on his or her own initiative and require the taxpayer or any other individual whom the tax assessor believes to be in possession of information concerning the manufacture, importation or sale of tobacco products which have escaped taxation to appear before the tax assessor with any books, accounts, papers or other documents for examination relative thereto.

Any person aggrieved because of any action or decision of the tax assessor under this chapter may appeal therefrom within 20 days to the Superior Court. No less than 14 days before the review by such court the appellant shall serve upon the tax assessor or his duly authorized agent a copy of said petition stating the reason for the appeal and notifying the tax assessor when the appeal is to be heard. Pending judgment of the court the decision of the tax assessor shall remain in full force and effect.

§ 4408. Penalties; civil action for tax

Any person who shall willfully make any false or fraudulent report or return required by this chapter, or who shall make any false statement in any claim or invoices presented to the tax assessor or who shall knowingly present to the tax assessor any claim or invoice containing any false statements, or who shall with intent to defraud, evade or violate any provisions of this chapter, or any rules or regulations duly made thereunder, or who shall engage in the State in business as a distributor, without being the holder of a valid license to engage in such business, shall be guilty of a misdemeanor and punished by a fine of not more than \$2,000. Whenever any person shall fail to pay any tax, interest or penalty due under this chapter within 15 days of demand, the Attorney General shall enforce payment thereof in a court of appropriate jurisdiction. In any civil action, records of the quantity of tobacco products held, purchased, manufactured, brought in

or caused to be brought in from without the State or shipped or transported to retailers within this State for the period covered by the tax assessor's audit shall be prima facie evidence of such quantities sold, distributed or used during the period covered by the audit on which the tax with interest from the date when it was due, shall be computed and collected and for which amount, with costs, judgment shall be rendered.

§ 4409. Claims

The claims of the State for the sums due under this chapter shall be preferred and priority claims in the event of assignment, receivership or bankruptcy.

§ 4410. Rules and regulations

In addition to this chapter, the tax assessor may promulgate rules and regulations necessary for the administration of this chapter, copies of which shall be sent to each licensee.

Sec. 2. 36 MRSA § 1760, sub-§ 35, is hereby enacted to read:

35. Tobacco products. Sales of tobacco products, subject to other taxes imposed by chapter 704.

Sec. 3. Appropriation. There is appropriated from the General Fund to the Department of Finance and Administration the sum of \$43,800 to carry out the purposes of this Act. The breakdown shall be as follows:

	1975-76	1976-77
FINANCE AND ADMINISTRATION DEPARTMENT OF		
Excise Tax Division		
Personal Services	(2) \$16,515	\$17,240
All Other	4,460	4,260
Capital Expenditures	1,325	—0—
	\$22,300	\$21,500

FISCAL NOTE

If this Act is effective in its entirety on June 1, 1975, it is projected it would result in an increase in income to the General Fund of \$1,500,000 for fiscal years 1976 and 1977.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is to impose a tax on tobacco products other than cigarettes. Such tobacco products include cigars, pipe tobacco, chewing tobacco and other similar products. It is an emergency bill due to the need

for the Act to take effect as soon as possible after passage so that the current buying patterns will not be disrupted by persons anticipating the tax. An appropriation is needed in order to properly audit the collection of the tax.