

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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**Legislative Document**

**No. 501**

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H. P. 395

House of Representatives, February 16, 1977

On motion of Mr. Carey of Waterville, referred to Committee on Taxation.  
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Carey of Waterville.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT Providing for Improvements in the Sales Tax Collection Provisions  
Specified by Statute.**

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

Sec. 1. 36 MRSA § 1814, is enacted to read:

§ 1814. Excessive and erroneous collections

1. Tax liability. Whenever the tax collected by a retailer for any period exceeds that provided by law, whether the excess is attributable to the collection of tax on exempt or nontaxable transactions or erroneous computation, the total amount collected, excluding only that portion of the excess which has been returned or credited to the person or persons from whom it was collected, shall constitute a tax liability of the retailer and shall be reported and paid at the time and in the manner provided by sections 1951 and 1952.

2. Tax liability subject to assessment, collection and enforcement. The tax liability specified in subsection 1 shall be subject to assessment, collection and enforcement by the Tax Assessor in the manner provided in chapters 211 to 225.

3. Refund. Any such amount which has been paid by or collected from a retailer shall be refunded by the Tax Assessor to the retailer in accordance with section 2011 only upon submission of proof to the satisfaction of the Tax Assessor that the amount has been returned or credited to the person or persons from whom it was originally collected.

Sec. 2. 36 MRSA c. 218, is enacted to read:

**CHAPTER 218**  
**TRUST FUNDS**

§ 1921. Taxes held in trust for the Tax Assessor

All taxes collected by any retailer from purchasers pursuant to chapters 211 to 225, and all taxes collected by any retailer from purchasers under color of chapters 211 to 225 which have not been properly returned or credited to the purchasers from whom they were collected, shall constitute a special fund in trust for the Tax Assessor. The liability for such taxes shall be enforceable, by assessment and collection in the manner prescribed in chapters 211 to 225, against:

1. Retailer. Such retailer; and
2. Officer, director, member, agent or employee of any retailer. Any officer, director, member, agent or employee of any retailer who, in such capacity, is responsible for the control or management of the funds or finances of such retailer or is responsible for the payment of such retailer's taxes.

The term "purchasers" as used in this section shall include persons who have paid rental charges for living quarters in any hotel, rooming house, tourist or trailer camp.

§ 1922. Notice to segregate trust funds

Whenever the Tax Assessor finds that the payment of the trust funds established under section 1921 will be jeopardized by delay, neglect or misappropriation or whenever any retailer fails to make payment of taxes or file reports as required by chapters 211 to 225, the Tax Assessor may give notice to the retailer that the trust funds shall be segregated from and shall not be commingled with any other funds or assets of the retailer. Within 5 days after the mailing of such notice, all taxes which thereafter become collectable or are collected shall be deposited daily in a bank approved by the Tax Assessor, in a separate account, in trust for and payable to the Tax Assessor and kept in such account until paid to him. Such notice shall remain in effect until a notice of cancellation is given by the Tax Assessor.

§ 1923. Revocation of registration; reconsideration and appeal

Upon the expiration of the 5-day period designated in section 1922, if any retailer fails to make the deposits required or, after making such deposits, withdraws any portion thereof, the Tax Assessor may revoke any registration certificate which has been issued to such retailer. The revocation shall not be effective until 15 days after notice to the retailer.

Within that 15-day period, the retailer may petition in writing for reconsideration. If a written petition for reconsideration is not filed within that period, the revocation becomes effective at the expiration of the period.

If a petition is filed within the 15-day period, the Tax Assessor shall reconsider the order, and if the petitioner has so requested in his petition, shall grant the 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.

Any retailer aggrieved by the decision upon such petition may appeal therefrom as provided in section 1958.

§ 1924. Misappropriation of trust funds

1. Retailer. A retailer is guilty of misappropriation of trust funds if:

A. He willfully appropriates or converts the tax collected to his own use or to any use other than the payment of tax; and

B. The amount of tax required to be collected or paid is not paid on the due date prescribed in chapters 211 to 225.

2. Retailer; definition. For purposes of this section, the term retailer includes, in addition to the persons described in section 1752, subsection 10, any officer, director, member, agent or employee of any retailer who, in such capacity, is responsible for the control or management of the funds or finances of such retailer or responsible for either the collection or payment of such retailer's taxes.

3. Misappropriation; Class D crime. Misappropriation of trust funds is a Class D crime.

§ 1925. Remedies not exclusive

The remedies provided by this chapter are not exclusive and are in addition to all other remedies prescribed in chapters 211 to 225 for the enforcement of collection of sales or use taxes.

Sec. 3. 36 MRSA § 1956, is repealed and the following enacted in its place:

§ 1956. Jeopardy assessments

1. Filing and notice. If the Tax Assessor finds that the assessment or the collection of a tax for any reporting period, current or past, will be jeopardized in whole or in part by delay, he may immediately assess the tax, interest and penalties due the State and give notice of the assessment and his finding to the person liable, together with a demand for immediate report or immediate payment, or both, of the tax declared to be in jeopardy, including interest and penalties.

2. Termination of reporting period. In the case of a tax for a current period, the Tax Assessor may declare the reporting period of the person liable immediately terminated and his notice and demand for immediate report and immediate payment of the tax shall relate to the period declared terminated, including therein all sales made and all taxes collected up to the date of termination if not otherwise properly includable in such period.

3. Collection. A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once. The person liable, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within 10 days after notice shall have been given him

of the jeopardy assessment, a written petition for reconsideration of the assessment, accompanied by a bond or other security in the amount of the assessment, including interest and penalties, as to which the stay of collection is sought. If a written petition for reconsideration, accompanied by a bond or other security of the appropriate amount, is not filed within the 10-day period, the assessment becomes final.

4. Proceeding on petition. If a written petition for reconsideration accompanied by a bond or other security is filed within the 10-day period, the Tax Assessor shall reconsider the assessment, and if the petitioner has so requested in his petition, shall grant him an oral hearing. The Tax Assessor's decision upon the petition for reconsideration becomes final upon the expiration of 30 days from the date when he gives notice of his decision to the petitioner, unless within that 30-day period, the petitioner appeals therefrom as provided in section 1958.

5. Presumptions. Any such jeopardy assessment and any finding of the Tax Assessor under subsection 1 shall be presumed to be correct, the burden of showing otherwise being on the taxpayer.

6. Abatement if jeopardy does not exist. The Tax Assessor may abate the jeopardy assessment if he finds that jeopardy does not exist.

#### STATEMENT OF FACT

The purpose of this bill is to prevent a retailer from becoming unjustly enriched by erroneous or excessive sales or use tax collections and to facilitate and expedite the collection of delinquent sales or use taxes.