

MAINE STATE LEGISLATURE

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H.P. 68

House of Representatives, February 6, 1989

Reported by Representative RIDLEY for the Municipal Solid Waste Management Study Committee.

Reference to the Joint Standing Committee on Business Legislation suggested and printing ordered under Joint Rule 19.

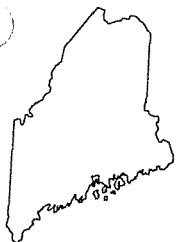
Ed Pert

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Create Tax Incentives for the Use of Recycled Packaging.



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

3 **36 MRSA c. 720** is enacted to read:

5 CHAPTER 720

7 WASTE REDUCTION PACKAGING TAX

9 §4841. Definitions

11 As used in this chapter, unless the context otherwise
13 indicates, the following terms have the following meanings.

15 1. Container. "Container" means a rigid or semirigid
17 package composed of any material or combination of materials, in
19 any shape or form and intended for use in packing or packaging
21 any product intended for retail sale. Containers include,
23 without limitation, barrels, baskets, bottles, boxes, cans,
cartons, carrying cases, cups, cylinders, drums, glasses, jars,
jugs, pails, pots, rigid metal foil containers, trays, tubs,
tubes, tumblers and vessels. All materials used in packaging a
single product for retail sale constitute a single container.

25 2. Office. "Office" means the Office of Waste Recycling
and Reduction established in Title 38, section 1310-J.

27 3. Recovered material. "Recovered material" means any
29 material recovered from or destined for the waste stream,
31 including post-consumer material, industrial scrap material and
33 overstock or obsolete inventories from distributors, wholesalers
and other companies. The term does not include any material and
by-product generated from, and commonly reused within, an
original manufacturing process.

35 4. Retail sale. "Retail sale" and "sale at retail" means
37 any sale of tangible personal property, in the ordinary course of
39 business, for consumption or use or for any purpose other than
resale, except resale as a casual sale as defined in section
1752, subsection 1-D.

41 5. Retailer. "Retailer" means any person who makes retail
43 sales of food or nonfood items packaged in containers, and
45 includes establishments that sell products intended for internal
human consumption on or off the premises which products are
prepared and ready to be consumed.

47 6. Tangible personal property. "Tangible personal property"
49 is defined under section 1752, subsection 17.

51 §4842. Tax on packaging

1 1. Amount of tax. A tax is imposed in the amount of 3¢ on
2 the container of any product sold at retail.

3
4 2. Liability. The tax is imposed at the time of retail
5 sale on the purchaser of the product employing a container. The
6 retailer shall add the tax to the sales price.

7
8 3. Exemptions. The following containers are exempt from
9 the tax imposed by this chapter:

11 A. Containers certified by the office as being composed of
12 50% or more recovered material;

13
14 B. Containers certified by the office as being recycled in
15 the State at an average annual rate of at least 75%;

16
17 C. Containers used to package food or food products sold
18 for internal human consumption if the food or food products
19 are exempt from the sales and use tax imposed under this
20 Part. Notwithstanding this exemption, containers are
21 taxable when used to package:

22 (1) Any alcoholic beverage; or

23
24 (2) Food and drink of any nature when sold in or by
25 restaurants, taverns or other establishments which sell
26 prepared food at retail; and

27
28 D. Containers sold or supplied containing a product
29 intended for use in manufacturing processes;

30
31 E. Containers used to package a prescription medication
32 sold or supplied for retail sale;

33
34 F. Containers sold or furnished for retail sale for which
35 the retailer requires a refundable deposit of at least 5¢
36 for each container and which may be redeemed for its refund
37 value by a purchaser.

38
39 G. Containers designed to be refillable with the same
40 product with which it was originally filled and which is
41 customarily refilled and reused; and

42
43 H. Containers required by federal law.

44 §4843. Certification

45
46
47

1 The office shall determine which types of containers qualify
2 for the exemptions provided under section 4842, subsection 3,
3 paragraphs A and B, according to the following provisions.

5 1. Composition. The office shall adopt and annually revise
6 a list of containers certified as being composed of at least 50%
7 recovered material.

9 2. Recycling rate. The office shall adopt and annually
10 revise a list of containers certified as being recycled at a rate
11 of at least 75% in the preceding year.

13 3. Procedures. The office may establish application
14 procedures, reporting requirements, testing methodologies and any
15 other procedures necessary to conduct the certification process
16 under this section.

17 4. Exemption label. The office shall develop an exemption
18 label or other suitable method of designating the containers
19 which have been certified as exempt from the packaging tax. The
20 designation method shall serve to notify both the retailer and
21 the consumer of the exemption.

23 **§4844. Administration**

25 1. Collection. The State Tax Assessor shall collect the
26 tax provided by this chapter from retailers under this Part. The
27 tax assessor may adopt any additional rules necessary to
28 administer this chapter.

31 2. Penalties. Failure to pay the tax required by this
32 chapter or file any of the forms required by the State Tax
33 Assessor shall be subject to the penalties and procedures in
34 chapter 7.

35 **§4845. The tax assessor may estimate liability**

37 Whenever any retailer neglects or refuses to make and file
38 any report required by this chapter or files an incorrect or
39 fraudulent report, the State Tax Assessor shall fix the amount of
40 taxes, penalties and interest from such information as the State
41 Tax Assessor may obtain and proceed to collect the amount so
42 fixed.

45 In any action or proceeding for collection of the packaging
46 tax, any penalties and interest imposed in connection with an
47 assessment by the tax assessor of the tax, penalty or interest
48 due the State constitutes prima facie evidence of the claim of
49 the State. The burden of proof is on the retailer to show that
50 the assessment was incorrect and contrary to law.

1 §4846. Disposition of taxes

3 The revenue derived from the tax imposed by this chapter
5 shall be deposited in the General Fund.

7
9 **STATEMENT OF FACT**

11 This bill is the product of the Municipal Solid Waste
13 Management Study Committee. This study was authorized by the
15 Legislative Council in 1988 in light of many solid waste issues
17 affecting the interest of the citizens of Maine. Three members
19 of the committee voted to support this bill; 3 voted to oppose
21 the bill; and the 7th member of the committee was absent from the
23 final vote.

25 The purpose of the bill is to establish an incentive for the
27 use of packaging which is either:

- 29 1. Currently recycled at a high rate; or
31 2. Is made largely of recycled material.

33 Packaging which does not meet these criteria would be
35 subject to a 3¢ per item tax to be collected at the point of
37 retail sale. All packaging associated with a single retail
39 product is to be considered a single container subject to the tax.

41 The Office of Waste Recycling and Reduction is charged with
43 certifying packaging under the 2 criteria listed above. The
45 Bureau of Taxation would undertake tax collection. Revenues
47 would be deposited in the General Fund.

49 In order not to conflict with certain federal requirements
51 and other state laws, a set of exemptions from the tax are
53 included. These include items subject to Maine's bottle bill and
55 items which can be purchased with food stamps. Medicine
57 containers, refillable containers and packaging for products used
59 in manufacturing are also exempt from the tax.