

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2350

H.P. 1701

House of Representatives, February 23, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative GWADOSKY of Fairfield.

Cosponsored by Senator MATTHEWS of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act Providing for the Protection and Preservation of Rail
Transportation in the State.

(AFTER DEADLINE)



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

Sec. 1. 23 MRSA c. 615, sub-c. III is enacted to read:

SUBCHAPTER III

TRANSFER OF RAILROAD PROPERTY FOR NONRAIL USE

§7161. Excise tax on transfer of railroad property

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Fair market value" means the purchase price for property as set forth in a signed and notarized purchase agreement, or the "fair market value" determined by the State Tax Assessor, whichever is larger.

B. "Nonrailroad use" means the full or partial use of land or interests in land acquired for rail purposes or placed in rail service in accordance with the federal Interstate Commerce Act or any other state or federal laws regulating the railroad or railway industry the Commissioner of Transportation considers to be for purposes not related to rail.

C. "Railroad property" means all property acquired for rail purposes or in current or former rail service, including, but not limited to, rail rights-of-way, side tracks, spur tracks, rail yards and related facilities in current or former use for rail operations.

2. Excise tax imposed. The Department of Transportation shall levy and collect an excise tax due upon the sale, transfer or disposition of railroad property for nonrail use or the placement of the property into a use the commissioner considers inconsistent with rail operations. The excise tax must be calculated at 50% of the fair market value of the property.

3. Determination of fair market value; nonrail use; appeal. If railroad property is placed into a use inconsistent with rail operations, the fair market value must be determined by the State Tax Assessor. A person aggrieved by the State Tax Assessor's determination of value may appeal within 60 days of receipt of that determination by filing a petition with the State Board of Property Tax Review in accordance with the provisions of Title 36, section 271. An appeal does not delay or otherwise affect the timely payment of the excise tax imposed under this subchapter. If the petitioner prevails on appeal, the petitioner is entitled solely to a refund without interest.

2 4. Notice. At least 10 days before the sale, disposition
4 or transfer of any portion of a railroad property, the owner of
the property must provide written notice to the Commissioner of
Transportation and the State Tax Assessor of:

6 A. The proposed sale, disposition or transfer;

8 B. The price, terms and conditions of the sale, disposition
10 or transfer; and

12 C. The size and location of the property proposed for sale,
disposition or transfer.

14 The notice must include a complete copy of the purchase and sale
16 agreement applicable to the sale, disposition or transfer. The
owner shall cause the excise tax established by this section to
18 be paid to the Railroad Preservation and Assistance Fund as
established by section 7103.

20 5. Tax due; lien imposed. The excise tax is due and
22 payable at the time of the sale, disposition, transfer or
placement into use inconsistent with rail operations. If the
24 owner of the property fails to notify the commissioner as
required by this subchapter, or to pay the excise tax at or
26 before the time of the sale, disposition, transfer or placement
into use inconsistent with rail operations, the State holds, for
28 its exclusive benefit, a lien upon the property to be sold,
transferred or disposed of or placed into use inconsistent with
30 rail operations, effective immediately before the sale,
disposition, transfer or placement to the extent necessary to
32 satisfy the excise tax. The lien must terminate no later than 6
years after the date of the sale, disposition, transfer or
34 placement into use inconsistent with rail operations and, until
termination, may be enforced in accordance with Title 36, section
36 175-A.

38 6. Administration and enforcement. The State Tax Assessor
shall administer and enforce the taxes imposed by this
40 subchapter. At any time after the sale, disposition, transfer or
placement into a use inconsistent with rail operation subject to
42 the excise tax imposed by this subchapter, the State Tax Assessor
may investigate and determine whether the excise tax, in proper
44 amount, was paid. For this purpose, the State Tax Assessor may
examine any books, papers, records, memoranda or other documents
46 bearing upon the amount of excise tax payable and may enforce by
subpoena the right to that examination. Any person who refuses
48 to permit the State Tax Assessor, or an agent or representative
of the State Tax Assessor, to inspect the books, papers, records,
50 memoranda or other documents or fails to preserve the books,
papers, records, memoranda or other documents for 6 years after
52 the sale, disposition, transfer or placement into a use
inconsistent with rail operations, or any person who alters,

2 cancels or obliterates any part of the books, papers, records,
3 memoranda or other documents, or makes any false entry on those
4 books, papers, records, memoranda or other documents must be
5 punished by a fine of not less than \$5,000 nor more than \$25,000.

6 7. Failure to pay tax. A person who fails to pay to the
7 commissioner any sums required by this subchapter is personally
8 and individually liable to the State for those sums. As used in
9 this section, "person" includes, but is not limited to, an
10 officer or employee of a corporation, or a member or employee of
11 a partnership who as an officer, employee or member is under a
12 duty to pay the taxes imposed by this subchapter. For purposes
13 of this section, the individual or individuals holding the
14 positions of president or treasurer of a corporation are
15 considered to have a duty to pay the taxes imposed by this
16 subchapter.

17 8. Penalty. If any amount of the excise tax due under this
18 subchapter is not paid to the State Tax Assessor on or before the
19 date prescribed for payment of the tax, the State Tax Assessor
20 shall add to the amount due and payable a penalty of 1% of the
21 amount of the tax or remaining tax due, for each month or
22 fraction of a month during which the failure continues not
23 exceeding, in the aggregate, 25% of the amount.

24 9. Exemptions. Sales to the United States, the State, the
25 State's authorities and subdivisions, or any designee of the
26 State, are exempt from the tax imposed by this subchapter.

27 10. Tax not deductible. Notwithstanding any law to the
28 contrary, the excise tax established by this subchapter may not
29 be taken as a deduction on a return filed under Title 36.

30 **Sec. 2. 36 MRS §271, sub-§2, ¶A,** as amended by PL 1987, c.
31 530, §2, is further amended to read:

32 **A.** Hear and determine appeals according to the following
33 provisions of law:

34 (1) The tree growth tax law, chapter 105, subchapter
35 II-A;

36 (2) The farm and open space law, chapter 105,
37 subchapter X;

38 (3) As provided in section 843;

39 (4) As provided in section 844;

40 (5) Section 272;

41 (6) Section 2865; and

2 (7) Title 38, section 1505; and

4 (8) Title 23, section 7161;

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STATEMENT OF FACT

10 This bill enables the State to impose and collect an excise
12 tax on the transfer of railroad property into a nonrail use. The
14 tax is 50% of the fair market value of the property and is
returned to the Railroad Preservation and Assistance Fund. This
bill is based on Massachusetts law.