

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 4

H.P. 10

House of Representatives, January 10, 1995

An Act to Continue the Fee on the Handling of Milk.

(EMERGENCY)

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative STROUT of Corinth.

Cosponsored by Representatives: AHEARNE of Madawaska, BAILEY of Township 27, CAMERON of Rumford, CAMPBELL of Holden, CARLETON of Wells, CHARTRAND of Rockland, CHASE of China, CLUKEY of Houlton, CROSS of Dover-Foxcroft, DAMREN of Belgrade, DiPIETRO of South Portland, DRISCOLL of Calais, GOOLEY of Farmington, GOULD of Greenville, GREEN of Monmouth, GWADOSKY of Fairfield, HATCH of Skowhegan, JACQUES of Waterville, JONES of Pittsfield, JOSEPH of Waterville, KILKELLY of Wiscasset, KNEELAND of Easton, LABRECQUE of Gorham, LaFOUNTAIN of Biddeford, LEMAIRE of Lewiston, LIBBY of Kennebunk, MARTIN of Eagle Lake, MAYO of Bath, McALEVEY of Waterboro, McELROY of Unity, MERES of Norridgewock, MITCHELL of Vassalboro, MURPHY of Berwick, NICKERSON of Turner, PENDLETON of Scarborough, REED of Dexter, ROTONDI of Madison, SAVAGE of Union, SHIAH of Bowdoinham, SIMONEAU of Thomaston, SPEAR of Nobleboro, STEDMAN of Hartland, TOWNSEND of Portland, TUFTS of Stockton Springs, VIGUE of Winslow, WATSON of Farmingdale, WINN of Glenburn, YACKOBITZ of Hermon, Senators: ABROMSON of Cumberland, BEGLEY of Lincoln, BENOIT of Franklin, CARPENTER of York, CASSIDY of Washington, FERGUSON of Oxford, HALL of Piscataquis, LONGLEY of Waldo, LORD of York, MICHAUD of Penobscot, MILLS of Somerset, STEVENS of Androscoggin.

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

4
6 **Whereas,** the recent decision in Cumberland Farms, Inc. v.
LaFaver terminated the collection of revenue from the handling of
milk by invalidating the Maine Dairy Farm Stabilization Tax; and

8
10 **Whereas,** the tax provided an average of more than \$2,000,000
per year in revenues to the State at a time when the State and
its citizens are experiencing economic difficulties and
12 significant fiscal problems; and

14 **Whereas,** such revenues are necessary to the State's ability
to address such difficulties and problems; and

16
18 **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
20 necessary for the preservation of the public peace, health and
safety; now, therefore,

22
24 **Be it enacted by the People of the State of Maine as follows:**

26 **Sec. 1. 7 MRSA §2954, sub-§1,** as repealed and replaced by PL
1991, c. 824, Pt. A, §8, is amended to read:

28 **1. Commission empowered to establish prices; public**
hearing. The commission is vested with the power to establish
30 and change, after investigation and public hearing, the minimum
wholesale and retail prices to be paid to producers, dealers and
32 stores for milk received, purchased, stored, manufactured,
processed, distributed or otherwise handled within the State. The
34 commission shall hold a public hearing prior to the establishing
or changing of such minimum prices. The commission may proceed,
36 however, under the emergency rule-making provisions of Title 5,
section 8054 without making findings of emergency when the only
38 changes to be made in the minimum prices are to conform with the
orders of any federal or other agency duly authorized by law to
40 establish or negotiate producer prices or are to respond to other
conditions affecting prevailing Class I, Class II and Class III
42 prices in southern New England, or reflect the ~~Maine Dairy Farm~~
~~Stabilisation~~ Milk Handling Tax as determined by Title 36,
44 chapter 708-A 716. Title 5, section 8054, subsection 3, the 2nd
sentence, does not apply to minimum prices adopted under the
46 previous sentence. Due notice of the public hearing must be
given by publishing notice as provided in Title 5, chapter 375.
48 The commission shall hold such a public hearing not less
frequently than once every 12 months to determine whether the
50 minimum wholesale and retail prices then established should be

2 changed. In addition to the data received through the
3 implementation of the information gathering procedures of its
4 rules as a basis for its determinations, the commission shall
5 solicit and seek to receive oral and written testimony at
6 hearings to determine whether the minimum wholesale and retail
7 prices then established should be changed and whether the
8 proposed minimum wholesale and retail prices are just and
reasonable.

10 **Sec. 2. 7 MRSA §2954, sub-§2, ¶B,** as amended by PL 1991, c.
11 526, §2, is further amended to read:

12
13 B. The minimum wholesale prices paid to dealers must be
14 established to reflect the lowest prices at which milk
15 purchased from producers in this State at minimum prices in
16 the State can be received, processed, packaged and
17 distributed within the State at a just and reasonable
18 return, and in addition must include the amount of any tax
determined by Title 36, chapter 708-A 716.

20
21 **Sec. 3. 7 MRSA §2954, sub-§13,** as enacted by PL 1991, c. 526,
22 §3, is amended to read:

23
24 **13. Report to State Tax Assessor.** The Maine Milk
25 Commission shall report before the first of each month to the
26 State Tax Assessor the basic price of milk established for that
month as defined in Title 36, chapter 708-A 716.

27
28 **Sec. 4. 36 MRSA c. 708-A,** as amended, is repealed.

29
30 **Sec. 5. 36 MRSA c. 716** is enacted to read:

31
32 **CHAPTER 716**

33
34 **MILK HANDLING TAX**

35
36 **§4771. Definitions**

37
38 As used in this chapter, unless the context otherwise
39 indicates, the following terms have the following meanings.

40
41 **1. Basic price.** "Basic price" means the minimum Class I
42 price of milk established pursuant to Title 7, chapter 603
43 including that part of the Class I price that exceeds the
44 applicable Class I price established pursuant to the New England
45 Milk Marketing Order, except that part of the Class I price
46 established by the Maine Milk Commission to reflect the cost
47 factors provided in Title 7, section 2954, subsection 2 or the
48 increased costs of production pursuant to Title 7, section 2954,
49 subsection 2, paragraph A.

2 2. Handler. "Handler," with respect to a particular
3 container of packaged milk, means the wholesale handler or, if
4 none, the retail handler.

6 3. Milk. "Milk" has the same meaning as in Title 7,
7 section 2951, subsection 6.

8 4. Packaged milk. "Packaged milk" means milk that has been
9 processed and placed in containers for ultimate sale to consumers.

12 5. Person. "Person" means any individual, partnership,
13 firm, corporation, association or other unit and the State and
14 all political subdivisions or agencies of the State.

16 6. Retail handler. "Retail handler" means any person who
17 handles packaged milk in this State that is next sold in this
18 State subject to the retail minimum prices established pursuant
19 to Title 7, chapter 603.

20 7. Tax period. "Tax period" means the period beginning on
21 the Sunday closest to the first day of the month and continuing
22 through the Saturday prior to the Sunday closest to the first day
23 of the subsequent month.

24 8. Wholesale handler. "Wholesale handler" means any person
25 who handles packaged milk in this State that is next sold in this
26 State subject to the minimum wholesale prices paid to dealers
27 established pursuant to Title 7, chapter 603.

28 §4772. Milk Handling Tax

29 1. Tax. An excise tax is levied and imposed at the rate
30 established in subsection 2 on the handling in this State of
31 packaged milk for sale in this State. With respect to the
32 handling in this State of a particular container of packaged milk
33 for sale in this State, the tax must be paid by the wholesale
34 handler or, if there is no wholesale handler with respect to that
35 container of packaged milk, by the retail handler. There is no
36 tax on the handling in this State of packaged milk for sale in
37 containers that are less than one quart or 20 or more quarts in
38 volume, or packaged milk that is sold to an institution that is
39 owned and operated by the State or Federal Government.

40 2. Rate. The rate of the tax levied under this chapter is
41 established for each tax period on the basis of the basic price
42 of milk in effect on the Sunday following the first Sunday of the
43 tax period in accordance with the following chart:
44

<u>Basic Price</u>	<u>Rate of Milk Handling Tax</u>
<u>\$16.50 per hundredweight and above</u>	<u>0¢ per quart</u>
<u>\$16.00 to \$16.49 per hundredweight</u>	<u>1¢ per quart</u>
<u>\$15.50 to \$15.99 per hundredweight</u>	<u>2¢ per quart</u>
<u>\$15.00 to \$15.49 per hundredweight</u>	<u>3¢ per quart</u>
<u>\$14.50 to \$14.99 per hundredweight</u>	<u>4¢ per quart</u>
<u>\$14.00 to \$14.49 per hundredweight</u>	<u>5¢ per quart</u>
<u>below \$14.00 per hundredweight</u>	<u>6¢ per quart</u>

For any container other than a quart, the tax is computed on a quart-equivalent basis.

3. Calculation of tax. Handlers shall pay the tax for each tax period on all milk subject to the tax, sold during the tax period, and either:

A. Subject to the minimum wholesale prices paid to dealers established by the Maine Milk Commission pursuant to Title 7, chapter 603; or

B. Not subject to minimum wholesale prices paid to dealers but subject to minimum retail prices established by the Maine Milk Commission pursuant to Title 7, chapter 603.

In calculating the amount of packaged milk handled for sale in this State each tax period, the handler shall deduct any packaged milk returned to the handler during that tax period.

4. Tax as additional. Any tax imposed and collected under this chapter is in addition to any other taxes imposed or collected under any other law of the State.

5. Records, reports and administration. Every handler subject to the tax imposed under subsection 1 shall register with the State Tax Assessor within 5 business days of becoming subject to the tax and annually thereafter on forms provided by the State Tax Assessor. The list of handlers so registered is available to the public. By the 25th day of each calendar month, every handler subject to the tax imposed under subsection 1 shall report to the State Tax Assessor the quantity of packaged milk handled in this State for sale in this State during the preceding tax period, the quantity of packaged milk handled that was subject to the Milk Handling Tax and any other information the State Tax Assessor determines necessary or useful in the administration of this chapter and enforcement of the Milk Handling Tax.

2 6. Due dates. Handlers shall pay to the State Tax Assessor
3 the tax due for the preceding tax period not later than the 25th
4 day of each calendar month and submit any information required by
5 the State Tax Assessor on the forms provided.

6 7. Presumption. In any proceeding against a retail handler
7 for collection of the tax with respect to any particular
8 container of packaged milk, there is a rebuttable presumption
9 that that retail handler did not purchase that container in a
10 transaction subject to the minimum wholesale prices paid to
11 dealers established pursuant to Title 7, chapter 603. The burden
12 is on the retail handler to show that the retail handler
13 purchased that container of packaged milk in a transaction
14 subject to minimum wholesale prices paid to dealers established
15 pursuant to Title 7, chapter 603.

16 8. General Fund. The State Tax Assessor shall immediately
17 pay all funds received from the Milk Handling Tax to the
18 Treasurer of State to be deposited in the General Fund.

19 **§4773. Repeal**

20 This chapter is repealed on August 1, 1996.

21 **Sec. 6. Appropriation.** The following funds are appropriated
22 from the General Fund to carry out the purposes of this Act.

23 1994-95

24 **ADMINISTRATIVE AND FINANCIAL**
25 **SERVICES, DEPARTMENT OF**

26 **Bureau of Taxation**

27 All Other \$10,000

28 Provides funding to cover the
29 initial costs of the Bureau
30 of Taxation to administer the
31 Milk Handling Tax.

32 **Emergency clause.** In view of the emergency cited in the
33 preamble, this Act takes effect when approved.

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FISCAL NOTE

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1994-95 1995-96 1996-97

APPROPRIATIONS/ALLOCATIONS

General Fund	\$10,000	-0-	-0-
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REVENUES

General Fund	\$1,600,000	\$2,500,000	\$415,000
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This bill establishes the Milk Handling Tax. This tax will increase General Fund revenue by approximately \$2,500,000 on an annual basis. Given the effective and sunset dates of this bill, General Fund revenue will increase by \$2,500,000 in fiscal year 1995-96 and \$415,000 in fiscal year 1996-97. Based on forecasted milk prices for early 1995, the tax will increase General Fund revenue by an estimated \$1,600,000 for the remainder of fiscal year 1994-95.

The Bureau of Taxation will require an additional General Fund appropriation of \$10,000 in fiscal year 1994-95 to cover the initial costs of administering and enforcing the provisions of this tax. The Department of Human Services will also incur some minor additional costs to cover the effect of higher milk prices on the Women, Infants and Children program within the Bureau of Health. These costs can be absorbed within that program's existing budgeted resources.

STATEMENT OF FACT

This bill responds to the situation caused by the decision of the United States Court of Appeals for the First Circuit in Cumberland Farms, Inc. v. LaFaver, No. 93-2066 (August 24, 1994) to invalidate the Maine Dairy Farm Stabilization Act as violating the Commerce Clause of the United States Constitution. Part of the Act is a tax on the handling of packaged milk, under which the State collected on average over \$2,000,000 a year since the inception of the tax.

This bill repeals the entire Maine Dairy Farm Stabilization Act, which the Circuit Court struck down. It then enacts a new chapter to continue the revenue portion of the invalidated Act. The Milk Handling Tax, although a new name, is not a new tax. It contains the same rate of tax imposed on the activity of handling milk that is sold in Maine. The amount of the tax fluctuates with the basic price of milk. A major difference is that the tax collected will be deposited in the General Fund.