

MAINE STATE LEGISLATURE

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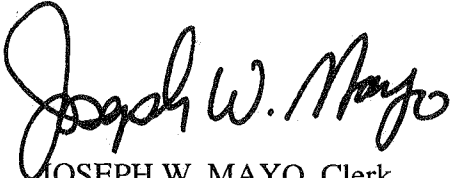
H.P. 1150

House of Representatives, March 20, 1997

An Act to Modernize Maine's Cigarette Tax Laws.

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Taxation suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative TRIPP of Topsham.
Cosponsored by Senator MILLS of Somerset.

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

2
4 **Sec. 1. 36 MRSA §4361**, as amended by PL 1983, c. 828, §12, is further amended to read:

6 **§4361. Definitions**

8 Whenever As used in this chapter, unless the context shall otherwise require indicates, the following ~~words--and--phrases~~ shall terms have the following meanings.

12 **1. Dealer.** "Dealer" means any person other than a distributor, who is engaged in this State in the business of selling cigarettes.

16 **1-A. Cigarette.** "Cigarette" means a cigarette, as defined in the ~~United States Internal Revenue Code of 1954, Chapter 52-A,~~ as amended Section 5702 of the Code.

20 **2. Distributor.** "Distributor" means any person engaged in this State in the business of producing or manufacturing cigarettes or in this State, importing cigarettes into the this State or making wholesale purchases or sales of cigarettes at least 75% of which are purchased directly from the manufacturers thereof in this State on which the tax imposed by this chapter has not been paid.

28 **4. Licensed distributor.** "Licensed distributor" means a distributor licensed under this chapter.

32 ~~4-A. --- Licensed --- wholesale --- dealer. --- "Licensed --- wholesaler dealer" means a sub-jobber licensed under this chapter.~~

34 ~~5. --- Person. --- "Person" means any individual, firm, fiduciary, partnership, corporation, trust or association, however formed.~~

38 **6. Sale or sell.** "Sale" or "sell" includes or apply applies to gifts, exchanges and barter.

40 ~~7. --- Sub-jobber. --- "Sub-jobber" means a wholesale dealer who does not qualify as a distributor.~~

42 ~~9. --- Unclassified importer. --- "Unclassified importer" means any person, firm, corporation or association within the State, other than a licensed distributor, or licensed wholesale dealer who shall import, receive or acquire from without the State, cigarettes for use or consumption within the State.~~

48 **10. Unstamped cigarettes.** "Unstamped cigarettes" means cigarettes to which stamps issued by the State Tax Assessor pursuant to section 4366-A are not affixed.

2 **Sec. 2. 36 MRS §4362**, as amended by PL 1983, c. 828, §13, is
repealed.

4 **Sec. 3. 36 MRS §4362-A** is enacted to read:

6 **§4362-A. Licenses**

8 **1. Generally.** A distributor doing business in this State
10 shall obtain a license from the assessor. A license must be
obtained for each wholesale outlet maintained by the
12 distributor. A distributor's license must be prominently
displayed on the premises covered by the license.

14 **2. Applications; fees; forms.** An application for a
16 distributor's license must be made on a form prescribed and
issued by the assessor and must be accompanied by a fee of \$250.
18 Licenses are issued in the form prescribed by the assessor and
must contain the name and address of the license holder, the
20 address of the place of business and such other information as
the assessor may require for the proper administration of this
22 chapter.

24 **3. Expiration and reissuance.** A distributor's license
26 expires one year from the 31st day of July next succeeding the
date of issuance unless sooner revoked by the assessor pursuant
to subsection 5 or unless the business with respect to which the
28 license was issued is sold, in either of which cases the holder
of the license shall immediately surrender it to the assessor. A
30 license holder may submit an application to the assessor before
the expiration date for a renewal of the license for a further
32 period of 2 years, with the fee prescribed by subsection 2.

34 **4. Penalties.** A distributor who imports into this State,
36 sells at wholesale, offers for sale at wholesale or possesses
with intent to sell at wholesale any cigarettes without holding a
distributor's license issued by the assessor pursuant to this
38 section commits a civil violation for which a forfeiture of not
less than \$250 nor more than \$500 must be adjudged for the first
40 violation and a forfeiture of not less than \$500 nor more than
\$1,000 must be adjudged for each subsequent violation.

42 **5. Revocation or suspension.** The assessor may revoke or
44 suspend the license of a license holder for failure to comply
with any provision of this chapter or if the license holder no
46 longer imports or sells cigarettes. Any person aggrieved by a
revocation or suspension may apply to the assessor for a hearing
48 as provided in section 151.

50 **Sec. 4. 36 MRS §4363**, as amended by PL 1979, c. 508, §2, is
repealed.

2 **Sec. 5. 36 MRSA §4364**, as amended by PL 1983, c. 828, §14, is
repealed.

4 **Sec. 6. 36 MRSA §4365**, as amended by PL 1989, c. 588, Pt. D,
6 §1, is repealed and the following enacted in its place:

8 **§4365. Rate of tax**

10 A tax is imposed on all cigarettes imported into this State
12 or held in this State by any person for sale at the rate of 18.5
mills for each cigarette. Payment of the tax is evidenced by the
14 affixing of stamps to the packages containing the cigarettes.

16 **Sec. 7. 36 MRSA §4365-A**, as amended by PL 1989, c. 588, Pt.
D, §2, is repealed.

18 **Sec. 8. 36 MRSA §§4365-B and 4365-C**, as enacted by PL 1989, c.
20 588, Pt. D, §3, are repealed.

22 **Sec. 9. 36 MRSA §4366**, as amended by PL 1983, c. 828, §15, is
repealed.

24 **Sec. 10. 36 MRSA §§4366-A and 4366-B** are enacted to read:

26 **§4366-A. Cigarette tax stamps**

28 **1. Generally.** A distributor may not sell, offer for sale
30 or display for sale any cigarettes within this State that do not
bear stamps evidencing the payment of the tax imposed by this
32 chapter. The face value of the stamps must be considered as part
of the retail cost of the cigarettes.

34 **2. Provided to sellers.** The State Tax Assessor shall
36 provide stamps suitable to be affixed to packages of cigarettes
as evidence of the payment of the tax imposed by this chapter.
38 The assessor shall sell cigarette stamps to licensed distributors
at their face value. The assessor may permit a licensed
40 distributor to pay for the stamps within 30 days after the date
of purchase, if a bond satisfactory to the assessor in an amount
42 not less than the sale price of the stamps has been filed with
the assessor conditioned upon payment for the stamps.

44 **3. Affixed to cigarettes.** A distributor shall affix, or
46 cause to be affixed, in such manner as the assessor may specify,
stamps of the proper denominations to individual packages of
48 cigarettes sold or distributed by the distributor in this State.
The distributor shall affix the stamps prior to the time the
50 cigarettes are transferred out of the possession of the
distributor.

2 **4. Resale and reuse of stamps prohibited; redemption.**
3 Cigarette stamps issued by the assessor pursuant to this chapter
4 may not be sold, transferred or used more than once by a
5 distributor. The assessor shall redeem any unused, uncanceled
6 stamps presented within one year of the date of purchase by any
7 licensed distributor, at a price equal to the amount paid for
8 them. The assessor may also redeem, at face value, cigarette tax
9 stamps affixed to packages of cigarettes that have become
10 unsalable, provided application is made within 90 days of the
11 return of the unsalable cigarettes to the manufacturer, and the
12 Treasurer of State shall provide, out of money collected pursuant
13 to this chapter, the funds necessary for the redemption.

14
15 **5. Possession of unstamped cigarettes; presumption of**
16 **intent for sale.** The possession in this State by any person
17 other than a licensed distributor of unstamped cigarettes is
18 prima facie evidence that the cigarettes have been imported and
19 that they are intended for sale in this State.

20
21 **6. Penalties.** A person who sells, offers for sale,
22 displays for sale or possesses with intent to sell unstamped
23 cigarettes in violation of this section is guilty of a Class D
24 crime, except that violation of this section is a Class C crime
25 when the person has 2 or more prior convictions for violation of
26 any provision of this chapter. A person who sells or transfers
27 cigarette stamps, or uses stamps more than once in violation of
28 this section, is guilty of a Class D crime, except that violation
29 of this section is a Class C crime when the person has one or
30 more prior convictions for violation of any provision of this
31 chapter. For purposes of this section, the date of the prior
32 conviction must precede the commission of the offense being
33 enhanced by no more than 10 years. The date of conviction is
34 deemed the date that sentence is imposed.

35 **§4366-B. Importation of cigarettes**

36
37 **1. Generally.** Except as provided in subsection 2, only a
38 licensed distributor may import cigarettes into this State.

39
40 **2. Exception for personal use.** An individual who is not a
41 licensed distributor may transport cigarettes into this State and
42 may transport cigarettes from place to place within this State
43 for the individual's personal use in a quantity not greater than
44 4 cartons.

45
46 **3. Evidence.** The possession of more than 4 cartons of
47 unstamped cigarettes by a person who is not a licensed
48 distributor is prima facie evidence of a violation of this
49 section.
50

2 4. Penalties. A person who violates this section is guilty
4 of a Class E crime, except that violation of this section is a
6 Class D crime when the person has one or more prior convictions
8 for violation of this section. For purposes of this section, the
date of the prior conviction must precede the commission of the
offense being enhanced by no more than 10 years. The date of
conviction is deemed the date that sentence is imposed.

10 **Sec. 11. 36 MRSA §4367**, as amended by PL 1971, c. 22, is
12 repealed.

14 **Sec. 12. 36 MRSA §4368**, as amended by PL 1985, c. 535, §11,
is repealed.

16 **Sec. 13. 36 MRSA §4369**, as amended by PL 1985, c. 535, §12,
is repealed.

18 **Sec. 14. 36 MRSA §4370**, as amended by PL 1983, c. 828, §17,
20 is repealed.

22 **Sec. 15. 36 MRSA §4371**, as amended by PL 1983, c. 828, §18,
is repealed.

24 **Sec. 16. 36 MRSA §4372**, as amended by PL 1983, c. 828, §19,
26 is repealed.

28 **Sec. 17. 36 MRSA §4372-A** is enacted to read:

30 **§4372-A. Seizure and forfeiture of contraband cigarettes**

32 1. Generally. Except as provided in subsection 2, any
34 unstamped cigarettes that are found in this State are hereby
declared to be contraband goods subject to seizure by and
36 forfeiture to the State. All law enforcement officers and duly
authorized agents of the State Tax Assessor may seize contraband
cigarettes under the process described in subsection 3.

38 2. Exceptions. The following cigarettes are not subject to
40 seizure:

42 A. Unstamped cigarettes in the possession of a licensed
44 distributor;

46 B. Unstamped cigarettes in the course of transit from
48 without the State and consigned to a licensed distributor;
and

50 C. Unstamped cigarettes in a quantity of 4 cartons or less
in the possession of an individual who is not a licensed
distributor.

2 3. Procedure for seizure. Contraband cigarettes may be
3 seized by law enforcement officers and by duly authorized agents
4 of the State Tax Assessor who have probable cause to believe that
5 the cigarettes are unstamped cigarettes under the following
6 circumstances:

8 A. When the cigarettes are discovered in a place where the
9 law enforcement officer or agent has the lawful right to be
10 in the performance of official duties; or

12 B. When the seizure is incident to a search under a valid
13 search warrant or an inspection under a valid administrative
14 inspection warrant.

16 4. Procedure for forfeiture. A petition for forfeiture
17 must be filed as provided in this subsection.

18 A. A district attorney or assistant district attorney, or
19 the Attorney General or an Assistant Attorney General, may
20 petition the District Court in the name of the State in the
21 nature of a proceeding in rem to order the forfeiture of
22 contraband cigarettes.

24 B. There may be no discovery other than under the Maine
25 Rules of Civil Procedure, Rule 36, except by order of the
26 court upon a showing of substantial need. An order
27 permitting discovery must set forth in detail the areas in
28 which substantial need has been shown and the extent to
29 which discovery may take place.

32 C. A petition for forfeiture filed pursuant to this section
33 must be accepted by the District Court without the
34 assessment or payment of civil entry or filing fees
35 otherwise provided for by rule of court.

36 5. Jurisdiction and venue. Cigarettes subject to
37 forfeiture under this section must be declared forfeited by the
38 District Court having jurisdiction over the cigarettes. Venue is
39 in the location where the contraband cigarettes are seized or in
40 Kennebec County.

42 6. Type of action; burden of proof. A proceeding
43 instituted pursuant to this section is an in rem civil action.
44 The State has the burden of proving all material facts by a
45 preponderance of the evidence and the owner of the cigarettes or
46 other person claiming the cigarettes has the burden of proving by
47 a preponderance of the evidence one of the exceptions set forth
48 in subsection 2.

2 **7. Hearings; disposition; deposit of funds.** At a hearing,
4 other than a default proceeding, the court shall hear evidence,
6 make findings of fact, enter conclusions of law and file a final
8 order from which the parties have the right of appeal. When
10 cigarettes are ordered forfeited, the final order must provide
12 for the disposition of the cigarettes by the State Tax Assessor
14 by public auction or by the State Purchasing Agent. Proceeds
16 must be deposited in the General Fund.

12 **8. Default proceedings.** Default proceedings must be held
14 in the same manner as default proceedings in other civil actions,
16 except that service of motions and affidavits related to the
18 default proceedings need not be served upon any person who has
20 not answered or otherwise defended in the action.

18 **Sec. 18. 36 MRS §4373**, as amended by PL 1983, c. 828, §20,
is repealed.

20 **Sec. 19. 36 MRS §4373-A** is enacted to read:

22 **§4373-A. Records required; inspection and examination;**
24 **assessment of tax deficiency**

24 **1. Generally.** Distributors and dealers shall keep complete
26 and accurate records of all cigarettes that they manufacture,
28 produce, transfer or sell. The records must be of a kind and in
30 the form prescribed by the State Tax Assessor and must be safely
32 preserved for 6 years in a manner that ensures permanency and
34 accessibility by authorized agents of the assessor. Records
maintained by dealers must include an inventory of stamped
cigarettes, by pack size. Records maintained by distributors
must include the following data on either a calendar or fiscal
year basis:

36 A. An inventory of unaffixed Maine cigarette stamps by
38 denomination;

40 B. An inventory of stamped cigarettes, by pack size;

42 C. An inventory of unstamped cigarettes, by pack size; and

44 D. Copies of all documents supporting redemption for tax on
unused, uncancelled stamps and for unsalable cigarettes.

46 If the rate of tax imposed by section 4365 is changed, a
48 distributor shall take a new inventory.

50 **2. Inspection and examination.** The assessor or any
authorized agent may enter into or upon any premises where there

2 is reason to believe that cigarettes are possessed, stored or
4 sold, and may examine the books, papers, records and cigarette
stock of any distributor or dealer to determine compliance with
the provisions of this chapter.

6 3. Assessment of tax deficiency; presumptions. If the
8 assessor determines that a distributor has not purchased
10 sufficient stamps to cover sales of cigarettes or that a dealer
12 has made sales of unstamped cigarettes, the assessor shall assess
14 the tax deficiency pursuant to section 141. When a distributor
can not produce evidence of sufficient stamp purchases to cover
receipts and sales or other disposition of cigarettes, it is
presumed that the cigarettes were sold without having the proper
stamps affixed to them.

16 **Sec. 20. 36 MRSA §4374**, as repealed and replaced by PL 1977,
18 c. 696, §291, is repealed and the following enacted in its place:

20 **§4374. Fraudulent stamps**

22 Any person who, with the intent to defraud, makes, forges or
24 counterfeits any stamp prescribed by the State Tax Assessor under
26 this chapter or who causes or procures the same to be done, who
28 knowingly utters, publishes, passes or renders as true any false,
altered, forged or counterfeited stamp or who knowingly possesses
any such false, altered, forged or counterfeited stamp, for the
purpose of evading the tax imposed by this chapter, commits a
Class C crime.

30 **Sec. 21. 36 MRSA §4379**, as amended by PL 1985, c. 785, Pt. B,
32 §169, is further amended to read:

34 **§4379. Administration; rules**

36 The administration of this chapter is vested in the State
38 Tax Assessor. All forms necessary and proper for the enforcement
40 of this chapter shall ~~shall~~ must be prescribed and furnished by the
42 ~~State--Tax--Assessor~~ assessor. The ~~State--Tax--Assessor~~ assessor
44 shall appoint such any agents, ~~clerks, stenographers and other~~
46 ~~assistants as he may deem necessary for effecting the purpose of~~
~~this chapter, subject to the Civil Service Law.~~ The ~~State--Tax~~
48 ~~Assessor~~ assessor may ~~prescribe regulations and rulings, not~~
~~ineconsistent with law, adopt rules to carry into effect this~~
~~chapter, which regulations and rulings, when reasonably designed~~
~~to carry out the intent and purpose of this chapter, shall be~~
~~prima facie evidence of its proper interpretation. The State Tax~~
~~Assessor shall, at least annually, and oftener in his discretion,~~
~~publish for distribution all regulations prescribed and such~~
~~rulings as appear to him to be of general interest.~~

