

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1169

S.P. 417

March 7, 2007

An Act Relating to Uncollectible Cigarette and Tobacco Taxes

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MITCHELL of Kennebec.
Cosponsored by Representative CROCKETT of Augusta and Senator: PERRY of Penobscot,
Representative: PIOTTI of Unity.

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

2 **Sec. 1. 36 MRSA §4366-A, sub-§4-B** is enacted to read:

3 **4-B. Credit for worthless account.** Tax paid by a licensed distributor pursuant to
4 this section with regard to stamps affixed to cigarettes sold to a retailer on credit for
5 which payment has not been received may, if and to the extent that the account is charged
6 off as uncollectible on the books of the distributor, be credited against the amount of tax
7 due for stamps purchased subsequently by the distributor.

8 The credit allowed by this subsection is allowed only for debts charged off on or after
9 July 1, 2007 and the credit must be claimed within one year of the charge-off. If a
10 licensed distributor subsequently collects all or part of a debt with respect to which the
11 distributor has claimed a credit under this subsection, the distributor shall remit the
12 amount collected, to the extent of the credit, to the assessor within 60 days or upon the
13 distributor's next purchase of cigarette tax stamps, whichever occurs sooner.

14 For the purposes of determining eligibility for a credit under this subsection, a partial
15 payment by a payor to a distributor must be chronologically applied to the earliest debt
16 arising from taxes imposed under this chapter and chapter 704 that is owed by that payor
17 before the payment is applied to any other debt owed by the payor to the distributor.

18 A credit claimed pursuant to this subsection must be made on a form prescribed and
19 furnished by the assessor and must include:

20 A. A copy of the original invoice documenting the sale of cigarettes to the retailer;

21 B. Evidence acceptable to the assessor that the cigarettes described in the invoice
22 were delivered to the retailer that ordered them;

23 C. Evidence acceptable to the assessor that the retailer who ordered and received the
24 cigarettes did not pay the distributor for the cigarettes and that the distributor used
25 commercially reasonable collection practices in attempting to collect the debt; and

26 D. Any other information reasonably required by the assessor.

27 **Sec. 2. 36 MRSA §4404**, as amended by PL 2005, c. 627, §10, is repealed and the
28 following enacted in its place:

29 **§4404. Returns; payment of tax and penalty; credits**

30 **1. Generally; monthly reports; records.** Every distributor subject to the licensing
31 requirement of section 4402 shall on or before the last day of each month submit, on a
32 form prescribed and furnished by the State Tax Assessor, a report together with payment
33 of the tax due under this chapter stating the quantity and the wholesale sales price of all
34 tobacco products held, purchased, manufactured, brought in or caused to be brought in
35 from outside the State or shipped or transported to retailers within the State during the
36 preceding calendar month. The monthly report must contain such further information as
37 the assessor may require. Every distributor shall keep complete and accurate records at
38 its principal place of business to substantiate all receipts and sales of tobacco products.

1 **2. Credits allowed.** A licensed distributor is entitled to a credit against tobacco
2 taxes paid as follows.

3 A. A licensed distributor that has paid tax on tobacco products that are returned to a
4 manufacturer because they have become unfit for use, sale or consumption is entitled
5 to a credit for that tax on a subsequent return upon receipt of the credit notice from
6 the original supplier. The credit allowed by this paragraph must be claimed on a
7 form prescribed and furnished by the assessor and must be submitted to the assessor
8 within 90 days of the return of the unsalable tobacco products to the manufacturer.

9 B. A licensed distributor that has paid tax on tobacco products that are sold to a
10 retailer on credit for which payment has not been received is entitled to a credit for
11 that tax to the extent that the account is charged off as uncollectible on the books of
12 the distributor. The credit allowed by this paragraph is allowed only for debts charged
13 off on or after July 1, 2007 and the credit must be claimed within one year of the
14 charge-off. If a licensed distributor subsequently collects all or part of a debt with
15 respect to which the distributor has claimed a credit under this paragraph, the
16 distributor must remit the amount collected, to the extent of the credit, to the assessor
17 on its next monthly return. For the purposes of determining eligibility for a credit
18 under this paragraph, a partial payment by a payor to a distributor must be
19 chronologically applied to the earliest debt arising from taxes imposed under chapter
20 703 and this chapter that is owed by that payor before the payment is applied to any
21 other debt owed by the payor to the distributor.

22 A credit claimed pursuant to this paragraph must be made on a form prescribed and
23 furnished by the assessor and must include:

24 (1) A copy of the original invoice documenting the sale of tobacco products to
25 the retailer;

26 (2) Evidence acceptable to the assessor that the tobacco products described in the
27 invoice were delivered to the retailer that ordered them;

28 (3) Evidence acceptable to the assessor that the retailer who ordered and received
29 the tobacco products did not pay the distributor for the tobacco products and that
30 the distributor used commercially reasonable collection practices in attempting to
31 collect the debt; and

32 (4) Any other information reasonably required by the assessor.

33 **3. Unlicensed distributors.** A person who is not a distributor licensed pursuant to
34 this chapter who imports, receives or otherwise acquires tobacco products for use or
35 consumption in the State from a person other than a licensed distributor shall file, on or
36 before the last day of the month following each month in which tobacco products were
37 acquired, a return on a form prescribed by the assessor together with payment of the tax
38 imposed by this chapter at the rate provided in section 4403. The return must report the
39 quantity of tobacco products imported, received or otherwise acquired from a person
40 other than a licensed distributor or retailer during the previous calendar month and
41 additional information the assessor may require.

SUMMARY

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2 This bill provides a mechanism for distributors of tobacco products and cigarettes
3 who pay the cigarette tax up front to receive a credit for the tax paid by them on products
4 for which the distributor is not paid and the distributor has been unable to reclaim.