

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1652

H.P. 1188

House of Representatives, April 30, 2019

An Act To Make Technical Changes to the Taxation of Marijuana

(EMERGENCY)

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

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TIPPING of Orono.

1 **3. Adult use marijuana licensed establishment.** If the taxpayer is a marijuana
2 establishment, as defined in Title 28-B, section 102, subsection 29, to the Department of
3 Administrative and Financial Services, which shall construe that liability and lack of
4 cooperation to be a ground for denying, suspending or revoking the taxpayer's marijuana
5 establishment license in accordance with Title 28-B, chapter 1, subchapter 8.

6 **Sec. A-5. 36 MRS §1752, sub-§3-B, ¶¶F and G,** as enacted by PL 2015, c.
7 267, Pt. OOOO, §2 and affected by §7, are amended to read:

8 F. Prepared food; ~~and~~

9 G. The following food and drinks ordinarily sold for consumption without further
10 preparation:

11 (1) Soft drinks and powdered and liquid drink mixes except powdered milk,
12 infant formula, coffee and tea;

13 (2) Sandwiches and salads;

14 (3) Supplemental meal items such as corn chips, potato chips, crisped vegetable
15 or fruit chips, potato sticks, pork rinds, pretzels, crackers, popped popcorn,
16 cheese sticks, cheese puffs and dips;

17 (4) Fruit bars, granola bars, trail mix, breakfast bars, rice cakes, popcorn cakes,
18 bread sticks and dried sugared fruit;

19 (5) Nuts and seeds that have been processed or treated by salting, spicing,
20 smoking, roasting or other means;

21 (6) Desserts and bakery items, including but not limited to doughnuts, cookies,
22 muffins, dessert breads, pastries, croissants, cakes, pies, ice cream cones, ice
23 cream, ice milk, frozen confections, frozen yogurt, sherbet, ready-to-eat pudding,
24 gelatins and dessert sauces; and

25 (7) Meat sticks, meat jerky and meat bars.

26 As used in this paragraph, "without further preparation" does not include combining
27 an item with a liquid or toasting, microwaving or otherwise heating or thawing a
28 product for palatability rather than for the purpose of cooking the product; and

29 **Sec. A-6. 36 MRS §1752, sub-§3-B, ¶H** is enacted to read:

30 H. Notwithstanding any other provision of law to the contrary, any food product
31 containing any amount of marijuana or marijuana product.

32 **Sec. A-7. 36 MRS §1752, sub-§6-E** is enacted to read:

33 **6-E. Marijuana.** "Marijuana" has the same meaning as in Title 28-B, section 102,
34 subsection 27.

35 **Sec. A-8. 36 MRS §1752, sub-§6-F** is enacted to read:

36 **6-F. Marijuana product.** "Marijuana product" has the same meaning as in Title
37 28-B, section 102, subsection 33.

1 **Sec. A-9. 36 MRSA §1752, sub-§9-G** is enacted to read:

2 **9-G. Qualifying patient.** "Qualifying patient" has the same meaning as in Title 22,
3 section 2422, subsection 9.

4 **Sec. A-10. 36 MRSA §1811, first ¶,** as amended by PL 2017, c. 409, Pt. D, §2, is
5 further amended to read:

6 A tax is imposed on the value of all tangible personal property, products transferred
7 electronically and taxable services sold at retail in this State. The rate of tax is 7% on the
8 value of liquor sold in licensed establishments as defined in Title 28-A, section 2,
9 subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of
10 living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of
11 rental for a period of less than one year of an automobile, of a pickup truck or van with a
12 gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged
13 in the business of renting automobiles or of a loaner vehicle that is provided other than to
14 a motor vehicle dealer's service customers pursuant to a manufacturer's or dealer's
15 warranty; 7% on the value of prepared food; and 5% on the value of all other tangible
16 personal property and taxable services and products transferred electronically.
17 Notwithstanding the other provisions of this section, from October 1, 2013 to December
18 31, 2015, the rate of tax is 8% on the value of rental of living quarters in any hotel,
19 rooming house or tourist or trailer camp; 8% on the value of prepared food; 8% on the
20 value of liquor sold in licensed establishments as defined in Title 28-A, section 2,
21 subsection 15, in accordance with Title 28-A, chapter 43; and 5.5% on the value of all
22 other tangible personal property and taxable services and products transferred
23 electronically. Notwithstanding the other provisions of this section, beginning January 1,
24 2016, the rate of tax is 9% on the value of rental of living quarters in any hotel, rooming
25 house or tourist or trailer camp; 8% on the value of prepared food; 8% on the value of
26 liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15,
27 in accordance with Title 28-A, chapter 43; and 5.5% on the value of all other tangible
28 personal property and taxable services and products transferred electronically.
29 Notwithstanding the other provisions of this section, beginning on the first day of the
30 calendar month in which adult use marijuana and adult use marijuana products may be
31 sold in the State by a marijuana establishment licensed to conduct retail sales pursuant to
32 Title 28-B, chapter 1, the rate of tax is 10% on the value of adult use marijuana ~~and~~, adult
33 use marijuana products and, if sold by a person to an individual who is not a qualifying
34 patient, marijuana and marijuana products. Value is measured by the sale price, except as
35 otherwise provided. The value of rental for a period of less than one year of an
36 automobile or of a pickup truck or van with a gross vehicle weight of less than 26,000
37 pounds rented from a person primarily engaged in the business of renting automobiles is
38 the total rental charged to the lessee and includes, but is not limited to, maintenance and
39 service contracts, drop-off or pick-up fees, airport surcharges, mileage fees and any
40 separately itemized charges on the rental agreement to recover the owner's estimated
41 costs of the charges imposed by government authority for title fees, inspection fees, local
42 excise tax and agent fees on all vehicles in its rental fleet registered in the State. All fees
43 must be disclosed when an estimated quote is provided to the lessee.

1 **PART B**

2 **Sec. B-1. 28-B MRSA §205, sub-§4, ¶A**, as enacted by PL 2017, c. 409, Pt. A,
3 §6, is amended to read:

4 A. Within 10 days of receiving certification of local authorization from a
5 municipality as required by section 402, subsection 3, paragraph B or, in the case of a
6 marijuana establishment to be located in the unorganized and deorganized areas, from
7 the Maine Land Use Planning Commission as required by section 403, subsection 3,
8 paragraphs B and C, the department shall notify the applicant that certification of
9 local authorization has been confirmed and that, in order for the department to issue
10 an active license, the applicant must:

11 (1) Pay the applicable license fee required pursuant to section 207;

12 (2) Submit a facility plan that specifies the location, size and layout of the
13 marijuana establishment within the municipality or, in the case of a marijuana
14 establishment to be located in the unorganized and deorganized areas, within the
15 town, plantation or township in which the marijuana establishment will be
16 located;

17 (3) If the application is for a license to operate a cultivation facility, submit
18 updated operating and cultivation plans as required under section 302 based upon
19 the actual premises to be licensed, except that, if no changes to the original
20 operating and cultivation plans submitted by the applicant are necessary based
21 upon the actual premises to be licensed, then the applicant may satisfy this
22 requirement by resubmitting the original operating and cultivation plans and
23 noting on those plans that no changes are necessary; ~~and~~

24 (4) If the application is for any license except a license to operate a ~~nursery~~
25 ~~cultivation testing~~ facility, ~~as described in section 301, subsection 5, or a~~
26 ~~marijuana store~~, register with the State Tax Assessor pursuant to Title 36, section
27 1754-B to collect and remit the sales tax on the sale of adult use marijuana and
28 adult use marijuana products imposed under Title 36, section 1811-; and

29 (5) If the application is for a license to operate a cultivation facility, register with
30 the State Tax Assessor pursuant to Title 36, section 4922 to collect and remit the
31 excise tax on the sale of adult use marijuana imposed under Title 36, chapter 723.

32 **Sec. B-2. 28-B MRSA §501, sub-§3, ¶C**, as enacted by PL 2017, c. 409, Pt. A,
33 §6, is amended to read:

34 C. A nursery cultivation facility may sell and distribute to marijuana stores and other
35 cultivation facilities only immature marijuana plants, seedlings and marijuana seeds.
36 Adult use marijuana sold by a nursery cultivation facility to marijuana stores and
37 other cultivation facilities is subject to the excise tax imposed pursuant to ~~subchapter~~
38 ~~40 Title 36, chapter 723~~, which must be paid to the ~~department~~ State Tax Assessor as
39 required by subsection 9.

40 **Sec. B-3. 28-B MRSA §501, sub-§6, ¶B**, as enacted by PL 2017, c. 409, Pt. A,
41 §6 and amended by c. 452, §37, is further amended to read:

1 B. A cultivation facility licensee authorized pursuant to paragraph A to purchase
2 marijuana plants and marijuana seeds from registered caregivers and registered
3 dispensaries that transacts such a purchase shall pay to the ~~department~~ State Tax
4 Assessor the excise taxes ~~that would have been imposed under subchapter 10~~
5 pursuant to Title 36, chapter 723 on the sale of the marijuana plants and marijuana
6 seeds ~~if the marijuana plants and marijuana seeds had been sold by a cultivation~~
7 ~~facility licensee to another licensee~~. In addition to payment of the required excise
8 taxes under this paragraph, the cultivation facility licensee shall provide the
9 department with an accounting of the transaction, which must include information on
10 the registered caregiver or registered dispensary from which the licensee purchased
11 the marijuana plants and marijuana seeds, the number of mature marijuana plants,
12 immature marijuana plants, seedlings and marijuana seeds purchased in the
13 transaction and any other information required by the department by rule.

14 **Sec. B-4. 28-B MRSA §501, sub-§9**, as enacted by PL 2017, c. 409, Pt. A, §6, is
15 amended to read:

16 **9. Excise tax; sales tax.** A cultivation facility licensee shall ensure that the tax
17 imposed on the sale of adult use marijuana ~~by a cultivation facility to other licensees~~
18 pursuant to subchapter 10 Title 36, chapter 723 is paid to the ~~department~~ State Tax
19 Assessor. A nursery cultivation facility licensee shall ensure that the tax imposed on the
20 sale of adult use marijuana and adult use marijuana products under Title 36, section 1811
21 is collected and remitted in accordance with the requirements of Title 36, Part 3 and the
22 rules adopted pursuant to Title 36, Part 3.

23 **Sec. B-5. 28-B MRSA c. 1, sub-c. 10**, as amended, is repealed.

24 **Sec. B-6. 28-B MRSA §1101, sub-§1, ¶A**, as enacted by PL 2017, c. 409, Pt. A,
25 §6, is amended to read:

26 A. Money received from the excise tax imposed on the sale of adult use marijuana ~~by~~
27 ~~a cultivation facility licensee to other licensees~~ pursuant to subchapter 10 Title 36,
28 chapter 723 in the amount required under ~~section 1003~~ Title 36, section 4925;

29 **Sec. B-7. 36 MRSA c. 723** is enacted to read:

30 **CHAPTER 723**

31 **MARIJUANA EXCISE TAX**

32 **§4921. Definitions**

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

35 **1. Adult use marijuana.** "Adult use marijuana" has the same meaning as in Title
36 28-B, section 102, subsection 1.

37 **2. Cultivation facility.** "Cultivation facility" has the same meaning as in Title 28-B,
38 section 102, subsection 13.

1 **3. Immature marijuana plant.** "Immature marijuana plant" has the same meaning
2 as in Title 28-B, section 102, subsection 19.

3 **4. Licensee.** "Licensee" has the same meaning as in Title 28-B, section 102,
4 subsection 24.

5 **5. Marijuana establishment.** "Marijuana establishment" has the same meaning as
6 in Title 28-B, section 102, subsection 29.

7 **6. Marijuana flower.** "Marijuana flower" has the same meaning as in Title 28-B,
8 section 102, subsection 31.

9 **7. Marijuana plant.** "Marijuana plant" has the same meaning as in Title 28-B,
10 section 102, subsection 32.

11 **8. Marijuana trim.** "Marijuana trim" has the same meaning as in Title 28-B,
12 section 102, subsection 35.

13 **9. Mature marijuana plant.** "Mature marijuana plant" has the same meaning as in
14 Title 28-B, section 102, subsection 36.

15 **10. Registered caregiver.** "Registered caregiver" has the same meaning as in Title
16 22, section 2422, subsection 11.

17 **11. Registered dispensary.** "Registered dispensary" has the same meaning as in
18 Title 22, section 2422, subsection 6.

19 **12. Seedling.** "Seedling" has the same meaning as in Title 28-B, section 102,
20 subsection 51.

21 **§4922. Registration**

22 **1. Generally.** A cultivation facility licensee operating in this State shall register with
23 the assessor each cultivation facility operated by the cultivation facility licensee and
24 collect and remit taxes in accordance with the provisions of this chapter. A person
25 required to be registered as a cultivation facility licensee pursuant to this section must
26 also be in compliance with Title 28-B, chapter 1. A registration issued pursuant to this
27 section is not a license within the meaning of that term in the Maine Administrative
28 Procedure Act.

29 **2. Applications; forms.** A registration application under this section must be made
30 on a form prescribed by the assessor and must state the name and address of the
31 applicant, the address of the applicant's registered cultivation facility and such other
32 information as the assessor may require for the proper administration of this chapter.

33 **3. Penalties.** The following penalties apply to violations of this section.

34 **A.** A cultivation facility licensee that sells at wholesale, offers for sale at wholesale
35 or possesses with intent to sell at wholesale any adult use marijuana without being
36 registered with the assessor pursuant to this section commits a civil violation for
37 which a fine of not less than \$250 and not more than \$500 must be adjudged.

1 B. A cultivation facility licensee that violates paragraph A after having been
2 previously adjudicated as violating paragraph A commits a civil violation for which a
3 fine of not less than \$500 and not more than \$1,000 must be adjudged for each
4 subsequent violation.

5 **4. Surrender, revocation and suspension.** A registration pursuant to this section is
6 nontransferable. The assessor may revoke or suspend the registration of any registered
7 cultivation facility licensee for failure to comply with any provision of this chapter or if
8 the person no longer cultivates adult use marijuana. A person aggrieved by a revocation
9 or suspension may request reconsideration as provided in section 151.

10 **5. Notification.** A cultivation facility licensee that has its registration under this
11 section suspended or revoked shall, within 10 business days of the suspension or
12 revocation, inform in writing all its accounts in this State that it no longer holds a valid
13 registration. The assessor may publish the name of a cultivation facility licensee that has
14 had its registration suspended or revoked.

15 **§4923. Excise tax imposed**

16 Beginning on the first day of the calendar month in which adult use marijuana may be
17 sold in the State by a cultivation facility under Title 28-B, chapter 1, an excise tax on
18 adult use marijuana is imposed in accordance with this chapter.

19 **1. Excise tax on marijuana flower and mature marijuana plants.** A cultivation
20 facility licensee shall pay an excise tax of \$335 per pound or fraction thereof of marijuana
21 flower or mature marijuana plants sold to other licensees in the State.

22 **2. Excise tax on marijuana trim.** A cultivation facility licensee shall pay an excise
23 tax of \$94 per pound or fraction thereof of marijuana trim sold to other licensees in the
24 State.

25 **3. Excise tax on immature marijuana plants and seedlings.** A cultivation facility
26 licensee shall pay an excise tax of \$1.50 per immature marijuana plant or seedling sold to
27 other licensees in the State.

28 **4. Excise tax on marijuana seeds.** A cultivation facility licensee shall pay an excise
29 tax of 30¢ per marijuana seed sold to other licensees in the State.

30 **5. Excise tax on purchases from registered caregivers and registered**
31 **dispensaries.** A cultivation facility licensee authorized pursuant to Title 28-B, section
32 501, subsection 6, paragraph A to purchase marijuana plants and marijuana seeds from
33 registered caregivers and registered dispensaries that transacts such a purchase shall pay
34 to the assessor the excise taxes that would have been imposed under subsections 1 to 4 on
35 the sale of the marijuana plants and marijuana seeds if the marijuana plants and marijuana
36 seeds had been sold by a cultivation facility licensee to another licensee.

37 **6. Multiple licenses.** When a cultivation facility licensee also holds a license to
38 operate another marijuana establishment, the taxes imposed by subsections 1 to 4 apply to
39 any transfer of marijuana from the cultivation facility to the other marijuana
40 establishment or, if no such transfer is made, to any activity undertaken pursuant to Title

1 28-B, section 501, subsection 2 or 4 with regard to marijuana cultivated by the cultivation
2 facility.

3 **§4924. Returns; payment of excise tax**

4 On or before the 15th day of each month, a cultivation facility licensee shall file a
5 return, as required by the assessor, and pay to the assessor all excise taxes due under this
6 chapter for the preceding calendar month.

7 **§4925. Application of excise tax revenue**

8 All excise tax revenue collected by the assessor pursuant to this chapter on the sale of
9 adult use marijuana must be deposited into the General Fund, except that, on or before the
10 last day of each month, the assessor shall transfer 12% of the excise tax revenue received
11 during the preceding month pursuant to this chapter to the Adult Use Marijuana Public
12 Health and Safety Fund established in Title 28-B, section 1101.

13 **Emergency clause.** In view of the emergency cited in the preamble, this
14 legislation takes effect when approved.

15 **SUMMARY**

16 This bill does the following.

17 Part A:

18 1. Authorizes the Department of Administrative and Financial Services to deny,
19 suspend or revoke an adult use marijuana establishment license for failure to cooperate
20 with Maine Revenue Services in the payment of a final tax liability;

21 2. Aligns the record-keeping requirements imposed by the Maine Revised Statutes,
22 Title 28-B with those of Title 36 by extending the record-keeping period in Title 28-B
23 from 3 tax years to 6 tax years;

24 3. Excludes foods containing marijuana and marijuana products from the category of
25 tax-exempt grocery staples; and

26 4. Imposes the 10% tax rate on adult use marijuana and marijuana products sold by
27 marijuana establishments on all marijuana and marijuana products sold by any person to
28 an individual who is not a qualifying patient.

29 Part B moves the adult use marijuana excise tax from Title 28-B to Title 36. In
30 addition, Part B:

31 1. Requires that applicants for an adult use marijuana license, except a testing facility
32 license, register with the State Tax Assessor to collect and remit sales tax, as is currently
33 required by Title 36, as a condition for obtaining the license;

34 2. Requires cultivation facilities to register with the State Tax Assessor to collect and
35 remit the adult use marijuana excise tax as a condition for receiving a cultivation facility

1 license; imposes penalties on cultivation facilities that sell marijuana without registering
2 with the State Tax Assessor; and allows for the suspension and revocation of the
3 registration for failure to comply with the adult use marijuana excise tax laws;

4 3. Clarifies that the adult use marijuana excise tax is imposed when a person holding
5 both a cultivation facility license and either a marijuana store license or products
6 manufacturing facility license transfers marijuana from the cultivation facility to either
7 the marijuana store or products manufacturing facility or otherwise undertakes an activity
8 with the marijuana pursuant to the marijuana store license or products manufacturing
9 facility license; and

10 4. Moves the adult use excise tax due date from the last day of the month to the 15th
11 day of the month to coincide with the sales tax due date.