

MAINE STATE LEGISLATURE

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SEVENTY-FOURTH LEGISLATURE

SENATE.

No. 26

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND NINE.

AN ACT to provide for a Recording Tax on Mortgages.

*Be it enacted by the Senate and House of Representatives in
Legislature assembled, as follows:*

Section 1. A tax of fifty cents for each one hundred dol-
2 lars and each remaining major fraction thereof of principal
3 debt or obligation which is or under any contingency may
4 be secured at the date of the execution thereof or at any
5 time thereafter by mortgage of real property situated with-
6 in the State recorded on or after the first day of July, nine-
7 teen hundred and nine, is hereby imposed on each such mort-
8 gage, and shall be collected and paid as provided in this act.
9 If the principal debt or obligation which is or by any con-

10 tency may be secured, is less than one hundred dollars,
11 the said tax shall be fifty cents.

Sect. 2. The words mortgage of real property as used in
2 this act include every mortgage by which a lien is created
3 over or imposed on real property or which affects the title
4 to real property, notwithstanding that it may also be a lien
5 on personal or other property or that personal or other
6 property may form part of the security for the debt or debts
7 secured by such mortgage. Executory contracts for the
8 sale of real property under which the vendee has or is en-
9 titled to possession shall be deemed to be mortgages for the
10 purposes of this act and shall be assessed at the amount
11 unpaid on such contracts. A contract or agreement by which
12 the indebtedness secured by any mortgage is increased or
13 added to, shall be deemed a mortgage of real property
14 for the purpose of this act, and shall be taxable as such upon
15 the amount of such increase or addition.

Sect. 3. All mortgages of real property situated within
2 the State which are taxed by this act, and the debts and the
3 obligations which they secure, together with the paper writ-
4 ings evidencing the same, shall be exempt from other taxa-
5 tion, except that such mortgages shall not be exempt from
6 the inheritance tax.

Sect. 4. No mortgage of real property situated within this
2 State shall be exempt, and no person or corporation owning
3 any debt or obligation secured by mortgage of real prop-
4 erty situated within this State shall be exempt from the taxes

5 imposed by this act by reason of anything contained in any
6 other statute, or by reason of any provision in any private
7 act or charter which is subject to amendment or repeal by
8 the legislature, or by reason of non-residence within this
9 State or for any other cause.

Sect. 5. Whenever any mortgage other than a mortgage
2 specified in section eight of this act has been recorded prior
3 to July first, nineteen hundred and nine, the record owner
4 thereof may file with the register of deeds of the county
5 in which the real property, or any part thereof, on which said
6 mortgage is a lien, is situated, a written statement under
7 oath verified by the record owner or the agent or officer of
8 such record owner describing such mortgage by giving the
9 date of the same and the book and page of record thereof
10 together with the names of the parties thereto, specifying
11 the amount then remaining unpaid on the debt or obligation
12 secured thereby, and electing that it shall become subject to
13 the tax prescribed by this act. Whenever any unrecorded
14 mortgage has been executed and delivered prior to July first,
15 nineteen hundred and nine, the owner thereof may record
16 the same upon filing with the recording officer a similar
17 statement and paying the tax as herein prescribed. A tax
18 shall thereupon be computed, levied and collected upon the
19 amount of the principal debt or obligation unpaid at the time
20 of the filing of such statement, or of the recording of such
21 mortgage and filing of such statement. On the payment of
22 such tax as herein provided, the register of deeds shall note

23 on the margin of the record of such mortgage the fact of
24 such statement and of the amount of the tax paid, attested by
25 his signature, whereupon such mortgage and the debt or
26 obligation secured thereby shall be entitled to the exemptions
27 and immunities conferred by this act, and all of the pro-
28 visions of this act shall thereafter be applicable to said mort-
29 gage. Whenever the original mortgage is presented to the
30 clerk together with the statement he shall also note on said
31 original mortgage the fact of the filing of the said statement
32 and also the amount of the tax paid, duly attested by his
33 signature, which endorsement shall be conclusive evidence
34 of the payment of such tax.

Sect. 6. If subsequent to the recording of a mortgage or
2 which all taxes, if any, accrued under this act have been paid,
3 a supplemental instrument or mortgage is recorded for the
4 purpose of correcting or perfecting any recorded mortgage,
5 or pursuant to some provision or covenant therein, or an
6 additional mortgage is recorded imposing the lien thereof
7 upon property not originally covered by or not described
8 in such recorded primary mortgage for the purpose of secur-
9 ing the principal indebtedness which is or under any con-
10 tingency may be secured by such recorded primary mortgage,
11 such additional instrument or mortgage shall not be subject
12 to taxation under this act, unless it creates or secures a new
13 or further indebtedness or obligation other than the prin-
14 cipal indebtedness or obligation secured by or which under
15 any contingency may be secured by the recorded primary

16 mortgage, in which case a tax is imposed as provided by sec-
17 tion one of this act on such new or further indebtedness or
18 obligation, and shall be paid to the proper recording officer
19 at the time such instrument or additional mortgage is record-
20 ed. If at the time of recording such instrument or addi-
21 tional mortgage any exemption is claimed under this section,
22 there shall be filed with the recording officer and preserved
23 in his office a statement under oath of the facts on which
24 such claim for exemption is based. The determination of
25 the recording officer upon the question of exemption shall be
26 reviewable by the board of State assessors.

Sect. 7. If the principal indebtedness secured or which by
2 any contingency may be secured by a mortgage is not deter-
3 minable from the terms of the mortgage, or if a mortgage
4 is given to secure the performance by the mortgagor or any
5 other person of a contract obligation other than the pay-
6 ment of a specific sum of money and the maximum amount
7 secured or which by any contingency may be secured by the
8 mortgage is not expressed therein, such mortgage shall be
9 taxable under this act upon the value of the property cov-
10 ered by the mortgage, which shall be determined by the
11 recording officer to whom such mortgage is presented for
12 record, unless at the time of presenting such mortgage for
13 record the owner thereof shall file with the recording offi-
14 cer a sworn statement of the maximum amount secured or
15 which under any contingency may be secured by the mort-
16 gage. If such maximum amount is expressed in the mort-

17 gage or in a sworn statement filed as required by this section,
18 such amount shall be the basis for assessing the tax imposed
19 by this act. A statement filed by the owner of a mortgage
20 pursuant to this section shall thereafter at all times be bind-
21 ing upon and conclusive against such owner, the holders of
22 any bonds or obligations secured by such mortgage and all
23 persons claiming through the mortgage any interest in the
24 mortgage or the mortgaged premises. If the maximum
25 amount secured or which by any contingency may be secured
26 by the mortgage is not expressed in the mortgage or in a
27 sworn statement as authorized by this section, the recording
28 officer at the time such mortgage is offered for record may
29 require the mortgagor or mortgagee to furnish him with
30 proofs as to such facts as he deems necessary for the pur-
31 pose of computing the value of the property covered by the
32 mortgage and such proofs shall be preserved in his office.
33 His determination as to the basis for computing the tax on
34 such mortgage shall be subject to review by the board of
35 State assessors.

Sect. 8. Whenever any part of the amount of the princi-
2 pal indebtedness which is or under any contingency may be
3 secured by a mortgage recorded prior to July first, nineteen
4 hundred and nine, is advanced after July first, nineteen hun-
5 dred and nine, the tax prescribed by this act is hereby im-
6 posed on the amount of principal indebtedness so advanced,
7 which tax shall be payable at the same time and in the same
8 manner as taxes imposed by section eleven of this act, and

9 all the provisions of section eleven in relation to the time
10 and manner of paying such tax, the filing of statements in
11 relation to the time and amount of such advances, and penal-
12 ties for failure to file the same shall apply to advances made
13 under this section and the payment of a tax thereon, except
14 that if the mortgagor is not a corporation, such statements
15 shall be filed by the owner of the mortgage, who, for fail-
16 ure to do so, shall be subject to the penalties prescribed by
17 such section. In case such mortgage was given to secure
18 the payment of a series of bonds, notes or other evidences
19 of indebtedness, the mortgagor may, at the time of paying
20 such tax, present to the recording officer, the bonds, notes,
21 or other evidences of indebtedness representing the portion
22 of the principal indebtedness secured by said mortgage upon
23 which the tax is to be paid, and also file with said recording
24 officer a statement verified by the mortgagor or an officer or
25 duly authorized agent or attorney of the mortgagor specify-
26 ing that said bonds, notes or other evidences of indebtedness
27 so presented are the bonds, notes or other evidences of in-
28 debtedness representing that portion of the principal indebt-
29 edness secured by said mortgage upon which the tax is to be
30 paid and that said bonds, notes, or other evidences of indebt-
31 edness are secured by a mortgage recorded in said office stat-
32 ing the date of said mortgage and the book and page of the
33 record of the same. It shall be the duty of such record-
34 ing officer to indorse upon each of said bonds, notes, or
35 other evidences of indebtedness so presented to him a state-

36 ment signed by him to the effect that the tax imposed by this
37 act on that portion of the principal indebtedness secured by
38 said mortgage represented by said bonds, notes or other
39 evidences of indebtedness has been paid and said statement
40 shall be conclusive proof of such payment. The bonds, notes
41 or evidences of indebtedness representing that portion of
42 the principal indebtedness secured by said mortgage upon
43 which such tax has been paid shall be exempt from taxation
44 as provided by section three of this act. In case of any
45 mortgage taxable under this section, only the portion of the
46 indebtedness secured thereby upon which the tax imposed
47 by this section is paid shall be exempt from taxation under
48 the provisions of section three of this act; provided, however,
49 that notwithstanding the exception contained in section five
50 any corporation shall have the privilege of an optional pay-
51 ment of the tax upon all advances which were made prior
52 to July first, nineteen hundred and nine, if it elects to avail
53 itself of the privileges of said section so far as they relate
54 to advances made prior to said date.

Sect. 9. The taxes imposed by this act shall be payable on
2 the recording of each mortgage of real property subject to
3 taxes thereunder. Such taxes shall be paid to the register of
4 deeds of any county in which the real property or any part
5 thereof is situated. It shall be the duty of such register to
6 indorse upon each mortgage a receipt for the amount of the
7 tax so paid. Any mortgage so indorsed may thereupon or
8 thereafter be recorded by any recording officer and the

9 receipt for such tax indorsed upon each mortgage shall be
10 recorded therewith. The record of such receipt shall be
11 conclusive proof that the amount of tax stated therein has
12 been paid upon such mortgage.

Sect. 10. No mortgage of real property shall be recorded
2 by any register of deeds on or after the first day of July,
3 nineteen hundred and nine, unless there shall be paid the tax
4 imposed by and as in this act provided. No mortgage of
5 real property which is subject to the taxes imposed by this
6 act shall be released, discharged of record, or received in
7 evidence in any action or proceeding, nor shall any assign-
8 ment of or agreement extending any such mortgage be
9 recorded unless the taxes imposed thereon by this act shall
10 have been paid as provided in this act. No judgment or
11 final order in any action or proceeding shall be made for
12 the foreclosure or enforcement of any mortgage which is
13 subject to the taxes imposed by this act or of any debt or
14 obligation secured by or which secures any such mortgage,
15 unless the taxes imposed by this act shall have been paid as
16 provided herein.

Sect. 11. In the case of mortgages made in trust to secure
2 payment of bonds or obligations issued or to be issued there-
3 after, if the total amount of principal indebtedness which
4 under any contingency may be advanced or accrue or which
5 may become secured by any such mortgage which is subject
6 to this act has not been advanced or accrued thereon or be-
7 come secured thereby before such mortgage is recorded, it

8 may contain at the end thereof a statement of the amount
9 which at the time of the execution and delivery thereof has
10 been advanced or accrued thereon, or which is then secured
11 by such mortgage; thereupon the tax payable on recording
12 of the mortgage shall be computed on the basis of the amount
13 so stated to have been so advanced or accrued thereon or
14 which is stated to be secured thereby. Such statement shall
15 thereafter at all times be binding upon and conclusive against
16 the mortgagee, the holders of any bonds or obligations
17 secured by such mortgage and all persons claiming through
18 the mortgagee any interest in the mortgage or in the mort-
19 gaged premises. Whenever a further amount is to be
20 advanced under the original mortgage, or shall accrue there-
21 on or become secured thereby, the person or corporation mak-
22 ing such mortgage shall, at or before the time when such
23 amount is to be advanced accrues or becomes secured file
24 in the office of the recording officer where such mortgage has
25 been or is first recorded a supplemental statement, verified
26 by such person or the secretary, treasurer or other proper
27 officer of such corporation of the amount of principal indebt-
28 edness to be so advanced, accruing or becoming secured, and
29 the tax on such amount shall become due and payable at the
30 time of filing such statement. Such additional tax shall be
31 paid to the recording officer where such mortgage has been
32 or is first recorded and a receipt therefor shall be indorsed
33 upon the mortgage and payment thereof shall be noted in
34 the margin of the record of such mortgage and if requested

35 a duplicate receipt for such payment shall also be given to
36 the party paying such tax and the note of such payment or
37 additional payment or such receipt shall have the same force
38 and effect as the record of receipt of the tax which under
39 this act is payable at or before the recording of the mort-
40 gage. If such additional tax is not paid as required by this
41 section, the trust mortgagee shall not certify any bond or
42 other obligation issued on account thereof, and no bonds or
43 other obligations issued in excess of the amount certified
44 in such original or supplemental statement shall be a lien
45 against the property covered by said mortgage. The county
46 attorney of the county in which such mortgage has been
47 or is first recorded may maintain an action against the per-
48 son or corporation making such mortgage to recover the
49 amount of such additional tax, with interest at the rate of
50 one per centum per month from the date when the same
51 became due, and upon recovering such tax and interest such
52 county attorney shall pay the same to the recording officer
53 of such county in satisfaction of such tax. The person or
54 corporation making such mortgage or the owner of the
55 property which secures the mortgage debt shall annually
56 within thirty days after July first, until the maximum amount
57 of principal indebtedness secured by such mortgage has been
58 advanced, has accrued or become secured and the tax there-
59 on paid file in the offices of the board of state assessors and
60 the recording officer where such mortgage has been or is
61 first recorded a statement, verified by such person or by the

62 secretary, treasurer or other proper officer of such corpora-
63 tion, of the total amount of principal indebtedness that has
64 been advanced or has accrued on such mortgage, or has been
65 secured thereby, prior to the first day of July preceding the
66 filing of such statement. A failure to file any statement
67 required by this section within the time required shall sub-
68 ject the person or corporation making such mortgage to a
69 penalty of one hundred dollars per day for each day such
70 failure continues, recoverable by the county attorney of the
71 county in which such mortgage has been or is first recorded.

Sect. 12. When the real property covered by a mortgage
2 is assessed in more than one county it shall be the duty of
3 the board of State assessors to ascertain the assessed value
4 of the property in each county and to apportion the amount
5 upon which the tax shall be paid to the recording officer in
6 each of the said counties upon the basis of the relative as-
7 sessments. Where the mortgage is a first lien upon real
8 property situate in one county and a subsequent lien upon
9 real property situate in another county it shall be their duty
10 to apportion the amount of the tax properly to be credited
11 to said counties by ascertaining the assessed valuation of
12 each parcel after deducting therefrom the taxable amount
13 of any prior lien. If however, the whole or a part of the
14 property covered by the mortgage in a county is not assess-
15 ed upon the last preceding valuation or is assessed as a part
16 of a larger tract in such a manner that the assessed value
17 cannot be readily determined, or improvements have been

18 made upon the property to such an extent as to change
19 materially the value of the property so assessed, the board
20 of State assessors may determine the value of the property
21 covered by the mortgage and for such purpose may require
22 the mortgagor or mortgagee to furnish the board with
23 proofs as to such facts as the board deems necessary for the
24 purpose of computing such value; and the value so deter-
25 mined shall be deemed to be the assessed value for the pur-
26 pose of such apportionment. When the real property cov-
27 ered by a mortgage is located partly within the State and
28 partly without the State it shall be the duty of the board of
29 State assessors to determine what proportion shall be tax
30 able under this act by determining the relative value of the
31 mortgaged property within this State as compared to the
32 total value of the entire mortgaged property, taking into
33 consideration in so doing the amount of all prior incum-
34 brances upon such property or any portion thereof. If a
35 mortgage covering property located partly within the State
36 and partly without the State, is presented for record before
37 such determination has been made, then there may be pre-
38 sented to the recording officer with such mortgage or at the
39 time when the first advance is made on prior advance mort-
40 gages as provided in section eight of this act a statement
41 in duplicate verified by the mortgagor, specifying the value
42 of the property covered by the mortgage within the State
43 and the property covered by the mortgage without the State,
44 stated separately. One of such statements shall be filed by

45 the recording officer and the other shall be transmitted by
46 him to the board of State assessors. The tax payable under
47 this act before the determination by the board of State
48 assessors, shall be computed upon such proportion of the
49 principal indebtedness secured by the mortgage or upon the
50 sum advanced thereon as the case may be as the value of the
51 mortgaged property within the State shall bear to the total
52 value of the entire mortgaged property as set forth in such
53 statement. The board of State assessors shall on receipt of
54 the statement filed with the board by the recording officer,
55 and on not less than ten days' notice, served personally or
56 by mail upon the person making such statement, the mort-
57 gagee and upon the county treasurer, proceed to determine
58 what proportion of the principal indebtedness secured by the
59 mortgage shall be used as the measure of taxation within
60 the State under the provisions of this act. In determining
61 the separate values of the property covered by any such
62 mortgage within and without the State for the purpose of
63 ascertaining the proportion of the principal indebtedness
64 secured by the mortgage which is taxable under this act,
65 the board of State assessors shall consider only the value of
66 the tangible property covered by each mortgage, taking into
67 consideration in so doing the amount of all prior incum-
68 brances thereon. For the purpose of determining such
69 value, the board of State assessors may require the mort-
70 gator or mortgagee to furnish the board, by affidavit or
71 verified report, such information or data as it deems needed

72 for such purpose, or the board may take the testimony of
73 the mortgagor or any other person in relation thereto, and
74 if any person whose testimony is desired can be found with-
75 in the State may require him by subpoena to attend before
76 the board at a specified time and place for the purpose of
77 testifying in relation to the value of such property. They
78 may also determine at the same time the proportion of the
79 tax which shall be paid by the recording officer who has
80 received the same to the several county treasurers of the
81 respective counties in the State, in which parts of the mort-
82 gaged property are situated. When such recording officer
83 shall pay any portion of such tax to the county treasurer of
84 any other county, he shall at the same time file in the office
85 of the recording officer of such other county a brief descrip-
86 tion of the mortgage on which such tax is paid sufficient to
87 identify the same, together with a statement of the pay-
88 ment of such tax, and the amount thereof, and the recording
89 officer of such other county shall note on the margin of the
90 record of such mortgage the fact of such payment attested
91 by his signature. The board of State assessors shall file a
92 certified copy of such determination with the recording offi-
93 cer of each county in which any part of the mortgaged prop-
94 erty is situated and shall serve a copy of such certificate per-
95 sonally or by mail upon the person making such statement
96 and upon the mortgagee together with a notice requiring the
97 payment to the proper recording officer within ten days there-
98 after, of the amount of the tax on such mortgage, if any,

99 which under the determination of said board remains un-
100 paid. Such additional tax shall become due and be deemed
101 unpaid upon the expiration of such period of ten days.
102 The board of State assessors shall adopt rules to govern
103 their procedure and the manner of taking evidence in these
104 matters, may require certified statements to be furnished
105 either by boards of assessors or recording officers in the
106 respective counties in relation thereto, and immediately
107 upon making their determination they shall file a certifi-
108 cate thereof with the recording officer of each county with-
109 in which a portion of the mortgaged property is situated;
110 and a minute of such determination shall be entered in the
111 margin of the record of said mortgage, and whenever the
112 tax upon a mortgage secured by real property assessed in
113 two or more counties shall have been paid as provided by
114 this act, it shall also be the duty of the board of State
115 assessors to equitably apportion between the respective
116 counties the amount upon which such tax is to be com-
117 puted and to file the certificate of their determination with
118 the recording officer, and thereupon said recording officer
119 shall pay over to the several county treasurers of the
120 respective counties the sums fixed by said certificate of
121 determination.

Sect. 13. Upon the first day of each month the recording
2 officer of each county shall pay over to the county treasurer
3 of said county, all moneys received during the preceding
4 month upon account of taxes paid to him as herein pre-

5 scribed, except taxes paid upon a mortgage which under
6 the provisions of section twelve is to be apportioned by the
7 board of State assessors between several counties, which
8 taxes and money shall be paid over by him as provided by the
9 determination of said board of State assessors within five
10 days after the filing of said determination in his office. The
11 amounts then paid over shall be applied to general county
12 purposes. Prior to the first day of November in each year
13 the recording officer shall cause to be prepared a list con-
14 taining a description of all mortgages upon which taxes
15 have been paid by a reference to the date of each mortgage,
16 the name of the mortgagor and mortgagee, the amount of
17 the principal debt upon which the tax was paid together
18 with the book and page where said mortgage is recorded,
19 together with the town, city or village in which the mort-
20 gaged property is assessed, and if assessed in two or more
21 counties the amount apportioned to each county by the board
22 of State assessors, and shall file the statement in his office
23 and shall furnish a copy thereof to the board of State
24 assessors.

Sect. 14. The board of State assessors shall have general
2 supervisory power over all recording officers in respect of
3 the duties imposed by this act and they may make such rules
4 and regulations as they may deem proper.

Sect. 15. No deduction from money at interest or debts
2 due a person to be taxed shall hereafter be allowed on
3 account of any amount owned by such person upon a mort-

4 gage upon which has been paid the tax provided by this act.

Sect. 16. All acts and parts of acts inconsistent herewith
2 are hereby repealed, provided, however, that nothing in this
3 act shall be so construed as to alter or affect sections fifty-
4 four, fifty-seven, sixty, or sixty-five, of chapter eight of the
5 revised statutes.

Sect. 17. This act shall take effect on July 1, 1909.