

MAINE STATE LEGISLATURE

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E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 611

H. P. 1164

House of Representatives, Feb. 8, 1933.

Referred to Committee on Taxation and 1,000 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Walker of Rockland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-
THREE

AN ACT Relating to the Sale of Tobacco and Tobacco Products and
Imposing an Excise on Dealers Therein.

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

Sec. 1. Provision for issuing permits. No store or other premises shall be maintained for the transaction of the business of selling tobacco or tobacco products as defined in section 3 unless it is registered with and a permit therefor has been issued by the state tax assessor. The state tax assessor shall, upon application made in such manner and form as he shall determine, register such store or premises under such conditions having regard to sanitation, protection of the public health, and child welfare as it may reasonably prescribe, and shall issue a permit therefor. The permit shall be exposed in a conspicuous place in the store or premises. Such permit shall expire on July 1 following the date of its issue, and the fee therefor shall be \$2. The state tax assessor may for cause suspend or revoke any such permit. The state tax assessor may make reasonable rules and regulations to carry into effect the provisions of this section.

Sec. 2. Penalties for violation. Whoever violates any provision of section 1 shall be punished by a fine of not less than \$100 nor more than \$5000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. Such person shall also be liable for the amount of tax which would have accrued to the state under the provisions of this

chapter, had such person operated under a permit, together with interest thereon. Such tax may be recovered in the same manner as sums due to the state under the excise tax on tobacco.

Sec. 3. Definition of terms. The following words and phrases, as used in this chapter, shall have the following meanings unless the context otherwise requires: (a) "state tax assessor", the state tax assessor.

(b) "licensed dealer", a person having a permit issued pursuant to the provisions of section 1.

(c) "Tobacco and tobacco products", any form whatsoever of tobacco and tobacco products or any substitute therefor, including chewing tobacco, smoking tobacco, cigars, cheroots, stogies, cigarettes, cigarette papers, wrappers, or tubes and snuff.

Sec. 4. Licensing of dealers. Every licensed dealer shall keep a complete and accurate record of all sales of tobacco and tobacco products and the sale price thereof. Said record shall be in such form as the state tax assessor may prescribe, and shall be preserved by the licensed dealer for a period of 2 years, and shall be free for inspection at any time upon oral or written demand by the state tax assessor or his duly authorized agents.

Sec. 5. Returns made by dealers. Every licensed dealer shall, on or before the 15th day of each month, file with the state tax assessor a return under oath, on forms to be furnished by the state tax assessor, stating in such detail as the state tax assessor may require the sale price of all tobacco and tobacco products sold by the licensed dealer in the state during the preceding calendar month to consumers, and the sale price of all tobacco and tobacco products sold by him in the state during said month to others than consumers. Said return shall also contain or be accompanied by such further information as the state tax assessor shall require. On or before the 15th day of each month next succeeding the filing with the state tax assessor of said return, each licensed dealer shall pay to the state tax assessor an excise equal to 10% of the aggregate sale price of all tobacco and tobacco products sold by him in the state during the calendar month covered by the return to consumers. Every sale shall be conclusively presumed to be a sale to a consumer unless the purchaser shall at the time of purchase file with the licensed dealer a statement under penalties of perjury, in such form as the state tax assessor shall prescribe, to the effect that the purchaser intends to resell the tobacco or tobacco products purchased, and that the same will not be consumed either in part or in whole prior to such resale. Statements so filed shall be preserved for the period of 2 years, and shall be open to inspection to the state tax assessor and his agents in the same manner as the records required in section 4.

Sec. 6. Certain discretionary exemptions. The state tax assessor may

in his discretion excuse the return of the sale price of tobacco and tobacco products sold to others than consumers, upon the giving of a bond in such form, for such amount, upon such conditions and with such sureties as he shall prescribe.

Sec. 7. Penalties for failure to file returns. If a licensed dealer, having failed to file a return, or having filed an incorrect or insufficient return without reasonable excuse, fails to file an original or corrected return, as the case may require, within 20 days after the giving of notice to him by the state tax assessor of his delinquency, the state tax assessor shall determine the amount due at any time within 1 year after the making of the earliest sale included in such determination. The state tax assessor, having made such determination, shall give notice to the delinquent licensed dealer of the amount determined to be due, and the licensed dealer shall, within 30 days after the giving of such notice, pay to the state tax assessor the amounts so determined.

Sec. 8. Penalties for failure to file returns. A licensed dealer who fails to file a return to the state tax assessor as required by section 5, otherwise than as excused under the provisions of section 6, or a corrected return as required by section 7 shall forfeit to the state, and shall pay to the state tax assessor on demand, the sum of \$5 for each day of delay after written notice by the state tax assessor of such failure. The state tax assessor may remit a part of such penalty.

Sec. 9. Certain exceptions. No provision of this chapter shall apply or be construed to apply to foreign or interstate commerce, except in so far as the same may be permitted under the provisions of the constitution and laws of the United States.

Sec. 10. Provision for rules and regulations. The state tax assessor may make reasonable rules and regulations to carry into effect the provisions of this chapter.

Sec. 11. Provision for collection of penalties or forfeitures. Sums due to the state under this chapter as excise or as penalties or forfeitures may be recovered by the attorney general in an action brought in the name of the state tax assessor. The state tax assessor shall revoke or suspend for such period as he directs the permit of any dealer who violates any provisions of this chapter, or rules and regulations authorized thereunder.

Sec. 12. Penalties for violation. Any licensed dealer who violates any provisions of this chapter, or who files any false return, affidavit, or statement, shall be punished by a fine of not more than \$1000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

Sec. 13. Jurisdiction in supreme and superior courts. The supreme judicial and superior court shall have jurisdiction in equity to restrain the

collection, with respect to any sale exempted by the constitution and laws of the United States, of the excise imposed by this chapter. Said bill shall be brought against the state tax assessor, whether the question of the collection of the excise is in the hands of the attorney-general or is still in the hands of the state tax assessor.

Sec. 14. Purposes of the fund. The sums received under this chapter as under excise, penalties, forfeitures, interest, costs of suits and fines shall be paid to the treasurer of state and shall (after the deduction of all refunds and administrative expenses) be credited to the state school fund and expended under the provisions of section 205 of chapter 19 of the revised statutes.