

MAINE STATE LEGISLATURE

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NEW DRAFT

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. 1031

H. P. 1704

House of Representatives, Mar. 23, 1933.

Reported by five members of the Committee on Taxation by Report A. On motion of Miss Martin of Bangor both Reports tabled pending acceptance of either. Specially assigned for Friday, March 24 and 1000 copies of New Draft ordered printed.

HARVEY R. PEASE, Clerk.

New Draft of H. P. 1172, L. D. 659.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-THREE

AN ACT Imposing a Sales Tax.

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

Sec. 1. Definitions. The following words, terms, and phrases, when used in this act, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

“Association.” Any partnership, limited partnership, or other form of unincorporated enterprise owned by 2 or more persons.

“Department.” The bureau of taxation.

“Gross Income.” The value proceeding or accruing from the sale of tangible personal property, excepting gasoline; including all receipts, cash and credits, without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost, interest or discount paid, or any other expense whatsoever.

“Sale.” Any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration.

“Vendor.” Every natural person, association, or corporation who or which sells tangible personal property to an amount of \$250 during any

quarterly period as hereafter defined, to a consumer or to any person for any purpose other than for resale; but the term "vendor" shall not include farmers who sell their own farm products. Whenever used in any clause prescribing a fine or imprisonment, or both, the term "vendor" as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

Sec. 2. Imposition and rate of tax. A state tax is hereby imposed and assessed upon sales of tangible personal property, at the rate of 1% upon each dollar of the gross income derived from the sales of such property, except such sales of tangible personal property made to the United States Government upon evidence satisfactory to the department, and except such sales as are not within the taxing power of this state under the commerce clause of the Constitution of the United States. Such tax shall be paid at the time and in the manner hereinafter provided. The provision of this act shall not apply to sales of gasoline or other petroleum products that are now or may hereafter be subject to any excise, sales, privilege or any other similar tax under the laws of this state.

Sec. 3. Vendors to file return. It shall be the duty of vendors on the 1st day of each January and quarterly thereafter to transmit to the department, upon a form prescribed, prepared, and furnished by the department, a return, under oath or affirmation, of the gross income arising from sales of tangible personal property during the preceding quarter. Such return shall show such further information as the department may prescribe.

Sec. 4. Assessment and payment of tax. Every vendor, at the time of making the return required under section 3, shall compute and pay to the department the tax due to the state by him for the preceding quarter. The amount of all taxes imposed under the provisions of this act shall be due and payable at the time the return for such quarter is required to be filed with the department by this act.

Sec. 5. Retention of records by vendors. Every vendor shall maintain and keep for a period of 2 years some record of the tangible personal property sold within this state by such vendor.

Sec. 6. Additional assessment. If the department is not satisfied with the return and payment of tax made by any vendor under the provisions of this act, it is hereby authorized and empowered to make an additional assessment of the tax due by such taxpayer, based upon the facts contained in the return or upon any information within its possession or that shall come into its possession. Promptly after the date of such additional assessment, the department shall give or send, by mail or otherwise, a notice thereof to the vendor, together with written notice of the time when

and the place where the vendor may be heard on a petition for reassessment as hereinafter provided.

Sec. 7. Estimated assessment upon failure to file return. If a vendor shall neglect or refuse to make any return and payment of tax required by this act, the department shall—if it deem it more conducive to the public interest, because of the supposed smallness of the debt or for any other reason, not to compel the exhibition of the vendor's account—make an estimated assessment of the probable amount of the account of the delinquent, together with a penalty of 10% of the amount so assessed. The department shall promptly thereafter give or send, by mail or otherwise, notice of such estimated assessment and penalty to the vendor against whom the same was made. There shall be no right to petition for reassessment or to appeal from any such estimated assessment made on account of the neglect or refusal of such vendor to make any return and payment of tax within a time prescribed by this act, but the department may permit the required return to be filed and permit a tax to be paid on the basis of such return, subject to investigation as in other cases. There shall be no right to appeal from the refusal of the department to permit the filing of a return in such a case.

Sec. 8. Estimated additional assessments upon refusal to permit examination of books. The department shall have the power to make an estimated additional assessment, to which shall be added a penalty of 10% of the assessment, against any vendor who has filed any return as required by this act but who refuses to permit the department, or any duly authorized agent thereof, to examine his books of account and papers pertaining to the business for which the return was made. The department shall promptly thereafter give or send, by mail or otherwise, notice of such estimated additional assessment and penalty to the vendor, together with written notice of the time when and the place where the vendor may be heard on a petition for reassessment, as hereinafter provided.

Sec. 9. Payment and due date of taxes assessed by the department. All taxes and penalties resulting from any assessment made by the department shall be due and payable 10 days after notice thereof is given or sent, by mail or otherwise, to the vendor against whom such assessment was made.

Sec. 10. Petition for reassessment of certain assessments; notice. Any vendor against whom an additional assessment or estimated additional assessment shall be made by the department may petition for a reassessment. Notice of an intention to file such a petition or to appear and be heard shall be given to the department prior to the time the amount becomes due and payable, to wit, within 10 days after notice of such assessment is given to the vendor as provided in this act. Petitions for reassess-

ment may be filed with the department on or before the date designated in the notice of such assessment when hearings on such petitions will be held. The department shall hold such hearings in each county as may be necessary to hear and determine petitions for reassessment. Such hearings shall be held at the time and place indicated in the notice of such assessment given to the vendor. All petitions filed with the department shall set forth specifically and in detail the grounds upon which it is claimed such assessment is erroneous or unlawful, and shall be accompanied by an affidavit, under oath or affirmation, certifying to the correctness of the facts stated therein. If no petition for reassessment is filed with the department, the vendor may, in lieu thereof, appear at the hearing and present his petition orally, in which event all testimony or statements of fact shall be made under oath or affirmation.

If the vendor is still dissatisfied with the finding of the department, he shall have the right to appeal to the superior court within 20 days after notice of the determination of the petition is given to him by the department. If any vendor shall fail to give due notice of an intention to petition for reassessment or to file a petition for reassessment after due notice of his intention to do so, or to appeal to the court within the time and in the manner herein set forth, the right to do so shall be forever barred, and any such vendor so failing shall not thereafter be permitted, in a suit for the recovery of such tax, to set up any ground of defense which might have been determined either by the department or the court as aforesaid: provided, that nothing contained in this section shall be construed to grant to any such vendor the right to petition for reassessment or to repeal from estimated assessments made by the department for neglect or refusal to make a return within the time prescribed by this act: and provided further: that every appeal to the court under this section shall specify all the objections to the assessment. In all cases of petitions for reassessment and appeals, the burden of proof shall be on the petitioner or appellant, as the case may be.

Sec. 11. Enforcement; rules and regulations. The department is hereby charged with the enforcement of the provisions of this act, and is hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act, and the collection of taxes, penalties and interest imposed by this act.

Sec. 12. Inquisitorial powers of department. The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers, records and equipment, and to investigate the character of the business of any vendor, in order to verify the accuracy of any return

made, or, if no return was made by such vendor, to ascertain and assess the tax imposed by this act. Every such vendor is hereby directed and required to give to the department, or its duly authorized agent, the means, facilities and opportunity for such examinations and investigations as are hereby provided and required. Any information gained by the department, as a result of any returns, investigations or verifications required to be made by this act, shall be confidential except for official purposes, and any person divulging such information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$500, and costs of prosecution, or by imprisonment for not more than 6 months, or both.

Sec. 13. Department to prepare and furnish returns. The department is hereby authorized to prepare and have printed proper forms for returns to be distributed, upon request, to vendors.

Sec. 14. Collection of delinquent taxes. The department shall call upon the attorney-general to collect any taxes or penalties imposed under the provisions of this act which are not paid within 30 days from—

(1) The date the taxes are due and payable, if a return was filed.

(2) 10 days after notice of an additional or estimated additional assessment is given or sent to the vendor, as heretofore provided, if no notice of an intention to petition for reassessment or if no petition for reassessment is filed with the department.

(3) 10 days after notice of an estimated assessment is given or sent to the vendor, as therefore provided.

(4) The date of the determination of a petition for reassessment by the department, if an appeal is not taken to the court.

Sec. 15. Interest. The tax imposed by this act shall bear interest at the rate of 12% per annum from the date such tax is due and payable, except that any tax found due as the result of an appeal to the court or any appellate court, shall bear interest at the rate of 6% per annum from the date the tax was originally due and payable. In cases of petitions to the department for reassessment any balance finally found due by the department shall bear interest at the rate of 12% per annum from 10 days after notice of the additional or estimated additional assessment was given to the vendor by the department.

Sec. 16. Penalties. (a) Any vendor who shall intentionally neglect or refuse to make the return to the department, as required by this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than \$500, and costs of prosecution, or by imprisonment for not more than 6 months, or both, in the discretion of the court.

(b) Any vendor who shall refuse to permit the department, or any agent appointed in writing by it, to examine his books, papers, invoices and other records, in and upon any premises where the same are kept, to the extent necessary to verify any return made or to ascertain and assess the tax imposed by this act if no return was made, or who shall fail or refuse to maintain and keep for 2 years such records, invoices, bills of lading and other papers pertaining to the sale of tangible personal property as may be required by the department, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$500, or by imprisonment of not more than 6 months, or both, in the discretion of the court.

Sec. 17. Disposition of tax, fines and penalties. All moneys collected under this act except such as may be used for purposes of administration shall upon December 1 of each year, be divided by crediting against the state tax assessed upon each incorporated municipality or tract of land in any place not incorporated that proportion of said net receipts which the state valuation of said municipality or tract bears to the total valuation of the state.

Sec. 18. Continuance of existing powers. The powers conferred by this act upon the department relating to the administration or enforcement of this act shall be in addition to, but not exclusive of, any other powers heretofore or hereafter conferred upon the department by law.

Sec. 19. Vendors may add price of tax to retail price of property sold. Vendors may add to the retail price of any tangible personal property, the sale of which is subject to a tax hereunder, 1% of the retail price, provided the retail price and the 1%, representing the tax imposed by this act, be separately stated on price display signs, tickets and tags, and bills rendered in connection with the sale of such property.

Sec. 20. Constitutionality. It is the intention of the legislature that, if this act cannot take effect in its entirety because of the judgment of any court of competent jurisdiction holding unconstitutional any part or parts thereof, the remaining provisions of the act shall be given full force and effect as completely as if the part or parts held unconstitutional had not been included herein.