

MAINE STATE LEGISLATURE

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DECEMBER SPECIAL SESSION

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. 132

H. P. 123

House of Representatives, Dec. 8, 1933.

Referred to Committee on Taxation. 1,500 copies ordered printed. Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Bailey of Woolwich.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND
THIRTY-THREE

AN ACT To Impose a Sales Tax.

Emergency Preamble. Whereas, the state is not able to balance the budget, and continue its present program of highway, educational, health and welfare work; and

Whereas, the reduction of the present program of highway, educational, health and welfare work would cause further unemployment and place unbearable burdens on many local communities; and

Whereas, many of the cities, towns and plantations of the state are not able to pay this state tax; and

Whereas, in the judgment of the legislature these facts create an emergency within the meaning of section 16 of Article XXXI of the constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety, now, therefore

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:

(a) "Person" includes any individual, firm, copartnership, joint ad-

venture, association, corporation, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit, and the plural as well as the singular number.

(b) "Sale" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, or tangible personal property, for a consideration, and includes the furnishing, preparing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price shall be deemed a sale.

(c) A "retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property.

(d) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(e) "Retailer" includes every person engaged in the business of making sales at retail.

(f) "Gross receipts" means the total amount of the sale price of the retail sales of retailers, including any services that are a part of such sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of any kind or nature, and also any amount for which credit is allowed by the seller to the purchaser, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expense whatsoever; provided, however, that cash discounts allowed and taken on sales shall not be included, and "gross receipts" shall not include the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit, nor shall "gross receipts" include the price received for labor or services used in installing, applying, remodeling or repairing the property sold.

For the purpose of this act the total amount of the sale price above mentioned shall be deemed to be the amount received exclusive of the tax hereby imposed; provided, that the retailer shall establish to the satisfaction of the board that the tax imposed hereunder had been added to the sale price and not absorbed by the retailer.

(g) "Board" means the bureau of taxation.

Sec. 2. Tax of 2% on gross receipts of retailers. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon retailers at the rate of 2% of the gross receipts of any such retailer from

the sale of all tangible personal property sold at retail in this state on and after the effective date of this act. Such tax shall be paid at the time and in the manner hereinafter provided and shall be in addition to any and all other taxes.

Sec. 3. When contracts were previously made, tax may be added.

In any case where tangible personal property is sold at retail under a contract made prior to the effective date of this act, which specifies and fixes the sale price and such sale is taxable under this act, the seller may add the tax imposed by this act to the sale price and collect it from the buyer.

Sec. 4. Exemptions. There are hereby specifically exempted from the provisions of this act and from the computation of the amount of tax levied, assessed or payable under this act the following:

(a) The gross receipts from sales of tangible property which this state is prohibited from taxing under the constitution or laws of the United States of America or under the constitution of this state.

(b) The gross receipts from the sales, furnishing, or service of gas, electricity, and water, when delivered to consumers through mains, lines, or pipes.

(c) The gross receipts from sale of gold bullion or gold concentrates or gold precipitates by the producer or refiner thereof.

(d) The gross receipts from sales of tangible personal property used for the performance of a contract on public works executed prior to the effective date of this act.

Sec. 5. Motor vehicle fuel exempted. There is hereby specifically exempted from the provisions of this act and from the computation of the amount of tax levied, assessed or payable under this act, the gross receipts received from sales or distributions of motor vehicle fuel in this state subject to the tax imposed thereon under the provisions of law.

The tax by this act imposed upon those sales of motor vehicle fuel which are subject to tax and refund under the law shall be collected by the state by way of deduction from refunds otherwise allowable under this act. The amount of such deductions, shall be transferred from the motor vehicle fuel fund to the retail sales tax fund.

This section is hereby declared to be separable and distinct from all other portions of this act, and shall not be deemed a consideration or inducement for the enactment of the whole or any portion of this act. If this section be for any reason declared invalid, the remainder of this act shall remain in full force and effect and shall be as completely operative as though this section had not been included herein.

Sec. 6. Refunds. As used in this section governmental agency means the state, any county, city and county, city, town, or plantation.

A governmental agency may apply to the board for refund of the amount of tax imposed hereunder and paid upon sales to it of foodstuffs used for free distribution to the poor and needy.

Such refunds may be obtained only in the following amounts and manner and only under the following conditions:

(a) On forms furnished by the board and during the time herein provided for the filing of quarterly tax returns by retailers, the governmental agency shall report to the board the total amount or amounts, valued in money, expended, directly or indirectly, for foodstuffs used for free distribution to the poor and needy.

(b) On said forms the governmental agency shall separately list the persons making the sales to it, or to its order, together with the dates of the sales, and the total amounts so expended by the governmental agency.

(c) The governmental agency must prove to the satisfaction of the board that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this act based on such computation of gross receipts.

If the board is satisfied that the foregoing conditions and requirements have been complied with, it shall certify the amount of the refund payable to the governmental agency to the state controller. Upon its approval by the governor and council, the treasurer of state shall refund the amount so certified and approved.

Sec. 7. Tax not to be absorbed by retailer. It shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this act will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of this section shall be punished by a fine of not more than \$500, or by imprisonment for not more than 6 months or by both such fine and imprisonment.

Sec. 8. Tax to be collected by retailer. The tax hereby imposed shall be collected by the retailer from the consumer in so far as the same can be done. This section is hereby declared to be separable and distinct from all other portions of this act, and shall not be deemed a consideration or inducement for the enactment of the whole or any portion of this act. If this section be for any reason declared invalid, the remainder of this act shall remain in full force and effect and shall be as completely operative as though this section had not been included herein.

Sec. 9. Tax; how paid. The tax levied hereunder shall be a direct

obligation of the retailer and shall be due and payable in quarterly installments on or before the 15th day of the month next succeeding each quarterly period, the first of such quarterly periods being the period commencing with January 1, 1934, and ending on the 31st day of March, 1934. The retailer shall on or before the 15th day of the month following the close of the first quarterly period as above defined, and on or before the 15th day of the month following each subsequent quarterly period of 3 months, make out a return for the preceding quarterly period in such form as may be prescribed by the board showing the gross receipts of the retailer, the amount of the tax for the period covered by such return and such information as the board may deem necessary for the proper administration of this act. The retailer shall deliver the return together with a remittance of the amount of the tax due to the office of the board. The board, if it deems it necessary in order to insure the payment of the tax to be made for other than quarterly periods. Returns shall be signed by the retailer or his duly authorized agent but need not be verified by oath. Any retailer having cash and credit sales may report the same separately and upon making application therefor may obtain from the board an extension of time for the payment of taxes due on such credit sales. Any such extension shall be granted by the board pursuant to such rules and regulations as the board may from time to time prescribe. When any such extension is granted the retailer shall thereafter include in each quarterly return as a separate item all collections made during the quarterly period covered by the return from sales made on credit prior to said quarterly period and shall pay the tax due on such collections in the same manner as though said collections resulted from a sale made in said quarterly period. A sale on credit is deemed to include any and all conditional sales, lease contracts, and other deferred payment transactions.

The board, if it deems it necessary to insure the collection of the tax imposed by this act, may provide by rule and regulation for the collection of said tax by affixing and canceling of revenue stamps and may prescribe the form and method of such affixing and canceling.

The board may by regulation provide that the amount collected by the retailer from the consumer, in reimbursement of taxes imposed by this act, shall be displayed separately from the list, advertised in the premises, marked or other price on the sales check or other proof of sale.

Sec. 10. Board may extend return date. The board for good cause may extend for not to exceed 30 days the time for making any return required under the provisions of this act.

Sec. 11. Board may require security from retailer. The board, whenever it deems it necessary to insure compliance with the provisions of this

act, may require any person subject to the tax imposed hereunder to deposit with it such security as the board may determine. This security may be in the form of a bond approved by the board, a certified check or such other security as may be deemed proper by the board. It shall be conditioned on the payment to the state of any tax, interest or penalty due to the state, and in case it becomes necessary to expire the bond or realize on the security, the state shall recover only the amount so due, plus interest at 6% from the due date, and the costs of court. In case the person so depositing security does not pay to the state any tax, interest or penalty due to the state, action may be taken by the board to enforce the bond or to realize on the security in accordance with the provisions of law relating to the enforcement of bonds or the realization on securities given or deposited for the performance of specified duties or obligations.

Sec. 12. Permits to be issued. Thirty days after the effective date of this act, it shall be unlawful for any person to engage in or transact business as a retailer within this state, unless a permit or permits shall have been issued to him as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the board an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member of or partner thereof; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority. Any person who engages in the business of selling tangible personal property at retail in this state without a permit or permits or after a permit has been suspended, and the officers of any corporation which shall so sell, shall be guilty of a misdemeanor and punished as provided in section 7 hereof.

Sec. 13. Filing fee. At the time of making such application, the applicant shall pay to the board a filing fee of 50 cents.

Sec. 14. Examination; issuance, display of permit. As soon as practicable after the receipt of any such application, the said bureau shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If an application is found to be satisfactory and if the filing and permit fees, as herein prescribed, shall have been paid, the said bureau shall issue to the applicant a permit for each store for which an application for permit shall have

been made. Each licensee shall display the permit so issued in a conspicuous place in the store for which such permit is issued.

Sec. 15. Expiration, lapse of permits; renewals. All permits shall be issued to expire on the 30th day of June of each calendar year. On or before the 1st day of July of each year every person, firm, corporation, association or copartnership having a permit shall apply to said bureau of taxation for a renewal of the permit for the fiscal year next ensuing. All applications for renewal permits shall be made on forms which shall be prescribed and furnished by the said bureau. No permits shall lapse prior to the 31st day of July next following the year for which the permit was issued, and if by such 31st day of July an application for renewal permit has not been made the said bureau shall notify such delinquent permit holder by registered mail, and if application is not made for and renewal permit issued on or before the last day of August next ensuing the former permit shall become null and void. Each such application for renewal permit shall be accompanied by a filing fee of 50 cents and by the permit fee prescribed in section 16 of this act.

Sec. 16. Annual permit fees. Every person engaged in or conducting business as a retailer establishing, owning, operating, managing or maintaining 1 or more stores as in this act defined, within this state, under the same general management, supervision or ownership, shall pay the permit fee or fees herein set forth annually, in addition to the filing fee required by section 13 of this act.

Such permit fees shall be:

- (1) For 1 store, \$1.
- (2) Upon each store in excess of 1 store, but not exceeding 5 stores, \$5.
- (3) Upon each store in excess of 5 stores but not exceeding the number of 10 stores, \$10.
- (4) Upon each store in excess of 10 stores but not exceeding the number of 15 stores, \$15.
- (5) Upon each store in excess of 15 stores but not exceeding the number of 25 stores, \$25.
- (6) Upon each store in excess of 25 stores, \$50.

Sec. 17. Fees for permits issued prior to or after January 1st. Each and every permit issued prior to the 1st day of January of any year shall be charged for at the full rate, and each and every permit issued on or after the 1st day of January of any year shall be charged for at $\frac{1}{2}$ of the full rate, as prescribed in section 16 of this act.

Sec. 18. Parties to whom §§ 13-21 apply. The provisions of sections 13 to 21, inclusive, apply to every person, firm, partnership, association or corporation, either domestic or foreign, establishing, owning, operating,

managing or maintaining any store as herein defined which is owned, controlled, directed or managed directly or indirectly by stock ownership or otherwise by 1 or more persons, associations, or methods of ultimate management.

Sec. 19. Definition of term "store". The term store as used in sections 13 to 21, inclusive, shall mean and include any store or stores, shop, mercantile establishment, office, warehouse, depot, business stand or station or other place where trade or business is carried on, where goods, wares and merchandise of any kind are sold at retail, but shall not be construed to apply to any place of business conducted principally for the sale and distribution of gasoline and petroleum products.

Sec. 20. Penalty. Any person, firm, partnership, association or corporation which shall violate any of the provisions of sections 13 to 21, inclusive, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$25 nor more than \$100, and each and every day that such violation shall continue shall constitute a separate and distinct offense as to each and every store opened, established, operated or maintained by any person, firm, corporation, association or partnership.

Sec. 21. Rules and regulations. The state tax assessor may make such reasonable rules and regulations regarding the administration and enforcement of the provisions of sections 13 to 21 as he may deem necessary or expedient.

Sec. 22. Sales presumed to be at retail; burden of proof to be on retailer. The burden of proving that a sale of tangible personal property was not a sale at retail shall be upon the person who made it, unless such person shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser to the effect that the property was purchased for resale. For the purpose of the proper administration of this act and to prevent evasion of the tax hereby imposed it shall be presumed that all gross receipts are subject to the tax hereby imposed until the contrary is established. If the board is not satisfied with the return and payments of tax made by the retailer, it is hereby authorized and empowered to make an additional assessment of tax due from such retailer based upon the facts contained in the return or upon any information within its possession or that shall come into its possession. The board shall give to the retailer written notice of such additional assessment, together with written notice of the time and place where the retailer may be heard on a petition by him for reassessment. Such notice may be served upon the retailer personally or by mail.

Sec. 23. Board may estimate tax when no return is made If a

retailer neglects or refuses to make a return and payment as required by this act, the board shall make an estimate based upon any information in its possession or that may come into its possession, of the amount of the gross receipts of the delinquent for the period in respect to which he failed to make return and payment, and upon the basis of said estimated amount compute and assess the tax payable by the delinquent, adding to the sum thus arrived at a penalty equal to 10% thereof. Promptly thereafter the board shall give to the delinquent written notice of such estimate, tax and penalty, the notice to be served personally or by mail in the same manner as prescribed for service of notice by the provisions of section 22 hereof. But the delinquent shall have the right to petition for reassessment of any such tax found, determined and declared by the board pursuant to and in accordance with the provisions of this section.

Sec. 24. Due date of penalty. Any tax assessed by the board under the provisions of sections 22 and 23 hereof, together with the penalty if any there be, shall be due and payable from the retailer to the board 15 days after the service upon the retailer or notice of the assessment of such tax.

Sec. 25. Petition for reassessment. Any retailer against whom an additional assessment is made by the board under the provisions of section 22 hereof, may petition for a reassessment thereof. Notice of intention to file such a petition or to appear and be heard shall be given by the retailer to the board prior to the time the additional assessment becomes due and payable. A petition for such a reassessment may be filed with the board on or before the date designated in the notice of such additional assessment as the time when the retailer may be heard on a petition by him for reassessment. Each such hearing shall be held at the time and place designated in such notice to the retailer, but the board shall have power to continue the same from time to time, as may be necessary. Each such petition filed with the board shall set forth specifically and in detail the grounds upon which it is claimed the assessment is erroneous. If no petition for reassessment is filed with the board the retailer may nevertheless appear at the hearing and present his objections orally.

None of the provisions of this section shall be construed to accord to any retailer the right to petition for reassessment in a case of neglect or refusal upon his part to make a return within the time prescribed by this act or by the board under authority of this act.

Sec. 26. Limitation of assessment of additional tax. Except in the case of a fraudulent return, or neglect or refusal to make a return, every notice of additional tax proposed to be assessed hereunder shall be mailed to the retailer within 2 years after the return was filed.

Sec. 27. Interest on overdue taxes. All taxes not paid to the board by the retailer on the date when the same becomes due and payable, shall bear interest in the rate of 12% annually from and after such date until paid.

Sec. 28. Correction of errors in computation of tax. If, in the opinion of the board, a tax has been computed in a manner contrary to law or has been erroneously computed by reason of a clerical mistake on the part of the board, such fact shall be set forth in the records of the board and the amount of the overpayment shall be credited on any taxes then due from the retailer under this act and the balance shall be refunded to the retailer or his successors, administrators, executors or assigns.

If any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, the board shall so certify to the state controller the amount collected in excess of what was legally due, from whom it was collected, or by whom paid, and if approved by that board the same shall be credited on any taxes then due from the retailer under this act and the balance shall be refunded to the retailer, but no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within 6 months from the date of overpayment.

Every claim for refund must be in writing under oath and must state the specific grounds upon which the claim is founded.

Any refund or any portion thereof which is erroneously made and any credit or any portion thereof which is erroneously allowed, may be recovered in an action brought by the state in the superior court in the county wherein the person receiving the refund or credit has his place of business. The Attorney General must prosecute such action, and the provisions of law relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for.

In the event that a tax has been illegally levied against a retailer the board shall certify such fact to the state controller and he shall authorize the cancellations of the tax upon the records of the board.

Sec. 29. Penalty in case of fraud. If fraud or evasion on the part of a retailer is discovered by the board, it shall determine the amount by which the state has been defrauded, shall add to the amount so determined a penalty equal to 25% thereof, and shall assess the same against the retailer. The amount so assessed shall be immediately due and payable.

Sec. 30. Board to report to controller. The board shall report to the controller every assessment made under this act, and he shall keep a record thereof.

Sec. 31. Lien provided for in case of non-payment by retailer. In any

case in which any tax, interest or penalty imposed under this act is not paid when due the board may file for record in the registry of deeds of the county where the person has his place of business, a notice of lien specifying the amount of the tax, interest or penalty due and the name of the retailer liable for the same. From the time of filing any such notice the amount of the tax specified in such notice shall have the force and effect of the lien of a judgment against the retailer named in said notice of lien for the amount specified in such notice. Such lien may be released by filing for record in the said registry of deeds of a release thereof executed by the board upon payment of the tax, interest and penalties or upon receipt by the board of security sufficient to secure payment thereof, but no such release shall be deemed a waiver of any tax, interest or penalty levied or assessed under this act and due and payable or to become due and payable by such retailer.

If any retailer liable for a tax levied hereunder shall sell out his business or stock of goods or shall quit the business, he shall make a final return within 15 days after the date of selling or quitting business. His successor, if any, shall be required to withhold sufficient of the purchase money to cover the amount of such taxes and interest or penalties due and unpaid until such time as the former owner shall produce a receipt from the board showing that they have been paid, or a certificate stating that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, he shall be personally liable for the payment of the taxes, interest and penalties accrued and unpaid on account of the operation of the business by the former owner.

In the event that any retailer is delinquent in the payment of the tax herein provided for the board may give notice of the amount of such delinquency by registered mail to all persons having in their possession, or under their control, any credits or other personal property belonging to such retailer, or owing any debts to such retailer at the time of receipt of them of such notice and thereafter any person so notified shall neither transfer nor make any other disposition of such credits, other personal property, or debts until the board shall have consented to a transfer or disposition, or until 20 days shall have elapsed from and after the receipt of such notice. All persons so notified must, within 5 days after receipt of such notice, advise the board of any and all such credits, other personal property or debts, their possession, under their control or owing by them, as the case may be.

At any time within 2 years after any retailer is delinquent in the payment of the tax herein provided for, the board may proceed forthwith to collect the tax due from the retailer in the following manner.

The board shall seize any property, real or personal, subject to the lien of said tax, and thereafter sell at public auction such property so seized, or a sufficient portion thereof, to pay the tax due hereunder, together with any interest or penalties imposed hereby for such delinquency, and any and all costs that may have been incurred on account of such seizure and sale. Notice of such intended sale and the time and place thereof, shall be given to such delinquent retailer and to all persons appearing of record to have an interest in such property in writing at least 10 days before the date set for such sale by enclosing such notice in an envelope addressed to such retailer at his last known residence or place of business in this state if any, and in the case of any person appearing of record to have an interest in such property addressed to each person at the last known place of residence, if any, and depositing the same in the United States mail, postage prepaid, and by publication for at least 10 days before the date set for such sale in a newspaper of general circulation published in the county or city and county in which the property seized is to be sold; provided, that if there be no newspaper of general circulation in such county or city and county, then by the posting of such notice in three public places in such county or city and county 10 days prior to the date set for such sale. The said notice shall contain a description of the property to be sold, together with a statement of the amount of the taxes, interest, penalties and costs, the name of the retailer, and the further statement that unless such taxes, interest and penalties and cost are paid on or before the time fixed in said notice for such sale, said property, or so much thereof as may be necessary, will be sold in accordance with law and said notice.

At any such sale, the property shall be sold by the board in accordance with law and said notice, and the board shall deliver to the purchaser a bill of sale for the personal property, and a deed for any real property so sold, and such bill of sale or deed shall vest the interest or title of the retailer in the purchaser. The unsold portion of any property so seized may be left at the place of sale at the risk of the retailer. If, upon any such sale, the moneys so received shall exceed the amount of all taxes, interest, penalties and costs, due the state from such retailer, any such excess shall be returned to the retailer, and his receipt therefor obtained; provided, however, that if any person having an interest or lien upon the property has filed with the board prior to any such sale notice of such interest or lien the board shall withhold any such excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If, for any reason, the receipt of such retailer shall not be available, the board shall deposit such excess moneys with the treasurer of

state, as trustee for such owner, subject to the order of such retailer, his heirs, successors or assigns.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the board or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this act.

Sec. 32. Records to be kept by retailer; board may investigate; future powers of board. Every retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the board may require.

The board or any person 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 retailer in order to verify the accuracy of any return made, or if no return was made by such retailer, to ascertain and assess the tax imposed by this act. The board is hereby charged with the enforcement of the provisions of this act and is hereby authorized and empowered to prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of the provisions of this act in the collection of taxes, penalties and interest imposed by this act, and to that end may appoint such accountants, auditors, investigators and assistants as it may deem necessary to enforce its powers and perform its duties under this act.

Sec. 33. Information obtained by board to be confidential It shall be unlawful for the board, or any person having an administrative duty under this act to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any retailer visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; provided, however, that the governor may authorize examination of such returns by other state officers, by tax officers of another state, or the federal government, if a reciprocal arrangement exists, and any other persons the governor may so authorize.

Any violations of the provisions of this section shall be a misdemeanor and be punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment, at the discretion of the court.

Sec. 34. "Retail Sales Tax Fund" created; appropriation. All fees, taxes, interest and penalties imposed under this act must be paid to the

board in the form of remittances payable to the treasurer of the state, and said board shall transmit such payments daily to the state treasurer to be deposited in the state treasury to the credit of the "Retail Sales Tax Fund," which fund is hereby created.

There is hereby appropriated the sum of \$5,000 to be made available for the necessary expenses of carrying out the provisions of this act and is hereby credited to the "Retail Sales Tax Fund." The necessary expenses of enforcing the provisions of this act shall be debited to the "Retail Sales Tax Fund." The governor and council may transfer funds available in the "Retail Sales Tax Fund" to the general fund whenever in their opinion, there is a sufficient surplus over and above the estimated expenses of the administration of this act.

Sec. 35. Collection of delinquent taxes. At any time within 2 years after the delinquency of any tax, the board may bring an action in a court of competent jurisdiction in the name of the state to collect the amount delinquent, together with penalties. The attorney general must prosecute such action, and the provisions of the revised statutes relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for. In such action a writ of attachment may issue, and no bond or affidavit previous to the issuing of said attachment is required. In such action a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the tax, of the delinquency and of compliance by the board with all the provisions of this act in relation to the computation and levy of the tax.

Sec. 36. Provisions for recovery of tax illegally collected. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any officer thereof to prevent or enjoin under this act the collection of any tax sought to be collected; but after payment of any such tax under protest, duly verified and setting forth the grounds of objection to the legality of such tax, the retailer paying such tax may bring an action against the treasurer of state in a court of competent jurisdiction for the recovery of tax so paid under protest. No such action may be instituted more than 60 days after the tax becomes due and payable, and failure to bring suit within 60 days shall constitute waiver of any and all demands against this state on account of alleged overpayment of taxes hereunder. No grounds of illegality of the tax shall be considered by the court other than those set forth in the protest filed at the time of the payment of the tax.

If in any such action judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any taxes due from the plaintiff under this act, and the balance of the judgment shall be refunded to the

plaintiff. In any such judgment, interest shall be allowed at the rate of 6% per year upon the amount of tax found to have been illegally collected from the date of payment of such tax to the date of allowance of credit on account of such judgment or to a date preceding the date of the refund warrant by not more than 30 days, such date to be determined by the controller.

In no case shall any judgment be rendered in favor of the plaintiff in any action brought against the treasurer of state to recover any tax paid hereunder, when such action is brought by or in the name of an assignee of the retailer paying said tax, or by any person other than the person who has paid such tax.

Sec. 37. Penalties for false returns, etc. Any retailer failing or refusing to furnish any return hereby required to be made, or failing or refusing to furnish a supplemental return or other data required by the board, or rendering a false or fraudulent return, shall be guilty of a misdemeanor and be punished by a fine of not more than \$500 for each such offense.

Any person required to make, render, sign or verify any report as aforesaid, who makes any false or fraudulent return, with intent to defeat or evade the assessment required by law to be made, shall be guilty of a misdemeanor, and shall for each such offense be punished by a fine of not less than \$300 and not more than \$5,000 or by imprisonment for not more than 1 year or by both said fine and imprisonment in the discretion of the court.

Sec. 38. General penalty. Any person, convicted of the violation of any of the provisions of this act, except as otherwise herein provided, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

Sec. 39. Review of proceedings provided for. Every order, decision or other official act of the board shall be subject to review if such proceeding is brought within 60 days after notice of the rendering of such order, decision or other official act in accordance with the provisions of law relating to a writ of certiorari. Upon such review the court shall be limited to a consideration and determination of the question whether there has been an abuse of discretion on the part of the board in making such order, decision or other official act.

Sec. 40. State tax may be rebated. The state tax assessor is hereby authorized and directed to rebate to the various cities, towns and plantations such percentage of their state tax as the receipts from the "Retail Sales Tax Fund" that are transferred to the general funds are to the total amount assessed to all the cities, towns and plantations; provided, however, that in case any city, town or plantation shall be delinquent in its

payment of the state tax, the amount of rebatement shall be applied to the payment of the amount so overdue, and the residue, if any, shall then be rebated as aforesaid; provided further that the said rebatement shall not in any 1 year exceed the amount of the state tax of the said city, town or plantation for that year.

Sec. 41. Constitutionality. If any section, subsection, clause, sentence or phrase of this act which is reasonably separable from the remaining portions of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed the remaining portions of this act irrespective of the fact that any such section, subsection, clause, sentence or phrase of this act be declared unconstitutional.

Sec. 42. P. L. 1933, c. 260, repealed. Chapter 260 of the public laws of 1933 is hereby repealed.

Emergency Clause. In view of the emergency created as recited in the preamble this act shall take effect when approved.