

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

---

---

# EIGHTY - EIGHTH LEGISLATURE

---

---

**Legislative Document**

**No. 690**

H. P. 1595

House of Representatives, February 16, 1937.

Referred to Committee on Taxation. Sent up for concurrence and 3000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Maxim of Portland.

---

---

## STATE OF MAINE

---

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-SEVEN

---

### **AN ACT Relating to a Tax on the Privilege of Selling at Retail.**

---

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

**Sec. 1. Imposition of tax.** For the privilege of selling tangible personal property at retail, in this state, every vendor shall pay a tax of 2% upon the gross receipts therefrom, except as hereinafter provided. The tax herein imposed shall be in addition to all other taxes imposed by the state of Maine or by any political subdivision thereof. In any case in which tangible personal property is sold under a contract made prior to the effective date of this act, which contract specifies and fixes the sale price, and such sale is taxable under this act, the vendor may add the tax imposed by this act and collect it from the vendee. The burden of proof that the sale of tangible personal property was not a sale at retail shall be upon the vendor, unless such vendor shall have taken from the vendee a certificate signed by and bearing the name and address of the vendee, to the effect that the property was purchased for resale. The maximum tax that shall be imposed upon any single article of merchandise under this act shall be \$10.

**Sec. 2. Exemptions.** The following are exempted from the tax imposed by section 1 herein: sales of motor fuels, upon which a tax is imposed pursuant to chapter 224 of the public laws of 1923, as amended;

sales of commercial fertilizer; sales of tangible personal property to the federal government or any of its agencies, or to the state of Maine or any of its subdivisions, including sales of such property to agencies of federal, state or local governments for distribution in public welfare and relief work; and all other retail sales of goods to the extent to which the same may be subject to a tax upon the gross receipts therefrom under any other law of this state.

**Sec. 3. Addition of tax to price.** It is the purpose and intent of this act that the tax levied hereunder shall be added to the sales price of merchandise and thereby be passed on to the consumer instead of being absorbed by the vendor. When so added, the tax shall constitute a part of such price, shall be a debt from vendee to vendor until paid, and shall be recoverable at law in the same manner as other debts. Any such vendor who shall, by any character of public advertisement, offer to absorb the tax levied in this act upon the retail sale of merchandise, or in any manner, directly or indirectly, advertise that the tax herein imposed is not considered as an element in the price to the consumer, shall be guilty of a misdemeanor. Agreements between competing vendors, or adoption of appropriate rules and regulations by associations of vendors, to provide uniform methods of adding the average equivalent of the tax to the sales price, and which do not involve price-fixing agreements otherwise unlawful, are expressly authorized and shall be held not in violation of the anti-trust laws of this state. It shall be the duty of the state tax assessor to co-operate with the merchants of the state in formulating rules, regulations and practices to effectuate the purposes of this act as herein declared.

**Sec. 4. Licenses.** Every vendor who shall engage or continue in the selling of tangible personal property at retail after the effective date of this act shall apply for and obtain from the commissioner a license so to do, giving the name and address of the vendor, and the address of the place or places where such sales are to be made. For such license there shall be paid the sum of \$1, which shall be credited against the tax to be due under this act. The commissioner shall have power to suspend the license of any vendor who shall wilfully violate or fail to comply with any provision of this act or any rule or regulation promulgated by him pursuant to this act, and shall also have power to restore licenses after such suspension. A license shall be suspended in case a return or corrected return is not filed as provided in this act, or in case any tax under any assessment made by the commissioner, or penalty thereon, shall not be paid within 30 days from the giving of notice of such assessment, unless proceedings instituted to contest the tax are pending, or the com-

missioner shall have granted an extension of time for the filing of the return or the payment of the tax. The filing of delinquent returns and/or the payment of delinquent taxes and penalties shall have the effect of restoring the license. Any vendor who shall sell tangible personal property at retail in this state after his license shall have been suspended, or without procuring a license as provided in this section, and the officers of any corporation which shall so sell, shall be guilty of a misdemeanor.

**Sec. 5. Records.** Every vendor engaged in the business of selling tangible personal property at retail in this state shall keep records and books of all such sales, together with invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books, papers, records and documents shall, at all times during business hours of the day, be subject to inspection by the commissioner or his duly authorized agents and employees. Such books and records shall be preserved for a period of at least 2 years, unless the commissioner in writing authorizes their destruction or disposal at an earlier date.

**Sec. 6. Returns.** Every vendor selling tangible personal property at retail in this state shall file with the commissioner a return of his receipts for each quarter year period after the effective date of this act; provided, however, that the commissioner, if he deems it necessary in order to insure the payment of the tax imposed by this act, may require returns of receipts to be made for other than quarter year periods. Returns shall be filed within 30 days of the period covered thereby, except that the commissioner, if he deems it necessary to insure the payment of the tax, may require that they be filed sooner. The form of such returns shall be prescribed by the commissioner, and shall call for such information as he may deem necessary for the proper administration of this act. In making such return the vendor shall determine the value of any consideration other than money received by him in connection with the sale of any tangible personal property in the course of his business and he shall include such value in his return. Such determination shall be subject to review and revision by the commissioner in the manner hereinafter provided for the correction of returns. If a vendor has receipts of less than \$250 for any quarter year period for which a return is required to be made, he shall not be required to pay a tax under this act.

**Sec. 7. Installment sales.** The commissioner may provide by regulation that receipts from installment sales under conditional contracts of sale may be reported as of the dates when the payments become due, in which event such receipts shall become subject to the tax at such times and not at the time when the contract of sale was entered into.

**Sec. 8. Cancelled sales.** Amounts representing sales in which the contract of sale has been cancelled, or the goods returned, or the purchase price or any part thereof has proven uncollectible, or refunds have been made, shall be excluded from total receipts reported. In case the vendor has included the sale of such tangible personal property in a return made by him and has paid the tax imposed by this act, he shall be given credit for the amount of the tax so paid against future tax liability.

**Sec. 9. Incorrect returns.** If the commissioner has reason to believe, and does believe, that any return is incorrect, after notice to the vendor making the return and a hearing, he shall correct such return according to his best judgment and information, which return so corrected shall be prima facie correct. If the tax computed by the commissioner on the corrected return is greater than the amount of tax due on the return as filed, the vendor making such return shall pay the additional tax as computed by the commissioner, together with a penalty of 5% thereon, within 10 days after notice of the amount of such additional tax and penalty is mailed to such vendor. If payment is not made within such 10 days, an additional penalty of 10% and interest at the rate of 1% per month, for each month or fraction of month, calculated from the date of mailing such notice, shall be added to the amount of such additional tax.

**Sec. 10. Failure to make return.** In case any vendor engaged in the business of selling tangible personal property at retail fails to make a return when and as herein required, the commissioner, after notice to such vendor and a hearing thereon, shall determine the amount of such tax according to his best judgment and information, which amount so fixed by the commissioner shall be prima facie correct. Such vendor shall pay said tax, together with a penalty of 25% of the amount of the tax, within 10 days after notice of the amount so computed by the commissioner. In addition to such penalty, if payment is not made within such 10 days, interest at the rate of 1% per month for each month or fraction of month, calculated from the date of mailing such notice, shall be added to the amount of such tax.

**Sec. 11. Payment of tax.** At the time of filing a return of receipts, the vendor shall pay to the commissioner the amount of tax herein imposed for the period covered by such return. All taxes for the period for which a return is required to be filed shall be due and payable on the date established for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed shows the correct amount of tax due. If any vendor shall make sales

of tangible personal property at retail while his license is suspended, the tax prescribed by this act shall nevertheless be imposed and payable with respect to such sales, but the payment of such tax shall not afford relief from any of the penalties prescribed by this act for selling while a license is suspended. In case a vendor makes a return but fails to pay the tax due under this act, the same penalty and interest shall be imposed on such vendor as is provided in section 10 of this act.

**Sec. 12. Procedure in investigation.** For the purpose of ascertaining the correctness of any return, or for the purpose of determining the amount of tax due from any vendor of tangible personal property at retail, the commissioner or his authorized agent may hold investigations and hearings concerning any matters covered by this act, and may examine any books, records, papers and memoranda bearing upon the sales of tangible personal property of any such vendor, and may require the attendance of any such vendor or any officer or employee of such vendor, or of any person having knowledge of such sales, and may take testimony and require proof for his information. The commissioner or his authorized agent shall have power to administer oaths to such persons. If any person summoned as a witness shall fail to obey such summons to appear before the commissioner or his authorized agent, or shall refuse to testify or answer any material question or to produce any book, record, paper, or memoranda when required to do so, such failure or refusal shall constitute a misdemeanor, and on complaint of the commissioner or his authorized agent the person so neglecting or refusing to furnish such evidence may be punished for a misdemeanor by any judge of a municipal court, or by any trial justice within the jurisdiction of the county wherein the offender lives. Officers who serve summonses or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the superior courts. The commissioner or his authorized agent, or any party in an investigation or hearing before the commissioner, may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts in this state, and to that end compel the attendance of witnesses and the production of books, papers, records and memoranda.

**Sec. 13. All information confidential.** All information received by the commissioner from returns filed under this act, or from any investigations conducted under the provisions of this act, shall be confidential, except for official purposes, and any officer or employee of such commissioner who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be

guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$1000.

**Sec. 14. Penalty for violation.** Any vendor of tangible personal property at retail who fails to make a return, or to keep books and records as required herein, or who wilfully violates any of the provisions of section 12 herein, or any rule or regulation of the commissioner for the administration and enforcement of this act, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$25, nor more than \$1000 for each offense.

**Sec. 15. Definitions.** For the purposes of this act:

“Sale at retail” means a sale to a consumer for use or consumption, and not for resale in any form as tangible personal property. Transactions whereby the possession of the property is transferred but the seller retains the title as security for the payment of the selling price shall be deemed to be sales.

“Tangible personal property” means all chattels, movables, including boats and vessels, merchandise and stock in trade, furniture and personal effects, live stock, vehicles, farming implements, movable machinery and equipment; but not including any structure, improvement, machinery equipment or fixtures attached to and forming a part of real property.

“Gross receipts” or “receipts” means the total selling price or amount of sales of tangible personal property sold in this state, valued in money, whether received in money, credits, or property of any kind or nature; also any amount for which credit is allowed by the seller to the purchaser, without any deductions therefrom on account of the cost of the property sold, the cost of material used, labor or service costs, or any other expense whatsoever.

“Vendor” means any individual, partnership, association or corporation which sells tangible personal property to a consumer.

“Commission” means the state tax assessor.

The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as engaging in the business of selling such tangible personal property at retail does not constitute engaging in such business.

**Sec. 16. Commissioner to make rules.** The commissioner is authorized to make, promulgate and enforce such reasonable rules and regulations relating to the administration and enforcement of the provisions of this act as may be deemed expedient.

**Sec. 17. Title of act.** This act shall be known and cited as the "Act Relating to a Tax on the Privilege of Selling at Retail."

**Sec. 18. Saving clause.** If any portion of this act shall be held to be unconstitutional, such decision shall not affect the validity of the remaining portions thereof.