

MAINE STATE LEGISLATURE

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

Legislative Document

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H. P. 2216

House of Representatives, April 7, 1939.

Reported by four members of the Committee on Taxation and printed under joint rules.

HARVEY R. PEASE, Clerk.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT Providing for an Excise Tax on Cigarettes and Tobacco.

Emergency preamble. Whereas, it is vitally necessary to provide funds for the expenses of the state government, and

Whereas, the collection of moneys under any new tax must be delayed while proper facilities for the collection thereof are prepared, 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. Whenever used in this act, unless the context shall otherwise require: The words "state tax assessor" or the word "assessor" shall mean the state tax assessor; the word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust or association, however formed; the word "distributor" shall mean any person engaged in this state in the business of producing or manufacturing cigarettes, cigars, tobacco or tobacco products or importing into the state cigarettes, cigars, tobacco or tobacco products at least 75% of which are purchased directly from the manufacturers thereof; the words "licensed distributor" shall mean a distributor licensed under the provisions of this act; the word

“dealer” shall mean any person other than a distributor, as defined herein, who is engaged in this state in the business of selling cigarettes, cigars, tobacco or tobacco products designed for smoking, chewing or snuffing; the words “licensed dealer” shall mean a dealer licensed under the provisions of this act; the word “sale” or “sell” shall include or apply to gifts, exchanges and barter; “tobacco products” refers only to such products as are designed for smoking, chewing, or snuffing.

Sec. 2. Dealers and distributors to be licensed. Each person engaging in the business of selling cigarettes, cigars, tobacco or tobacco products in this state, including any distributor or dealer, shall secure a license from the tax assessor before engaging in such business, or continuing to engage therein after the effective date of this act. A separate application and license shall be required for each wholesale outlet and for each retail outlet when a person shall own or control more than one place of business dealing in cigarettes, cigars, tobacco and tobacco products. Such license shall be issued on forms prescribed by the assessor, and shall contain the name and address of the applicant, the address of the place of business and such other information as the assessor may require for the proper administration of this act. Each such application for a wholesale outlet shall be accompanied by a fee of \$10, and each such application for a retail outlet license shall be accompanied by a fee of \$1. Each license so issued shall be prominently displayed on the premises covered by the license. Any person who shall sell, offer for sale or possess with intent to sell, any cigarettes, cigars, tobacco or tobacco products without a license as provided in this section, shall be punished by a fine of not more than \$25 for the first offense, and not less than \$25 nor more than \$200 for each subsequent offense.

Sec. 3. License to be valid for 1 year. Each license issued under the provisions of section 2 of this act shall be valid for a period of 1 year from the date of its issuance, unless sooner revoked by the assessor, as provided in section 4 of this act, or unless the business with respect to which such license was issued shall be transferred, in either of which cases the holder of the license shall immediately return it to the assessor. The holder of each license may, annually, before the expiration date of the license then held by him, renew his license for a period of 1 year, on application accompanied by a fee of $\frac{1}{2}$ the amount prescribed in section 2, of this act. No person shall cause to be operated a machine for vending cigarettes, cigars, tobacco or tobacco products, unless there shall be attached to the same a disc or marker, in a form to be determined by the tax assessor, showing it to have been licensed by said assessor for 1 year from the date

appearing thereon. The fee for each such license shall be \$1. Any such machine, so licensed, may be removed from one location to another within **the state without payment of an additional fee.** Any person who shall operate any such machine in violation of the provisions of this section shall be subject to the same penalties as provided in section 2 for the sale of cigarettes, cigars, tobacco or tobacco products without a license.

Sec. 4. Revocation of license. The assessor may revoke the license of any dealer or distributor for failure to comply with any provision of this act. Any person aggrieved by such revocation may apply to the assessor for a hearing as provided in section 16 of this act and may further appeal to the courts as provided in section 17 of this act.

Sec. 5. Tax imposed. A tax is imposed on all cigarettes held in this state by any person for sale, said tax to be at the rate of 1 mill for each cigarette. A tax is also imposed on all cigars, tobacco or tobacco products prepared for smoking, chewing or snuffing, in whatever form so prepared, said tax to be as follows: 5 mills on every cigar so sold having a retail price not in excess of 5 cents exclusive of said tax; 7 mills on every cigar so sold having a retail price of more than 5 cents but not in excess of 9 cents; 10 mills on every cigar sold having a retail price in excess of 9 cents; and $\frac{1}{4}$ of a cent for each $\frac{1}{2}$ of an ounce of tobacco or tobacco products. The payment of said tax shall be evidenced by the affixing of stamps to the packages containing the cigarettes, cigars, tobacco or tobacco products, as hereinafter provided. Any cigarettes, cigars, tobacco or tobacco products on which a tax has been paid, such payment being evidenced by the affixing of such stamp, shall not be subject to a further tax under this act. Nothing containing in this act shall be construed to impose a tax on any transaction the taxation of which by this state is prohibited by the constitution of the United States.

Sec. 6. Assessor to provide stamps. The tax assessor shall secure stamps, of such design and denomination as he shall prescribe, suitable to be affixed to packages of cigarettes, cigars, tobacco or tobacco products as defined in section 1 of this act, as evidence of the payment of the tax imposed by this act. He shall sell such stamps to licensed distributors at a discount of 5% of their face value and to licensed dealers at their face value. The assessor may, in his discretion, permit a licensed distributor or licensed dealer to pay for such stamps within 30 days after the date of purchase, provided a bond satisfactory to the assessor in an amount not less than the sale price of such stamps shall have been filed with the assessor conditioned upon payment for such stamps sold to each distributor

and dealer and shall pay over all receipts from the sale of stamps to the state treasurer daily.

Sec. 7. Dealers and distributors not to resell stamps, redemption. No distributor or dealer shall sell or transfer any stamps issued under the provisions of this act. The assessor shall redeem any unused, uncanceled stamps presented by any licensed distributor or licensed dealer at a price equal to 95% of their face value.

Sec. 8. Distributors to affix stamps. Each distributor shall affix, or cause to be affixed, in such manner as the assessor may specify in regulations issued pursuant to this act, to each individual package of cigarettes, cigars, tobacco or tobacco products, sold or distributed by him, stamps of the proper denominations as required by section 5 of this act. Such stamps may be affixed by a distributor at any time before the cigarettes, cigars, tobacco or tobacco products are transferred out of his possession. When the tax assessor shall find that the collection of the tax imposed by this chapter would be facilitated thereby, he may, in his discretion, authorize any person resident or located outside this state engaged in the business of manufacturing cigarettes, cigars, tobacco or tobacco products, or any person resident or located outside this state who ships cigarettes, cigars, tobacco or tobacco products into this state for sale to dealers in this state as defined in section 1, and who qualifies as a distributor as defined in section 1, but need not have a place of business in this state, upon complying with the requirements of the commissioner, to affix, or cause to be affixed, the stamps required by this chapter on behalf of the purchasers of such cigarettes, cigars, tobacco and tobacco products who would otherwise be taxable therefor, and the assessor may sell such stamps to such person as provided in section 6.

Sec. 9. Dealers to affix stamps. Each dealer shall, within 72 hours after the effective date of this act, and within 72 hours after coming into possession of any cigarettes, cigars, tobacco or tobacco products, not bearing proper stamps evidencing payment of the tax imposed by this act, and before selling such cigarettes, cigars, tobacco or tobacco products, affix or cause to be affixed at the location for which his license is issued, in such manner as the assessor may specify in regulations issued pursuant to this act, to each individual package of cigarettes, cigars, tobacco and tobacco products, stamps of the proper denomination, as required by section 5 of this act.

Sec. 10. Sale of unstamped cigarettes, cigars, tobacco or tobacco products prohibited. No distributor shall sell, and no other person shall

sell, offer for sale, display for sale or possess with intent to sell, any cigarettes, cigars, tobacco or tobacco products which do not bear stamps evidencing the payment of the tax imposed by this act, provided a licensed dealer may keep on hand unstamped cigarettes, cigars, tobacco and tobacco products for a period not exceeding 72 hours. Any unstamped cigarettes, cigars, tobacco or tobacco products in the possession of a dealer shall be presumed to have been held by him for more than 72 hours unless proof be shown to the contrary. Any person who shall violate any provision of this section shall be punished by a fine of not more than \$500 for the first offense and, for each subsequent offense, shall be punished by a fine of not less than \$200 nor more than \$2000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

Sec. 11. Unstamped cigarettes subject to confiscation. Any cigarettes, cigars, tobacco or tobacco products as defined in this act found at any place in this state without stamps affixed thereto as required by this act, unless such cigarettes, cigars, tobacco or tobacco products shall be in the possession of a licensed distributor, or unless they shall be in course of transit from without this state and consigned to a licensed distributor or licensed dealer, or unless they shall have been received by a licensed dealer from without the state within 72 hours, are declared to be contraband goods and may be seized by the assessor, his agents or employees, or by any peace officer of this state when directed by the assessor to do so, without a warrant, provided nothing herein shall be construed to require the assessor to confiscate unstamped cigarettes, cigars, tobacco or tobacco products when he shall have reason to believe that the owner thereof is not wilfully or intentionally evading the tax imposed by this act. Any cigarettes, cigars, tobacco or tobacco products seized under the provisions of this act may, at the discretion of the assessor, be offered for sale at public auction to the highest bidder after advertisement, as provided in section 12 of this act. The assessor shall deliver to the treasurer of state the proceeds of any sale made under the provisions of this section. Before delivering any cigarettes, cigars, tobacco or tobacco products so sold to the purchaser, the assessor shall require such purchaser to affix the amount of stamps to the packages required by this act. The seizure and sale of any cigarettes, cigars, tobacco or tobacco products under the provisions of this section shall not relieve any person from a fine or other penalty for violation of this act.

Sec. 12. Procedure on sale of seized cigarettes, cigars, tobacco or tobacco products. When any cigarette, cigar, tobacco or tobacco products shall have been seized under the provisions of section 11 of this act, the

assessor may, at his discretion, after a hearing as provided in section 16, advertise them for sale, in a newspaper published or having a circulation in the town in which the seizure took place, at least 5 days before the sale. Any person claiming an interest in such cigarettes, cigars, tobacco or tobacco products may make written application to the assessor for a hearing, stating his interest in the cigarettes, cigars, tobacco or tobacco products and his reasons why they should not be forfeited. Further proceedings on such application for hearing shall be taken as provided in sections 16 and 17 of this act. No sale of any cigarettes, cigars, tobacco or tobacco products under the provisions of section 11 of this act shall be made while an application for a hearing is pending before the assessor, but the pendency of an appeal under the provisions of section 17 of this act shall not prevent the sale unless the appellant shall post a satisfactory bond, with surety, in an amount double the estimated value of the cigarettes, cigars, tobacco or tobacco products, conditioned upon the successful termination of the appeal.

Sec. 13. Fraudulent stamps. Any person who shall fraudulently make or utter or shall forge or counterfeit any stamp prescribed by the tax assessor under the provisions of this act, or who shall cause or procure the same to be done, or who shall wilfully utter, publish, pass or render as true, any false, altered, forged or counterfeited stamp, or who shall knowingly possess any such false, altered, forged or counterfeited stamp, or who shall use more than once any stamp provided for and required by this act, for the purpose of evading the tax hereby imposed, shall be deemed guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than 1 year nor more than 10 years.

Sec. 14. Taxpayers to keep records; assessor may examine. Each distributor and each dealer shall keep complete and accurate records of all cigarettes, cigars, tobacco and tobacco products as defined in this act, manufactured, produced, purchased and sold. Such records shall be of such kind and in such form as the tax assessor may prescribe and shall be safely preserved for 3 years in such manner as to insure permanency and accessibility for inspection by the assessor and his authorized agents. The assessor and his authorized agents may examine the books, papers and records of any distributor or dealer in this state, for the purpose of determining whether the tax imposed by this act has been fully paid, and may investigate and examine the stock of cigarettes, cigars, tobacco and tobacco products in or upon any premises where such cigarettes, cigars, tobacco and tobacco products are possessed, stored or sold, for the purpose of determining whether the provisions of this act are being obeyed.

Sec. 15. Oaths and subpoenas. The assessor and any agent of the assessor duly authorized to conduct any inquiry, investigation or hearing hereunder shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the assessor, the assessor or his agent authorized to conduct such hearing and having authority by law to issue such process may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. No witness under subpoena authorized to be issued by the provisions of this act shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate him, but such evidence or the books or papers so produced shall not be used in any criminal proceeding against him. If any person shall disobey such process or, having appeared in obedience thereto, shall refuse to answer any pertinent question put to him by the assessor or his authorized agent or to produce any books and papers pursuant thereto, the assessor or such agent may apply to the superior court of the county wherein the taxpayer resides or wherein the business has been conducted, or to any judge of said court if the same shall not be in session, setting forth such disobedience to process or refusal to answer, and said court or such judge shall cite such person to appear before said court or such judge to answer such question or to produce such books and papers, and, upon his refusal so to do, shall commit him to jail until he shall testify, but not for a longer period than 60 days. Notwithstanding the serving of the term of such commitment by any person, the assessor may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the assessor or under his authority and witnesses attending hearings conducted by him hereunder shall receive fees and compensation at the same rates as officers and witnesses in the courts of this state, to be paid on vouchers of the assessor on order of the comptroller from the proper appropriation for the administration of this act.

Sec. 16. Hearings by assessor. Any person aggrieved by any action under this act of the assessor or his authorized agent for which hearing is not elsewhere provided may apply to the assessor, in writing, within 10 days after the notice of such action is delivered or mailed to him, for a hearing setting forth the reasons why such hearing should be granted and the manner of relief sought. The assessor shall promptly consider each such application and may grant or deny the hearing requested. If the hearing be denied, the applicant shall be notified thereof forthwith; if it be granted, the assessor shall notify the applicant of the time and place

fixed for such hearing. After such hearing, the assessor may make such order in the premises as may appear to him just and lawful and shall furnish a copy of such order to the applicant. The assessor may, by notice in writing, at any time, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of information concerning any manufacture, importation or sale of cigarettes, cigars, tobacco or tobacco products which have escaped taxation to appear before him or his duly authorized agent with any specific books of account, papers or other documents, for examination relative thereto.

Sec. 17. Appeals from decisions of assessor. Any person aggrieved because of any action or decision of the assessor under the provisions of this act may appeal therefrom to the superior court, which appeal shall be accompanied by a citation to the tax assessor to appear before said court. Such citation shall be signed by the same authority, and such appeal shall be returnable at the same time and served and returned in the same manner, as is required in case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to the state of Maine, with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases, to be heard, unless cause appear to the contrary, at the first session, by the court. Said court may grant such relief as may be equitable and may order the treasurer to pay the amount of such relief, with interest at the rate of 6% per annum, to the aggrieved taxpayer. If the appeal shall have been taken without probable cause, the court may tax double or triple costs, as the case shall demand; and, upon all such appeals which may be denied, costs may be taxed against the appellant at the discretion of the court, but no costs shall be taxed against the state.

Sec. 18. Administration by assessor; rulings and regulations. The administration of this act is vested in the tax assessor. All forms necessary and proper for the enforcement of this act shall be prescribed and furnished by the assessor. The assessor shall appoint such agents, clerks, stenographers and other assistants as he may deem necessary for effecting the purpose of this act, and shall fix their salaries subject to the approval of the governor and council. The assessor may require any such agent, clerk, stenographer or other assistant to execute a bond in such sum as said assessor shall determine for the faithful discharge of his duties. Any such agent, clerk, stenographer or other assistant may be removed by the assessor. The tax assessor may prescribe regulations and rulings, not inconsistent with law, to carry into effect the provisions of this act, which regulations and rulings, when reasonably designed to carry out the intent

and purpose of this act, shall be prima facie evidence of its proper interpretation. The assessor shall, at least annually, and oftener in his discretion, publish for distribution all regulations prescribed hereunder and such rulings as appear to him to be of general interest.

Sec. 19. Further provisions. The tax assessor, if he shall determine that it is practicable to stamp by impression packages of cigarettes, by means of a metering machine, may, in lieu of selling stamps under the provisions of section 6, authorize any licensed distributor or licensed dealer to use any metering machine approved by said assessor, such machine to be sealed by the assessor before being used in accordance with regulations prescribed by him. Any licensed distributor or licensed dealer authorized by the tax assessor to affix stamps to packages by means of a metering machine shall file with the assessor a bond issued by a surety company licensed to do business in this state, in such amount as the tax assessor may fix, conditioned upon the payment of the tax upon cigarettes so stamped. The bond shall be in full force and effect for a period of 1 year after the expiration of the bond, unless a certificate be issued by the tax assessor to the effect that all taxes due to the state have been paid. In the discretion of the tax assessor, cash may be accepted in lieu of a surety bond, such cash to be paid over by the tax assessor to the treasurer of state, who may deposit or hold the same subject to further order of the tax assessor. The tax assessor shall cause each metering machine approved by him to be read and inspected at least once a month and, unless being used on a prepayment basis, shall determine as of the time of each inspection the amount of tax due from the distributor or dealer using such machine after allowing for the discount, if any, provided for in section 6 which tax shall be due and payable upon demand of the tax assessor or his duly authorized agent.

Sec. 20. Expenses of administration, how paid. All salaries and other sources of expense by reason of this act shall be paid from the proceeds of the taxes imposed by this act. The balance of said proceeds shall be used for old age assistance as provided in Title II of chapter 105 of the private and special laws of 1937.

Sec. 21. Constitutionality. If any part or parts of this act shall be held to be unconstitutional, such decision shall not affect the validity of the remaining parts thereof.

Emergency clause. In view of the emergency recited in the preamble, this act shall take effect when approved.