

MAINE STATE LEGISLATURE

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

Legislative Document

No. 65

H. P. 112.

House of Representatives, January 15, 1941.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Good of Monticello.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT Providing for the Levy of an Excise Tax on Sales of Manufactured Tobacco Products.

Emergency preamble. Whereas, there is an immediate necessity of raising more revenue to pay Old Age pensions to those now eligible under the law, and

Whereas, any delay in the effective date of this act will prevent the needy aged people from receiving necessary support, 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 public peace, health and safety; now, therefore

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

Sec. 1. Definitions of words and terms. As used in this act: "person" includes firms, corporations, co-partnerships and associations; "wholesale dealer" includes only those persons who sell manufactured tobacco products to licensed retail dealers or for purposes of resale only; "retail dealer" includes every person other than a wholesale dealer engaged in the business

of selling manufactured tobacco products in this state, irrespective of quantity or amount or number of sales thereof; "sale" includes exchange, barter, gift, offer for sale and distribution and excludes transactions in interstate or foreign commerce; "package" means the individual package, box or other container in or from which retail sales of manufactured tobacco products are normally made or intended to be made; "manufactured tobacco products" include cigars, cheroots, stogies, cigarettes, snuff, chewing tobacco, and smoking tobacco. Nothing in this act shall be construed as requiring a tax to be paid on the privilege of selling leaf tobaccos.

Sec. 2. Excise tax on sales of manufactured tobacco products; rate. An excise tax is hereby levied and imposed on all sales, within this state, of manufactured tobacco products enumerated in section 1, at the rate of 1c for every 10c or fraction thereof of the retail selling price of each article or commodity so enumerated. Whenever the retail selling price of any such articles or commodities is referred to, as in this section, as a basis for computing the amount of the tax imposed by this section, it is intended to mean the ordinary, customary or usual price paid by the consumer for each individual cigar, package of cigarettes, package of smoking tobacco, etc., before the amount of the tax is added.

Sec. 3. Payment of tax; method of affixing stamps. The excise tax imposed by this act shall be paid by affixing stamps in the manner herein set forth. A stamp or stamps shall be affixed to each package of an aggregate denomination not less than the amount of the tax upon the contents thereof. In the case of cigars, stogies, cheroots, and chewing tobacco, the stamps shall be affixed to the box, or container, in which or from which normally sold at retail. In the case of cigarettes, snuff, smoking tobacco and chewing tobacco wrapped in packages of 2 pounds or less, the stamps shall be affixed to each individual package. The stamp or stamps so affixed shall be prima facie evidence of the payment of the tax imposed under the act.

Each wholesale dealer in this state receiving any manufactured tobacco products at his place of business, shall affix to each package the stamp or stamps required under this section, and cancel the same by stamping his name and the date of cancellation across the face thereof, within 48 hours after the receipt of such manufactured tobacco products and in accordance with and subject to any rules or regulations presented by the state tax assessor under authority of this act, unless such stamps have been previously affixed. Each retail dealer in this state receiving any manufactured tobacco products at his place of business shall, within 24 hours after the receipt of such products and prior to their sale by him, affix the required stamp or

stamps to each package and cancel the same by stamping his name and the date of cancellation across the face thereof, in accordance with and subject to any rules and regulations presented by the state tax assessor under authority of this act, unless such stamp or stamps have been previously affixed. In the event any manufactured tobacco products, enumerated in section 1 of this act, are manufactured within the state they shall be stamped by the manufacturer when and as sold.

Sec. 4. Duplicate invoice; contents; copy of freight bill filed, when. At the time of delivering any manufactured tobacco products to any person, each wholesale dealer in this state shall make a true and duplicate invoice showing the date of delivery, the amount of and value of each shipment of manufactured products delivered and the name of the purchaser to whom delivery is made, and shall retain the same for a period of 2 years, subject to the use and inspection of the state tax assessor or his authorized deputies.

Every retail dealer in this state purchasing or receiving any manufactured tobacco products from without the state, whether the same shall have been ordered through a wholesale dealer in this state, or by drop shipment or otherwise, shall within 5 days after receipt of the same mail a duplicate invoice of all such purchases and receipts to the state tax assessor. In the event any manufactured tobacco products are shipped into the state, the railroad company, express company, or any other public carrier transporting any shipment thereof shall file with the state tax assessor a copy of the freight bill within 10 days after the delivery in this state of each shipment.

Sec. 5. License required. Every person engaged in the business of selling any manufactured tobacco products enumerated in section 1 above, shall within 30 days after this act becomes effective and annually thereafter on or before July 1 of each year file with the state tax assessor an application for a license permitting him to engage in such business. All applications for such licenses shall be filed on blanks furnished by the state tax assessor for that purpose and shall contain a statement including the name of the applicant, the postoffice address and the nature of the business, whether wholesale or retail, in which engaged and such other information as the treasurer of state may require. Every person hereafter intending to engage in such business shall, precedent to so engaging, file an application for a license in the manner and form herein required. At the time of making such application each such person desiring to engage in the wholesale business of selling manufactured tobacco products shall pay to the state tax assessor a license tax in the sum of \$25, or if desiring to engage in such retail business, such tax in the sum of \$2 for each place where he

proposes to carry on such business. When such application is filed after July 1 of each year the license tax required to be paid shall be proportioned in amount to the remainder of the license year, except that it shall not be less than $\frac{1}{5}$ of the whole amount in any 1 year. The revenues and fines collected under the provisions of this section and section 15 shall be paid to the state tax assessor.

Upon receipt of an application for a license filed in accordance with the provisions of this section, together with the amount of fee required for license tax, the state tax assessor shall issue such license permitting the applicant to engage in the business of selling any or all of the manufactured tobacco products enumerated in section 1 of this act. Such license shall be displayed at all times in some conspicuous place at the place where such business is carried on.

Sec. 6. Separate place of business; license not transferable. In case any business is conducted at 2 or more separate places, a separate license for each place of business shall be required.

No license issued permitting the sale of any manufactured tobacco products shall be transferable and any license issued to any person who shall afterwards retire from business shall be null and void.

No person shall engage in the wholesale or retail business of selling any manufactured tobacco products without having a license therefor, except that in case of the dissolution of a partnership by death, the surviving partner, or partners may operate under the license of the partnership until the time of its expiration and the heirs or legal representatives of deceased persons, and receivers and trustees in bankruptcy appointed by any competent authority, may operate under the license of the person so succeeded in possession by such heir, representative, receiver or trustee in bankruptcy. Provided, that anyone may be allowed to operate for 10 days after purchase of stock in bulk, pending granting of license upon application made promptly upon such purchase.

Nothing in this section shall be construed as requiring a license for the privilege of selling leaf tobaccos.

Sec. 7. Dealer's license revoked upon conviction. If a person convicted of any violation of this act is the holder of a wholesale or retail license, to sell manufactured tobacco products, the court may enter an order revoking such license and the clerk of the court shall certify a copy of such order in duplicate to the state tax assessor and thereafter such person shall be deemed and considered not to have obtained any license; provided, however, that after the expiration of 1 year from the date of such revocation such person shall be entitled to apply for such license.

Sec. 8. Powers and duties of commission. The state tax assessor shall design and procure the stamps herein provided for and shall enforce and administer the provisions of this act. The state shall have authority to promulgate such rules and regulations as it may deem necessary to carry out the provisions of this act and may adopt different detailed regulations applicable to diverse methods and conditions of sale of manufactured tobacco products in this state, prescribing, in each class of cases, upon whom, as between the wholesale dealer and the retail dealer, the primary duty of affixing stamps shall rest and the manner in which stamps shall be affixed. A copy of such regulations shall be furnished to each licensed dealer in this state in such a manner as the state tax assessor may determine. Any such rule or regulation so furnished, excusing a wholesale dealer from affixing stamps under the circumstances of the particular case, shall be a defense in the prosecution of such dealer for violation of section 3 of this act. All books, papers, invoices, and records of any wholesale or retail dealer in this state, whether or not required under the provisions of this act to be kept by him, showing his sales, receipts and purchases of manufactured tobacco products, shall at all times, during the usual business hours of the day, be open for the inspection of the state tax assessor or his deputies for such purposes; and the state tax assessor or his deputies shall have power to investigate and examine the stock of such manufactured products in and upon any premises where the same are placed, stored or sold, for the purpose of determining whether or not the provisions of this act are being obeyed.

Sec. 9. Duplicate list of stamps compiled by state tax assessor, sale of stamps, weekly report; discount allowed, when; unused or spoiled stamps redeemed, when. The state tax assessor shall compile in duplicate a list of all stamps procured by him showing the number and aggregate face value of each denomination procured by him and shall retain 1 such list and shall deliver the duplicate thereof to the state controller. The state tax assessor shall sell the stamps and shall, on the 5th day of each month, make a report in duplicate showing all sales by him made during the preceding month, with the names of the purchasers and the number of each denomination and the aggregate face value purchased by each, and retain 1 copy thereof and deliver the other to the state auditor. The state tax assessor shall be accountable for all stamps received and unsold by him. Such stamps shall be sold and/or accounted for at the face value thereof, excepting that the state tax assessor is hereby authorized to sell the same to wholesale or retail dealers outside of this state at a discount of not exceeding 5% of such face value as a commission for affixing and can-

celling such stamps; and excepting further that the state tax assessor is also hereby authorized to deliver such stamps to wholesale or retail dealers in this state or to wholesale dealers outside of this state on credit, allowing the same discount as when sold for cash, if and when the purchaser shall file with the state tax assessor a bond, payable to the state of Maine, in such form and amount as the state tax assessor shall prescribe, and with surety or sureties to the satisfaction of the state tax assessor, conditioned upon the payment for stamps so delivered within such period of time after delivery thereof as may be so prescribed and the making of such reports and settlements as may be required; and the state tax assessor may, by further regulations, provide for cancelling, renewing or increasing such bond or for the substitution of the surety thereon. The state tax assessor shall redeem and pay for any unused or spoiled stamps on written verified requests made by the purchaser, his administrators, executors, successors, or assigns. Such payment shall be made from the proceeds of the act.

Sec. 10. Certain town treasurers may be appointed deputies, duties; weekly report and payment to state tax assessor; per cent to deputies. The state tax assessor may appoint certain town treasurers as his deputies for the purpose of selling such stamps, excepting that no town treasurer shall be thereby authorized to sell the same at a discount or on credit. It shall be the duty of any town treasurer so appointed, to act as such deputy, and all the powers and duties thereby imposed upon such town treasurer shall be deemed and considered to be within the scope of his office as town treasurer for all purposes. The state tax assessor shall be responsible for the delivery of stamps to any town treasurer so appointed, and may prescribe such regulations and forms of receipts and reports as he may deem necessary and advisable for the transaction of the business of selling such stamps. Each such town treasurer shall pay weekly to the state tax assessor all moneys arising from the sale of such stamps by him together with a report showing the names of the purchasers and the number of each denomination and the aggregate face value purchased by each, which the state tax assessor shall include in his monthly report to the state controller. But such town treasurer shall retain for his services an amount equal to 1% of the proceeds of such sales.

Sec. 11. Seizure and sale of manufactured tobacco products, when; notice of sale; collection of tax; penalty and costs. Whenever the state tax assessor or any of his deputies or employees authorized by him for such purpose shall discover any manufactured tobacco products, subject to tax as provided by this act, and upon which the tax has not been paid as herein required, the state tax assessor, or such deputy or employee is hereby au-

thorized and empowered forthwith to seize and take possession of such manufactured tobacco products, which shall thereupon be deemed to be goods forfeited to the state and the state tax assessor may within a reasonable time thereafter by a notice posted upon the premises where such seizure is made, or by publication in some newspaper having circulation in the county wherein such seizure is made, at least 5 days before the day of sale, sell such forfeited goods, and from the proceeds of such sale shall collect the tax due thereon together with a penalty of 50% thereof and the costs incurred in such proceedings and pay the balance, if any, to the person in whose possession such forfeited goods were found; provided, however, that such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided herein for violation of any provision of this act. Such sale shall be made in the county where most convenient and economical. All moneys collected under the provisions of this section shall be paid to the state tax assessor.

Sec. 12. Revocation of license; procedure. Upon notice and hearing the state tax assessor may revoke any wholesale or retail license for violation of any provisions of this act. The state tax assessor shall first notify the licensee in writing, specifying the violations charged and fixing the time, not less than 5 days after the date of service of such notice, and the place at which such licensee shall appear to show cause why his license should not be revoked. The state tax assessor shall, at the time and place so specified, accord to the licensee a hearing in person and by counsel. The licensee shall be entitled to offer evidence and to compel the attendance of witnesses and the production of books, papers and records. An appeal may be taken from the action of the state tax assessor in revoking a license to the superior court of the county in which the place of business of the licensee is located, by filing a petition therefor with such court within 10 days from the date of the state tax assessor's order and giving bond to the state of Maine in the sum of \$100, with surety to the satisfaction of the clerk of such court.

Sec. 13. Penalty for failure to affix stamps. Whoever sells any manufactured tobacco products in this state without there having been first affixed to each package thereof the stamp or stamps required to be affixed thereto by this act shall be punished by a fine of not more than \$100, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment, at the discretion of the court.

Sec. 14. Penalty for forging, altering or counterfeiting stamps. Whoever falsely or fraudulently makes, forges, alters or counterfeits any stamp

prescribed by the state tax assessor under the provisions of this act, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, or knowingly and wilfully utters, publishes, passes or tenders as true, any such false, altered, forged or counterfeited stamp, or uses more than once any stamp provided for and required by this act for the purpose of evading the tax hereby imposed shall be punished by imprisonment for a term of not less than 1 year nor more than 10 years.

Sec. 15. Penalty for failure to display license. Whoever, being engaged in the business of selling any manufactured tobacco products enumerated in section 1 of this act, fails to post and keep constantly displayed in a conspicuous place at the place where such business is carried on, a license issued by the state tax assessor, shall be punished by a fine of not less than \$100 nor more than \$300 for the first offense and for each subsequent offense shall be punished by a fine of not less than \$300 nor more than \$500.

Sec. 16. Penalty for other violations. Whoever violates any of the provisions of sections 4 and 8 of this act, or any of the other provisions of this act or any lawful rule or regulation promulgated by the state tax assessor under authority of this act, for the violation of which no penalty is provided by law, shall be punished by a fine of not less than \$25 nor more than \$100.

Sec. 17. State tax assessor may remit penalty. The state tax assessor upon good cause shown, may at his discretion remit the penalty or penalties, or any part thereof, prescribed under any section of this act.

Sec. 18. Assistant in state tax assessor's office; compensation. The state tax assessor is hereby authorized to appoint a deputy whose duty it shall be to administer and enforce the provisions of this act, including the collection of all stamp taxes provided for herein. In such enforcement the state tax assessor may call to his aid the attorney general, any county attorney, or any peace officer of the state. The state tax assessor is further authorized to appoint such clerks or additional help as may be needed to carry out the provisions of this act. The compensation of all persons employed hereunder shall be approved by the governor and council and shall be paid from the revenues derived under the provisions of this act.

Sec. 19. Disposition of proceeds. The proceeds of revenues and fines collected under the provisions of this act shall be paid to the state tax assessor and credited to the tobacco tax fund. The state tax assessor shall remit to the treasurer of state all such revenues and fines under such rules

and regulations as may be made by the state controller. After the deduction of the costs of administration of this act the balance shall be credited by the treasurer of state to the old age pension fund to be expended for the payment of old age pensions.

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