

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. 602

H. P. 1479

House of Representatives, February 11, 1941.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Richardson of Strong.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT Levying a Use Fuel Tax.

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

Sec. 1. Short title. This act and any amendments thereof shall be known and may be cited as the "Use Fuel Tax Act".

Sec. 2. Definitions. The following words, terms and phrases as used in this act are, for the purposes thereof, hereby defined as follows:

"Motor vehicles" shall mean and include all vehicles, engines, machines or mechanical contrivances which are propelled by internal combustion engines or motors.

"Fuels" shall mean and include all combustible gases and liquids used in an internal combustion engine for the generation of power to propel vehicles of any kind or character on the public highways except such fuels as are subject to the tax imposed by the Gasoline Tax Act.

"Public highways" shall mean and include every way or place, of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

“Person” shall mean and include natural persons and partnerships, firms, associations and corporations.

“Use” shall mean and include, in addition to its original meaning, the receipt of fuel by any person into a motor vehicle or into a receptacle from which fuel is supplied by such person to his own or other motor vehicles.

“User” shall mean any person who uses and consumes fuel within this state in an internal combustion engine for the generation of power to propel vehicles of any kind or character on the public highways of this state.

“Duly licensed user” shall mean and include any user holding an unrevoked license issued by this state.

Sec. 3. Purpose. The tax imposed by this act is levied for the purpose of providing revenue to be used by this state to defray in whole or in part, the cost of constructing, widening, reconstructing, maintaining, resurfacing and repairing the public highways of this state and the cost and expense incurred in the administration and enforcement of this act and for no other purpose whatsoever.

Sec. 4. Levy of tax and exemptions. An excise tax is hereby imposed on all users of fuel upon the use of such fuel by any person within this state only when such fuel is used in an internal combustion engine for the generation of power to propel motor vehicles of any kind or character on the public highways at the rate of 4c per gallon, to be computed in the manner hereinafter in this act set forth; provided, however, that no tax is hereby imposed upon the use of any fuel if the constitution of the United States or of this state precludes such tax.

Sec. 5. Application for license; contents; licensing of users. It shall be unlawful for any user to use or consume any fuel within this state unless such user is the holder of an uncanceled license issued by the state tax assessor. To procure such license every user shall file with the state tax assessor an application upon oath and in such form as the state tax assessor may prescribe setting forth the name and address of the user.

Concurrently with the filing of an application for a license, every user shall file with the state tax assessor a bond of the character stipulated and in the amount provided for in section 6 of this act. No license shall issue upon any application unless accompanied by such a bond.

In the event that any application for a license to use fuel as a user in this state shall be filed by any person whose license shall at any time theretofore have been cancelled for cause by the state tax assessor, or in case the state tax assessor shall be of the opinion that such application is not filed in good faith or that such application is filed by some person as

a subterfuge for the real person in interest whose license or registration shall theretofore have been cancelled for cause by the state tax assessor then and in any of said events the state tax assessor after a hearing of which the applicant shall have been given 5 days' notice in writing and in which said applicant shall have the right to appear in person or by counsel and present testimony, shall have and is hereby given the right and authority to refuse to issue to said person a license certificate in this state.

Upon the filing of the application for a license, a filing fee of \$1 shall be paid to the state tax assessor.

The application in proper form having been accepted for filing, the bond having been accepted and approved and the other conditions and requirements of this section having been complied with, the state tax assessor shall issue to such user a license certificate and such license shall remain in full force and effect until cancelled as provided in this act.

The license certificate so issued by the state tax assessor shall not be assignable and shall be valid only for the user in whose name issued and shall be displayed conspicuously by the user.

The state tax assessor shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed users.

Sec. 6. Bond required of licensed users. Every user shall file with the state tax assessor a bond

(1) in the minimum amount of \$100 and a maximum amount of \$10,000 on a form to be approved by the state tax assessor and

(2) with a surety company authorized to do business within the state as surety thereon and

(3) upon which such user shall be the principal obligor and this state shall be the obligee,

(4) conditioned upon the prompt filing of true reports and the payment by such user to the state tax assessor of any and all fuel excise taxes which are now or which are hereafter levied or imposed by this state, together with any and all penalties and interest thereon and generally upon faithful compliance with the provisions of this act.

In the event that the liability upon the bond thus filed by the user with the state tax assessor shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the state tax assessor any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the state tax assessor may require the user to file a new bond with satisfactory sureties in the same form and amount, failing which the state tax assessor shall forthwith cancel the

license certificate of said user. If such new bond shall be furnished by such user as above provided, the state tax assessor shall cancel and surrender the bond of said user for which such new bond shall be substituted.

In the event that upon hearing, of which the user shall be given 5 days' notice in writing, the state tax assessor shall decide that the amount of the existing bond is insufficient to insure payment to this state of the amount of the tax and any penalties and interest for which said user is or may at any time become liable, then the user shall forthwith upon the written demand of the state tax assessor file an additional bond in the same manner and form with a surety company thereon approved by the state tax assessor in any amount determined by the state tax assessor to be necessary to secure at all times the payment by such user to this state of all taxes, penalties, and interest due under the provisions of this act, failing which, the state tax assessor shall forthwith cancel the license certificate of said user.

Any surety on any bond furnished by any user as heretofore provided shall be released and discharged from any and all liability to this state accruing on such bond after the expiration of 60 days from the date upon which such surety shall have lodged with the state tax assessor a written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release or discharge such surety from any liability already accrued or which shall accrue, before the expiration of said 60 day period. The state tax assessor shall promptly, on receipt of notice of such request, notify the user to furnish such bond and unless such user shall, on or before the expiration of such 60 day period, file with the state tax assessor a new bond with a surety company satisfactory to the state tax assessor in the amount and form hereinbefore in this section provided. The state tax assessor shall forthwith cancel the license of said user. If such new bond shall be furnished by said user as above provided, the state tax assessor shall cancel and surrender the bond of said user for which such new bond shall be substituted.

In lieu of furnishing a bond executed by a surety company, as surety, as hereinbefore in this section provided, any user may furnish his bond not so executed provided he shall concurrently therewith deposit and pledge with the state tax assessor direct obligations of the United States or obligations of any agency of the United States fully guaranteed by it or bonds of the state of Maine of equal full amount to the amount of the bond required by this section as collateral security for the payment of such bond.

Sec. 7. Tax reports; computation and payment of tax. For the purpose of determining the amount of tax herein imposed, each user shall, not later than the 15th day of each calendar month, file with the state tax as-

sensor on forms prescribed by said state tax assessor, monthly reports sworn to by the user which shall include the total gallonage of fuels used within this state during the next preceding calendar month.

At the time of filing of each monthly report with the state tax assessor, each user shall file with the treasurer of state an executed duplicate thereof and, concurrently therewith, shall pay to the treasurer of state, the full amount of the fuel tax for the next preceding calendar month at the same rate as provided for in section 4 of this act.

Sec. 8. Power of state tax assessor to cancel licenses; surrender of bond.

If a user shall at any time file a false monthly report of the data or information required of this act, or shall fail, refuse or neglect to file the monthly report required by this act or to pay the full amount of the tax as required by this act, the state tax assessor may forthwith cancel the license of said user and notify such user in writing of such cancellation by registered mail to the last known address of such user appearing on the files of the state tax assessor.

Upon receipt of a written request from any user licensed under this act to cancel the license issued to such user, the state tax assessor shall have the power to cancel such license effective 60 days from the date of such written request, but no such license shall be cancelled upon the request of any user until and unless the user shall, prior to the date of such cancellation, have paid to this state all excise taxes payable under the laws of this state, together with any and all penalties, interest and fines accruing under any of the provisions of this act and until and unless the user shall have surrendered to the state tax assessor the license certificate theretofore issued to such user. If upon investigation, the state tax assessor shall ascertain and find that any person to whom a license has been issued under this act is no longer engaged in the use of fuel and has not been so engaged for a period of 6 months, the state tax assessor shall have the power to cancel such license by giving such person 60 days' notice of such cancellation mailed to the last known address of such person, in which event the license certificate theretofore issued to such person shall be surrendered to the state tax assessor.

In the event that the license of any user shall be cancelled by the state tax assessor as hereinbefore in this section provided and in the further event that said user shall have paid to this state all excise taxes due and payable by it under this act, together with any and all penalties accruing under any of the provisions of this act, then the state tax assessor shall cancel and surrender the bond and any collateral security theretofore filed by said user.

Sec. 9. Penalty for failure to report and pay taxes promptly. When any user shall fail to file monthly report with the state tax assessor on or before the time fixed in this act for the filing thereof, or when such user fails to submit data outlined in section 7 of this act in such monthly report, or when such user shall fail to pay to the treasurer of state the amount of excise taxes due this state when the same shall be paid, a penalty of 10% shall be added to the amount of the tax due, and such penalty of 10% shall immediately accrue, and thereafter said tax and penalty shall bear interest at the rate of 1% per month until the same is paid.

Sec. 10. State tax assessor may estimate fuel used. Whenever any user shall neglect or refuse to make and file any report for any calendar month as required by this act, or shall file an incorrect or fraudulent report, the state tax assessor shall determine, after an investigation the number of gallons of fuel with respect to which the user has incurred liability under this act, for any particular month or months and fix the amount of taxes and penalties payable by the user under this act accordingly. The state tax assessor shall forthwith certify the amount so fixed to the treasurer of state for collection by him.

In any action or proceeding for the collection of the fuel tax and any penalties or interest imposed in connection therewith, an assessment by the state tax assessor of the amount of the tax due and the interest or penalties due to the state shall constitute prima facie evidence of the claim of the state, and the burden of proof shall be upon the user to show the assessment was incorrect and contrary to law.

Sec. 11. Retention of records by users; penalty. Each user shall maintain and keep for a period of two years, such record or records of fuel used within this state by such user, together with invoices, bills of lading, and other pertinent records and papers as may be required by the state tax assessor for the reasonable administration of this act. Any person wilfully violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be sentenced to pay a fine of not more than \$2,000.

Sec. 12. Inspection of records; civil action for tax; forms; rules and regulations. The state tax assessor or any deputy, employee or agent authorized, is hereby given authority to examine the records, books, papers and any other equipment of the user pertaining to fuel used, to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the tax imposed by this act has been paid, and further to examine the records, books, papers and any other equipment of the user to

determine the financial responsibility of the user for the payment of the taxes imposed by this act.

The state tax assessor shall have the power to institute legal proceeding by the attorney general in a court of appropriate jurisdiction for the purpose of ascertaining the amount due and enforcing the collection thereof with penalties and interest thereon and for the purpose of enjoining the business of the delinquent. The claims of the state for sums due under the provisions of this act shall be preferred and priority claims in the event of the assignment, receivership or bankruptcy of any user.

The state tax assessor shall have the authority to prescribe all forms upon which reports shall be made to the state tax assessor and any other forms required for the proper administration of this act and shall prescribe and publish all needful rules and regulations for the enforcement of this act.

Sec. 13. Discontinuance as a licensed user. Whenever a user ceases to engage in business as a user of fuel within this state it shall be the duty of such user to notify the state tax assessor in writing within 15 days after discontinuance. All taxes, penalties and interest under this act not yet due and payable under the provisions of this act shall, together with any and all interest accruing or penalties imposed under this act, notwithstanding any provisions thereof, become due and payable concurrently with such discontinuance. It shall be the duty of said user to make a report and pay all such taxes, interest and penalties and to surrender to the state tax assessor the license certificate theretofore issued to such user by the state tax assessor.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be sentenced to pay a fine of not less than \$50 nor more than \$300.

Sec. 14. Refund of taxes erroneously or illegally collected. In the event it shall appear to the state tax assessor that any taxes or penalties imposed by this act have been erroneously or illegally collected from any user, the state tax assessor shall certify the amount thereof to the controller, who shall thereupon draw his warrant for such certified amount on the treasurer of state to such user. Such refund shall be paid by the treasurer of state to such user forthwith from the general highway fund.

No refunds shall be made under the provisions of this section unless a written claim therefor setting forth the circumstances by reason of which such refund shall be allowed, which claim shall be in such form as the state tax assessor shall prescribe and shall be sworn to by the claimant, shall be

filed with the state administrator within 9 months from the date of the payment of the taxes erroneously or illegally collected.

Sec. 15. Failure to file statement; false statement; penalties, etc. Any person who shall refuse or neglect to make any statement, report or return required by the provisions of this act or who shall knowingly make, or shall aid or assist any other person in making a false statement in a return or report to the state tax assessor, or in connection with an application for refund of any tax, or who shall knowingly collect or attempt to collect, or cause to be paid to him or to any other person, either directly or indirectly, any refund of such tax without being entitled to the same, or who shall use fuel without being the holder of an uncancelled license, shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than \$2,000. Each day or part thereof during which any person shall engage in business as a user without being the holder of an uncancelled license shall constitute a separate offense within the meaning of this section.

Sec. 16. Allocation of tax. All taxes collected under the provisions of section 4 of this act, after the deduction of such amounts as may be currently appropriated to cover the costs and expenses of the state tax assessor incident to the administration and enforcement of this act, shall be credited to the general highway fund.

Sec. 17. Exchange of information among the states. The state tax assessor shall, upon request duly received from the officials to whom are entrusted the enforcement of the fuel tax laws of any other state, forward to such officials any information which he may have in his possession relative to the manufacture, receipt, sale, use, transportation and shipment by any person of fuel.

Sec. 18. Separability. If any provision of this act or application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.