

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. 611

H. P. 1480

House of Representatives, February 11, 1941.

Referred to Committee on Taxation. Sent up for concurrence and 1000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Roy of Lewiston.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT to Impose an Occupation Tax on Conducting a Business by a System of Chain Stores.

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

Sec. 1. Title. This act shall be known as the "Chain Store Tax Act".

Sec. 2. 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. The word "bureau" means the bureau of taxation.

b. "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit, and the plural as well as the singular thereof, and all firms however organized and whatever be the plan of operation.

c. "Sale" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

d. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose, other than for resale, of tangible personal property including goods, wares and merchandise.

e. "Business" includes any merchandising activity engaged in by any

person or caused to be engaged in by him with the object of gain, profit or advantage, either direct or indirect.

f. "Store" means any store or stores, or any mercantile or other establishment in which tangible goods, wares or merchandise of any kind are sold or kept for sale at retail. The term "store" as used in this act shall not be construed to mean or include any place of business at which the principal business conducted is that of selling, storing or distributing petroleum products.

g. "Conducting a business by a system of chain stores" when used in this act shall be construed to mean and include every person, as defined in this act, in the business of owning, operating or maintaining, directly or indirectly, under the same general management, supervision, control or ownership in this state, and/or in this state and any other state, 2 or more stores, where goods, wares, articles, commodities, or merchandise of any kind whatsoever are sold or offered for sale at retail and where the person operating such store or stores receive the retail profit from the commodities sold therein. Two or more stores shall, for the purpose of this act, be treated as being under a single or common ownership, control, supervision or management, if directly or indirectly owned or controlled by a single person or any group of persons, or by a common interest in such stores, or if any part of the gross revenues, net revenues or profits from such store shall, directly or indirectly, be required to be immediately or ultimately made available for the beneficial uses, or shall directly or indirectly inure to the immediate or ultimate benefit, of any single person or group of persons having a common interest therein. Not more than one of said stores need be located in this state, if one or more of said stores of said person is located in any other state. The fact that 2 or more retail stores are ostensibly owned and operated by different persons, shall not defeat the application of this act where such stores are under the same general management, supervision, or ownership. Lease and agency, and lease and ownership agreements or contracts, or operation under a common name shall, unless shown to the contrary, be deemed to constitute operation under the same general management, supervision, or ownership. Provided, however, that leased or licensed departments, located in a store under a contract obligating such departments to pay to the store a fixed rental or a percentage of the gross receipts, shall not be deemed to be owned, operated, supervised, or managed by the store in which such departments are located.

h. "Gross receipts" when used in this act shall be construed to mean and include the total amount of all sales at retail valued in money, whether

received in money or otherwise, provided, however, that discounts for any purpose allowed or taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either by cash or in credit be included. Provided, however, that on sales at retail valued in money when such sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than 60 days, that only such portion of the sale amount thereof shall be accounted for, for the purpose of the imposition of the tax in this act as has actually been received in cash by the retailer during the taxable year as herein defined. Gross receipts as interpreted under this section shall not include any federal or state sales tax or any special taxes now or hereafter imposed by the state or federal government which special tax or taxes are added to or included in the retail selling price of any merchandise sold under this act. Gross receipts shall not include the consideration received by the vendor from the purchaser residing without this state unless the purchaser is present within this state at the time of such sale or purchase.

i. "Taxable year" means the year commencing on July 1 and ending on June 30th of each calendar year.

Sec. 3. Exemptions. There are specifically exempted from the provisions of the act and from the computation of the amount of tax imposed by it the following:

a. Cooperative associations not organized for profit under the laws of this state in good faith and not for the purpose or with the intent of evading the tax hereby imposed.

b. Persons exclusively engaged in gardening and/or farming, selling in this state products of their own raising.

c. Persons selling at retail one or more of the following products: coal, ice, lumber, grain, feed, building materials (not including builders and general hardware, glass, and paints) if the total retail sales of any such person or persons of such products within the state shall, during such taxable year, exceed 95% of the total retail sales of all sources within the state of any such person or persons.

d. Liquor stores, established and operated by the state liquor control commission.

e. Hotels or rooming houses, including dining rooms or cafes operated in connection therewith and by the same management.

Sec. 4. Tax imposed. There is hereby imposed upon every person within the state of Maine engaged in conducting a business by a system

of chain stores from any of which stores are sold or otherwise disposed of at retail tangible personal property such as goods, wares, and merchandise an annual occupation tax for each taxable year during which year or any part thereof, such person is so engaged, as follows to wit:

a. A specific amount on each person engaged in conducting a business by a system of chain stores to be determined as follows:

1. \$5 for each store in excess of one and not in excess of 10 if said business is conducted at not in excess of 10 stores within this state under a single or common ownership, supervision or management.

2. \$15 for each store in excess of 10 and not in excess of 20 if said business is conducted at in excess of 10 but not in excess of 20 stores within this state under a single or common ownership, supervision or management.

3. \$35 for each store in excess of 20 and not in excess of 30 if said business is conducted at in excess of 20 but not in excess of 30 stores within this state under a single or common ownership, supervision or management.

4. \$65 for each store in excess of 30 and not in excess of 40 if said business is conducted at in excess of 30 but not in excess of 40 stores within this state under a single or common ownership, supervision or management.

5. \$105 for each store in excess of 40 and not in excess of 50 if said business is conducted at in excess of 40 and not in excess of 50 stores within the state under a single or common ownership, supervision or management.

6. \$155 for each store in excess of 50 if said business is conducted at in excess of 50 stores within this state under a single or common ownership, supervision or management.

b. An amount based on the combined gross receipts of each person on all of said business of each and all stores within this state under a single or common ownership, control, supervision, or management, conducting a business by a system of chain stores, but which shall be computed by applying the following rates to the entire or combined gross receipts:

1. \$25 when the gross receipts are not in excess of \$50,000.

2. \$10 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$50,000 but not in excess of \$100,000.

3. \$25 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$100,000 but not in excess of \$150,000.

4. \$60 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$150,000 but not in excess of \$200,000.

5. \$75 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$200,000 but not in excess of \$300,000.
6. \$100 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$300,000 but not in excess of \$400,000.
7. \$125 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$400,000 but not in excess of \$500,000.
8. \$150 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$500,000 but not in excess of \$600,000.
9. \$175 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$600,000 but not in excess of \$700,000.
10. \$200 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$700,000 but not in excess of \$800,000.
11. \$225 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$800,000 but not in excess of \$900,000.
12. \$250 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$900,000 but not in excess of \$1,000,000.
13. \$275 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$1,000,000 but not in excess of \$1,250,000.
14. \$300 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$1,250,000 but not in excess of \$1,500,000.
15. \$325 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$1,500,000 but not in excess of \$1,750,000.
16. \$350 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$1,750,000 but not in excess of \$2,000,000.
17. \$375 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$2,000,000 but not in excess of \$2,500,000.
18. \$400 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$2,500,000 but not in excess of \$3,000,000.
19. \$425 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$3,000,000 but not in excess of \$3,500,000.
20. \$450 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$3,500,000 but not in excess of \$4,000,000.
21. \$475 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$4,000,000 but not in excess of \$4,500,000.
22. \$500 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$4,500,000 but not in excess of \$5,000,000.
23. \$600 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$5,000,000 but not in excess of \$6,000,000.
24. \$700 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$6,000,000 but not in excess of \$7,000,000.

25. \$800 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$7,000,000 but not in excess of \$8,000,000.

26. \$900 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$8,000,000 but not in excess of \$9,000,000.

27. \$1,000 for each additional \$10,000 or fraction thereof of gross receipts in excess of \$9,000,000.

The tax imposed by subsection "b" hereof shall be computed for the annual period commencing July 1, 1941, and terminating June 30th, 1942, and for each succeeding 12 month period thereafter. The tax imposed by subsection "a" hereof shall be due and payable on July 1, 1941, and on July 1st of each succeeding year thereafter; the tax imposed hereby as far as measured by subsection "a" hereof, shall be computed on the basis of the number of stores operated by any person under a system of chain stores in this state as of July 1st of each taxable year. The tax imposed by subsection "b" hereof shall be due and payable on August 1, 1942, and on August 1, of each succeeding year thereafter or within 30 days after any person liable for such tax shall cease entirely to do business within this state of the kind on which the tax is imposed.

Sec. 5. Returns. Every person subject to the payment of a tax as provided in subsection "b" of section 4 hereof shall on or before August 1st, 1942, and on or before August 1st, of each succeeding year thereafter file with the bureau a verified return in such form and manner as may be prescribed by the bureau, showing the gross receipts of such person for the taxable year as herein defined, the amount of the tax due, and such further information as the bureau may require to enable it to compute and collect the tax herein imposed; provided, however, that the bureau may, upon the request of any such person and a proper showing for the necessity therefor, grant an extension of time not to exceed 30 days in which to make such return and to pay such tax.

Sec. 6. Failure to file return; incorrect return. If a return required by this act is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within 20 days after the same is required by notice from the bureau, such bureau shall determine the amount of tax due from such information as it may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, and/or other factors. The bureau shall give notice of such determination to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within 30 days after the giving of notice of such deter-

mination, apply to the bureau for a hearing or unless the bureau of its own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is correct. After such hearing the bureau shall give notice of its decision to the person liable for the tax.

Sec. 7. Appeals. 1. An appeal may be taken by the taxpayer to the superior court of the county in which he resides, or in which his principal place of business is located, within 60 days after he shall have received notice from the bureau of its determination as provided for in the preceding section.

2. The appeal shall be taken by a written notice to the state tax assessor, and served by any officer authorized to serve civil processes. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of said superior court, and docketed as other cases, with the taxpayer as plaintiff and the bureau as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant, and the state of Maine with sureties approved by such clerk, in penalty at least double the amount of tax appealed from, and in no case shall the bond be less than \$50, and conditioned that the plaintiff shall pay any amount found to be due the defendant and/or the state of Maine and will perform the orders of the court.

3. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the bureau. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the bureau who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the bureau to the law court as in equity.

Sec. 8. Lien of tax; collection; action authorized. Whenever any taxpayer liable to pay a tax and/or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the court costs that may accrue in the collection thereof, shall be a lien in favor of the state of Maine upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien aforesaid shall attach at the time the tax becomes due and payable and shall continue until the liability for such amount is satisfied.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the bureau shall file with the register of deeds of each county, in which said property is located, a notice of such lien.

The register of deeds of each county shall prepare and keep in his office a book to be known as "index of chain store tax liens" so ruled as to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically:

1. The name of the taxpayer.
2. The name "State of Maine" as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien when due.
6. When satisfied.

The register shall indorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The bureau shall pay to the register of deeds a recording fee of 75c for each lien so recorded, or for the satisfaction thereof.

Upon payment of a tax as to which the bureau has filed notice with the register of deeds, the bureau shall forthwith file with said register a satisfaction of said tax and the register shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

Upon any tax herein provided for becoming delinquent the bureau may notify the county treasurer of any county in which the person owing the tax owns real or personal property of the amount of such delinquent tax with interest and penalties. Upon receiving such notification the treasurer shall spread the amount of such tax with interest and penalties upon the records in his office and shall proceed as in equity so collect such tax, interest and penalties from the person owing the same.

The amount realized by the method provided in this paragraph shall not discharge the lien of such tax unless the full amount owing is received. Any amount received by the treasurer shall be remitted by him to the bureau.

The attorney-general shall, upon request of the bureau, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any taxes and/or penalties, and in such action he shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the bureau 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 provided by law.

Sec. 9. Service of notices. 1. Any notice, except notice of appeal, authorized or required under the provisions of this act may be given by mailing the same to the person for whom it is intended by registered mail, addressed to such person at the address given in the last return filed by him pursuant to the provisions of this act, or if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this act by the giving of notice shall commence to run from the date of registration and posting of such notice.

Sec. 10. Limitations. The statute of limitations shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this act.

Sec. 11. Bureau to administer act. The bureau of taxation shall administer and enforce the assessment of the tax imposed by this act. It may make and publish such rules and regulations, not inconsistent with this act, and shall distribute the same throughout the state and furnish them on application, but failure to receive or secure them shall not relieve any person from the obligation of making any return required of him by this act.

Sec. 12. Bureau may examine books. For the purpose of determining the correctness of any return, or of determining whether or not any person should have made a return or paid tax hereunder, the bureau of taxation shall have the power to examine or cause to be examined any books, papers, records or memoranda which are the property of or in the possession of the taxpayer or any other person. It shall further have the power to require the attendance of any taxpayer or other person having knowledge, or information relevant to such determinations aforementioned, to compel the production of books, papers, records or memoranda by persons so required to attend, to take testimony on matters material to such determinations, and to administer oaths or affirmations in any such connection. The bureau of taxation is empowered to any time and from time to time to require any owner, manager, or employee of any store in the state of Maine to file with the bureau of taxation, a statement under oath, showing the ownership, management and control of such store for the purpose of determining whether or not such store is subject to the tax hereby imposed. Such statement shall be in such form as the bureau shall prescribe.

Sec. 13. Appropriation. For expenditure by the bureau in carrying out the provisions of this act, there is hereby appropriated from the general

funds of the state, not otherwise appropriated, the sum of \$25,000 for the taxable year 1941-1942 and thereafter, an amount equal to 3% of the amount of taxes collected under this act; provided, however, that any balance of said amount equal to said 3% remaining after the payment of administrative expense, shall be transferred back to the general funds of the state, and provided, further, that before any distribution shall be made hereunder during the first taxable year that the sum of \$25,000 hereinbefore appropriated out of the general funds of the state shall be repaid to the general funds of the state.

Sec. 14. Fees, etc., to be paid to the treasurer of state. All fees, taxes, interest and penalties imposed under this act must be paid to the bureau in the form of remittances payable to the treasurer of state of the state of Maine, and said bureau shall transmit each payment daily to the treasurer of state, to be deposited in the state treasury to the credit of the general fund.

Sec. 15. Penalties; offenses. 1. Any person failing to file a return or corrected return or to pay any tax within the time required shall be subject to a penalty of 5% of the amount of tax due, plus 1% of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due; but the bureau, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the bureau and disposed of in the same manner as other receipts under this act. Unpaid penalties may be enforced in the same manner as the tax imposed.

2. Any person required to make, render, sign or verify any return or supplementary return, who makes any false or fraudulent return with the intent to defeat or evade the assessment required by law to be made, shall be guilty of a felony and shall, for each such offense, be fined not less than \$500, nor not more than \$5,000, or by imprisonment for not more than 1 year, or be subject to both such fine and imprisonment, in the discretion of the court.

3. The certificate of the bureau to the effect that the tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this act, shall be prima facie evidence thereof.

Sec. 16. Designated occupation tax. The tax levied and collected under this act shall not be affected or be in lieu of any other tax levied under any other act but the taxes levied and collected hereunder are levied and collected as an occupation tax.

Sec. 17. Validating clause. If any section, provision or clause of this act should be declared invalid, such invalidity shall not be construed to affect the portions of this act not so held invalid.

Sec. 18. Exception. This act shall not apply to any stores owned or operated by any person, firm, or corporation when all of said stores so owned or operated, are located in unincorporated villages and no store is more than 6 miles distant from every other store so owned or operated.

Sec. 19. Constitutionality. If any section, subsection, clause, sentence, or phrase of this act is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this act.