

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 1146**

H. P. 1917

House of Representatives, April 11, 1941.

Reported by Report "A" from Committee on Taxation. On motion by Mr. Morrison of Winter Harbor tabled pending acceptance of any of the three Reports A, B or C. 1,000 copies of new drafts "A" and "B" ordered printed.

HARVEY R. PEASE, Clerk.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-ONE

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**AN ACT Providing for Funds for Old Age Assistance and Homestead  
Taxation Relief, and Imposing a Consumer's Tax Therefor.**

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

**TITLE I**

**Consumer's Tax**

**Sec. 1. Definitions.** For the purpose of this title:

"Sale at retail" means the sale to a consumer for any purpose, other than for processing or for resale, of tangible personal property and the sale of a ticket or admission to a place of amusement or an athletic contest or exhibition. A transaction whereby the possession of the property is transferred but the vendor retains the title as security for the payment of the selling price shall be deemed to be a sale.

"Tangible personal property" means all chattels, movables, including boats and vessels, merchandise and stock in trade, furniture and personal effects, livestock, vehicles, movable machinery and equipment but not in-

cluding farming implements or any structure, improvement, machinery, equipment or fixtures attached to and forming a part of real property except where such structures, improvements, machinery, equipment or fixtures are sold under a lawful agreement that the same shall be and remain personal property.

“Selling price” means the aggregate value in money paid or delivered or promised to be paid or delivered by a consumer to a vendor in the consummation and complete performance of a sale at retail, whether received in money, credits or property of any kind or nature, including any value for which credit is allowed by the vendor to the consumer without any deductions therefrom on account of the cost of the property sold, the cost of the material used, labor or service costs or any other expense whatsoever.

“Services” means admission to theaters, recreation parks and other places of recreation and amusement excepting, however, admissions to amusements or to athletic contests or exhibitions managed by and for the benefit of elementary and secondary schools.

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

“Consumer” means the person to whom the transfer effected or license given by a sale is or is to be made or given, or to whom the admission is granted.

**Sec. 2. Imposition of tax.** There is hereby imposed an excise tax on each sale at retail in this state of tangible personal property and services, as herein defined, at the rate of 2% of the selling price thereof. For the purpose of proper administration of this act and to prevent the evasion of the tax hereby imposed, it shall be presumed that all sales at retail made in this state are subject to the tax hereby imposed until the contrary is established.

In the case of a sale at retail, the selling price of which consists in whole or in part of rentals for the use of the property sold, the tax hereby imposed shall, as regards such rentals, be collected upon the installments as they fall due.

**Sec. 3. Exemptions.** The provisions of this title shall not apply to the following sales:

Sales of internal combustion engine fuel as defined in the Gasoline Tax Act;

Sales of all goods for use in manufacturing or producing, including

seeds, fertilizers, insecticides and fungicides, feeds and other materials purchased by farmers and used in producing farm products for sale, but not including goods or materials that are used in building or repairing buildings;

Sales of newspapers, and all articles sold for less than 5c;

Sales of telephone, telegraph, electricity, water and transportation services;

Sales of spirituous, vinous and malt liquor or sales of any other tangible personal property and services that are now or may hereafter be subject to any excise, sale, privilege or any other similar tax under the laws of this state;

Sales to the federal government or any of its agencies or to the state of Maine or any of its political subdivisions including sales to agencies of federal, state or local governments for distribution in public welfare and relief work;

Sales which are not within the taxing power of this state under the constitution of the United States or the state of Maine;

Sales to charitable, educational or religious organizations and sales by such organizations, the income from which is used for educational, charitable or religious purposes;

Sales of tangible personal property to be used wholly in the manufacture or processing of tangible personal property;

Professional or personal service transactions which involve sales as inconsequential elements for which no separate charges are made;

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

**Sec. 4. Payment of tax.** Except as provided in section 5 of this title, the tax hereby imposed shall be paid by the consumer to the vendor in every instance and it shall be the duty of each vendor to collect from the consumer the full and exact amount of the tax payable in respect of each taxable sale and to evidence the payment of the tax in each case by canceling portions of tax cards equal in face value to the amount thereof in the manner and at the times provided in this section, to wit:

(a) If the selling price is, at or prior to the delivery of possession of the property sold to the consumer, paid in currency passed from hand to hand by the consumer to the vendor, the vendor shall collect the tax with and at the same time as the selling price and immediately cancel in the presence of the consumer by punching from a tax card or cards, by means

of mechanical device or otherwise, a portion or portions thereof of proper face value.

(b) If the price is otherwise paid or to be paid, the vendor shall, at or prior to the delivery of possession of the property sold to the consumer, in like manner punch or cause to be punched from a tax card or cards a portion or portions thereof equal in face value to the amount of the tax imposed by this title. Thereupon and thereby the amount of the tax with respect to such sale, payment of which to the state is evidenced by such cancellation, shall become a legal charge in favor of the vendor and against the consumer, which shall in every case be collected by the vendor as herein provided, in addition to the price; and at or immediately after such collection, the vendor shall deliver to the consumer so much of such tax card or cards as is canceled.

**Sec. 5. Issuance of tax cards; administration, rules and regulations.**

Tax cards required by this title shall be designed, procured and issued by the state tax assessor, blocked off into denominations of mills, cents and dollars, each card to represent the sum of \$5, \$10, \$25, \$50 and \$100 worth of sales at retail and to be sold, as hereinafter provided for 5c, 10c, 25c, 50c and \$1 respectively. They shall be printed on durab'e paper and have printed thereon a copy of section 12 of this title.

The state tax assessor shall enforce and administer the provisions of this title and is authorized to adopt and promulgate such rules and regulations as he may deem necessary to carry out the provisions of the title. The state tax assessor may authorize a vendor to prepay the tax levied by this title upon sales of property produced or distributed by such vendor, and waive the collection of the tax from the consumer in the manner otherwise provided in this title; but no such authority shall be granted or exercised excepting upon application to the state tax assessor and unless the state tax assessor shall, after hearing, advance notice of which must be given by the state tax assessor to all vendors in the same general classification as the applicant, find that the conditions of the applicant's business are such as to render impractical the collection of the tax in the manner otherwise provided by the title, nor shall the authority so granted be exercised nor the vendor or vendors actually selling such property be exempted from the other provisions of this title by virtue thereof, unless the person to whom such authority is granted shall print plainly upon the property sold or offered for sale a statement to the effect that the tax levied by this title has been paid in advance.

**Sec. 6. Canceled sales.** In the event prepaid purchases are returned to

the vendor by the consumer after the tax imposed by this title has been collected or charged to the account of the consumer, the vendor shall be entitled to reimbursement of the amount of the tax so collected or charged by him, in the manner hereinafter provided. Upon receipt of a sworn statement by the vendor as to the gross amount of such refunds, during the period covered by such sworn statement, which period shall not be longer than 60 days, the state tax assessor shall issue to the vendor an official credit memorandum equal to the net amount paid by the vendor for such canceled tax cards. Such memorandum shall be accepted by the treasurer of state or his agents at full face value, from the vendor to whom it is issued, in the purchase of tax cards under the provisions of section 7 of this title.

**Sec. 7. Reporting of sales of tax cards by treasurer of state and agents; commissions.** All tax cards procured by the state tax assessor shall be immediately delivered to the treasurer of state, who shall execute duplicate receipts therefor, showing the number of and aggregate face value of the cards received by him, and deliver such receipt to the state tax assessor and a duplicate thereof to the state auditor. The treasurer of state shall be accountable for all tax cards received and unsold by him. He may appoint agents for the sale of tax cards at such places in the state as he may deem expedient, fix their compensation, payable from any appropriation to his department for the purpose of administering the provisions of this title and require of each such bond or other security as he may deem necessary. He shall deliver to each county treasurer such number and denomination of tax cards as in his judgment may be required for sale in each county pursuant to this title, 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 tax cards. On the 5th day of each month, the treasurer of state shall make a report in duplicate showing all sales of tax cards made during the preceding month with the names of the purchasers, the aggregate face value purchased by each and the office from which sold, and deliver one copy thereof to the state tax assessor and the other to the state auditor. Each county treasurer shall pay on the first business day of each week to the treasurer of state all moneys arising from the sale of tax cards by him during the preceding week, together with a report showing all sales, the names of the purchasers and the aggregate face value purchased by each, which the treasurer of state shall include in his monthly report. But such county treasurer shall retain for the use of the general fund of the county an amount equal to 1% of the proceeds of such sales. All the powers and duties hereby imposed upon the county

treasurer shall be deemed and considered to be within the scope of his office as county treasurer for all purposes.

**Sec. 8. Sale of tax cards to licensed vendors; redemption of cards.** The treasurer of state, his agents and the several county treasurers, shall sell tax cards only to licensed vendors. All such tax cards shall be sold and accounted for at a discount of not to exceed 2% of the face value thereof, as a commission for handling and canceling such tax cards. The state tax assessor shall by regulation, certified to the treasurer of state, fix within the limitations herein prescribed the rate of discount applicable to the sale of tax cards to such classes of licensed vendors as he may establish. The treasurer of state shall redeem and pay for any unused or spoiled tax cards at the net value thereof, on written verified request made by any licensed vendor, his administrators, executors, successors or assigns. Such payments shall be made from an appropriation of the treasurer of state for the purpose of defraying the expenses of administering this title.

**Sec. 9. Duties of licensed vendors of tax cards.** Within 5 days after the issuance of his license, it shall be the duty of each such licensed vendor to purchase and have on hand at all times tax cards in suitable denominations and in amount sufficient to supply the normal requirements of his business. A licensed vendor shall procure tax cards from the treasurer of state, or his agent authorized to sell such cards, or from the several county treasurers.

**Sec. 10. Vendor's license, application and license fee for; penalty.** No person shall engage in making sales at retail as herein defined, as a business, without having a license therefor, excepting that 2 or more persons constituting a single "vendor" as defined by section 1 of this title may operate a single retail establishment under one license, and in such case neither the retirement of one or more such persons from business in such establishment nor the entrance of one or more thereinto, under an existing arrangement, shall affect the license or require the issuance of a new license. Each applicant shall make out for delivery to the state tax assessor, upon a blank to be furnished by the state tax assessor for that purpose, a statement showing the name of the applicant, each retail establishment where the applicant's business is to be conducted, the kind and nature of such business and such other information as the state tax assessor may reasonably prescribe in the form of statement prescribed by him.

At the time of making such application, the applicant shall pay to the treasurer of state a license fee of \$1 for each retail establishment in the

state where he proposes to carry on such business. Upon receipt of such application an exhibition of the state treasurer's receipt, showing the payment of such fee or fees, the state tax assessor shall issue to the applicant a license for each retail establishment designated in the application, authorizing the applicant to engage in business at such retail establishment. This license shall continue valid until surrendered by the vendor or canceled, for cause, by the state tax assessor. The form of such license shall be prescribed by the state tax assessor.

In the case of a vendor who has no fixed place of business and sells from one or more vehicles each such vehicle intended to be used within the state shall constitute a "retail establishment" for the purpose of this section. In the case of a vendor who has no fixed place of business and does not sell from a vehicle, the application for a license shall nevertheless set forth a place in the state to which any notice or other communication authorized by this title may be sent, and the place so designated shall constitute a "retail establishment" for the purpose of this section.

Whoever engages in the business of selling tangible personal property or services at retail or sells tangible personal property or service at retail incidental to any other regularly conducted business as such sales are herein defined, without having a license therefor, as required by this title, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25 and not more than \$100.

**Sec. 11. Vendors' records open to inspection.** Each vendor shall keep such records of sales together with invoices, bills of lading and such other pertinent documents in such form as the state tax assessor may by regulation require. Such records and other documents shall be open at any time during business hours to the inspection of the state tax assessor and shall be preserved for a period of 2 years, unless the state tax assessor shall in writing consent to their destruction within that period or by order require that they be kept longer.

**Sec. 12. Penalty.** Any vendor who fails to collect and any consumer who fails to pay the tax herein imposed and anyone who violates any rule or regulation of the state tax assessor for the administration and enforcement of this title shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$10 or more than \$100 for each offense.

Whoever falsely or fraudulently makes, alters or counterfeits any pre-paid tax card prescribed by the state tax assessor under the provisions of this title, or knowingly and wilfully utters, publishes, passes or tenders as



true, any such false, altered, forged or counterfeited card shall be punished by imprisonment for a term of not less than 1 year or more than 10 years.

**Sec. 13. Revocation of vender's license.** Upon notice and hearing the state tax assessor may revoke any vendor's license for wilful violation of any provision of this title. 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 before the state tax assessor 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.

**Sec. 14. Venders liable for tax; tax assessment.** In case any vendor fails to collect the tax herein imposed, or having collected the tax, fails to cancel the tax cards in the manner prescribed by this title, and by the regulations of the state tax assessor, he shall be personally liable for such amount as he failed to collect, or for the amount of the tax cards which he failed to cancel.

In such case the state tax assessor shall have power to make an assessment against such vendor based upon any information within his possession or that shall come into his possession. The state tax assessor shall give to the vendor written notice of such assessment, together with written notice of the time and place where the vendor may be heard. Such notice may be served upon the vendor personally or by registered mail.

Any amount assessed by the state tax assessor under the provisions of this section, together with a penalty of 15% thereof shall be due and payable from the vendor to the treasurer of state 15 days after the service upon the vendor of notice of such assessment and when paid shall be considered as revenue arising from the tax imposed by this title.

All amounts assessed under this section, which are not paid to the treasurer of state by the vendor on the date when the same become due and payable, shall bear interest at the rate of 12% per annum from and after such date until paid.

## TITLE II

### Use Tax

**Sec. 1. Use tax. I. Definitions.** The following words, terms and phrases when used in this section shall have the meanings ascribed to them in this subsection.

1. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing or the sale of that property in the regular course of business. Property used in "processing" within the meaning of this subsection shall mean and include (a) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, (b) fuel which is consumed in creating power, heat or steam for processing or for generating electric current, (c) industrial materials and equipment, which are not readily obtainable in Maine, and which are directly used in the actual fabricating, compounding, manufacturing or servicing of tangible personal property intended to be sold ultimately at retail.

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

3. "Purchase price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise; provided that cash discounts allowed and taken on sales shall not be included.

4. "Tangible personal property" means tangible goods, wares, and merchandise, and gas, electricity, and water when furnished or delivered to consumers or users within this state.

5. "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this section; provided, however, that when in the opinion of the state tax assessor it is necessary for the efficient administration of this section to regard any salesmen, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the state tax assessor may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this section.

6. "Retailer maintaining a place of business in this state" or any like term, shall mean and include any retailer having or maintaining within this state directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this

state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state pursuant to law.

7. "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

8. "Taxpayer" shall mean any person within the meaning of subsection 7 hereof who is subject to a tax imposed by this section whether acting for himself or as a fiduciary.

**II. Imposition of tax.** An excise tax is hereby imposed on the use in this state of tangible personal property purchased on or after the effective date of this section for use in this state, at the rate of 2% of the purchase price of such property. Said tax is hereby imposed upon every person using such property within this state until such tax has been paid directly to the state tax assessor or to a retailer, as hereinafter provided.

**III. Exemptions.** The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this section:

1. Tangible personal property, on the sale of which at retail a tax is imposed by title I, and any amendments made or which may hereafter be made thereto.

2. Tangible personal property used (a) in interstate transportation or interstate commerce, or (b) for the performance of a building or construction contract executed prior to the effective date of this section.

3. Tangible personal property upon which the state now imposes and collects a special tax, whether in the form of a license tax, excise tax, stamp tax, or otherwise.

4. All articles of tangible personal property brought into the state of Maine by a non-resident individual thereof for his or her use or enjoyment while within the state.

5. Tangible personal property not readily obtainable in Maine and used in the operation of street railways.

6. Tangible personal property, the sales of which at retail are exempted from the sales tax imposed by title I.

**IV. Evidence of use.** For the purpose of the proper administration of this section and to prevent evasion of the tax, evidence that tangible personal property was sold by any person for delivery in this state shall be prima facie evidence that such tangible personal property was sold for use in this state.

**V. How collected.** The tax herein imposed shall be collected in the following manner :

1. The tax upon the use of all tangible personal property which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the state tax assessor shall authorize pursuant to subsection VII, shall be collected by such retailer and remitted to the state tax assessor, pursuant to the provisions of subsections VI to X, inclusive.

2. The tax upon the use of all tangible personal property not paid pursuant to subsection 1 hereof shall be paid to the state tax assessor directly by any person using such property within this state, pursuant to the provisions of subsection XI.

**VI. Collection by retailer.** Every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under the provisions of subsection III, shall at the time of making such sales, whether within or without the state collect the tax imposed by subsections I to XX from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax assessor, if the state tax assessor shall, by regulation, require such receipt. Each such retailer shall require such receipt. Each such retailer shall list with the state tax assessor the name and address of all his agents operating in this state and the location of any and all his distribution or sales houses or offices or other places of business in this state.

**VII. Foreign retailers.** The state tax assessor may, in his discretion, upon application authorize the collection of the tax, herein imposed, by any retailer not maintaining a place of business within this state who, to the satisfaction of the said assessor furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject to such regulations and agreements as the said assessor shall prescribe. When so

authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property sold to his knowledge for use within this state, in the same manner and subject to the same requirements as a retailer maintaining a place of business within this state. Such authority and permit may be canceled when, at any time, the said assessor considers the security inadequate, or that such tax can more effectively be collected from the person using such property in this state.

**VIII. Absorbing tax.** It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this section will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. The state tax assessor shall have the power to adopt and promulgate rules and regulations for adding such tax, or the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. Any person violating any of the provisions of this subsection within this state shall be guilty of a misdemeanor and subject to the penalties provided in subsection XV.

**IX. Tax as debt.** The tax herein required to be collected by any retailer pursuant to subsections VII and VIII, and any tax collected by any retailer pursuant to said subsections, shall constitute a debt owed by the retailer to this state.

**X. Payment to state tax assessor.** Each retailer required or authorized, pursuant to subsections VII or VIII, to collect the tax herein imposed, shall be required to pay to the state tax assessor the amount of such tax, on or before the 20th day of the month next succeeding each quarterly period, the first such quarterly period being the period commencing on the 1st day of October, 1941, and ending on the 31st day of December, 1941. At such time, each such retailer shall file with the state tax assessor a return for the preceding quarterly period in such form as may be prescribed by the said assessor showing the sales price of any or all tangible personal property sold by the retailer during such preceding quarterly period, the use of which is subject to the tax imposed by this section and such other information as the said assessor may deem necessary for the proper administration of this section. The return shall be accompanied by a remittance of the amount of such tax, for the period covered by the return, provided that

where such tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended over a period longer than 60 days from the date of the sale thereof, the retailer may collect and remit each quarterly period that portion of the tax equal to 2% of that portion of the purchase price actually received during such quarterly period. The state tax assessor, if he deems it necessary in order to insure payment to the state of the amount of such tax, may in any or all cases require returns and payments of such amount to be made for other than quarterly periods. The said assessor may, upon request and a proper showing of the necessity therefor, grant an extension of time not to exceed 30 days for making any return and payment. Returns shall be signed by the retailer or his duly authorized agent and must be certified by him to be correct.

**XI. Liability of user.** Any person who uses any property upon which the tax herein imposed has not been paid, either to a retailer or direct to the state tax assessor as herein provided, shall be liable therefor, and shall on or before the 20th day of the month next succeeding each quarterly period pay the tax herein imposed upon all such property used by him during the preceding quarterly period in such manner and accompanied by such returns as the state tax assessor shall prescribe. All of the provisions of subsection X with reference to such returns and payments shall be applicable to the returns and payments herein required.

**XII. Bond to secure payment.** The state tax assessor may, when in his judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under this section, authorize any person subject to such tax, and any retailer required or authorized to collect such tax pursuant to the provisions of subsections VII and VIII, to file with it a bond issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the state tax assessor may fix, to secure the payment of any tax, amount, and/or penalties due or which may become due from such person. In lieu of such bond, securities approved by the state tax assessor in such amount as it may prescribe, may be deposited with it, which securities shall be sold by the said assessor at public or private sale, without notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax and/or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this section shall be returned to the person who deposited the securities.

**XIII. Determination by assessor.** If any return required by this section is not filed, or if any return when filed is incorrect or insufficient, and the maker or person from whom it is due fails to file a corrected or sufficient return within 20 days after the same is required by notice from the state tax assessor, the said assessor shall have the power to determine the amount due from such information as he may be able to obtain, and if necessary may estimate the tax on the basis of external indices, such as the number of employees of the person concerned, rentals paid by him, his stock on hand, and/or other factors. The state tax assessor 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 determination, apply to the state tax assessor for a hearing or unless the state tax assessor of his own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the state tax assessor shall give notice of his decision to the person liable for the tax.

**XIV. Appeals.** 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 state tax assessor of his determination as provided for in subsection XIII.

The appeal shall be taken by a written notice to the state tax assessor and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of said court, and docketed as other cases, with the taxpayer as plaintiff and the state tax assessor as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant, 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, conditioned that the plaintiff shall perform the orders of the court.

The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the state tax assessor. In such appeal, the burden of proof shall be upon the taxpayer. 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 state tax assessor who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the state tax assessor to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved.

**XV. Failure to pay; penalties.** Any person failing to file a return or corrected return or to pay any tax and/or amount required to be paid by this section within the time required by this section, shall be subject to a penalty of 5% of the amount due, plus 1% of such amount for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax or amount became due; but the state tax assessor, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the state tax assessor and disposed of in the same manner as other receipts under this section. Unpaid penalties may be enforced in the same manner as the tax imposed by this section. The certificate of the said assessor to the effect that a tax and/or amount required to be paid by this section has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this section, shall be prima facie evidence thereof.

**XVI. Fraud.** Any person required to make, render, sign or certify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the tax, and/or amount required to be paid by this section, shall be punished by a fine of not less than \$500, or by imprisonment for not more than 11 months, or by both such fine and imprisonment, in the discretion of the court.

**XVII. Penalty.** Any retailer or other person failing or refusing to furnish any return herein required to be made, or failing or refusing to furnish a supplemental return or other data required by the state tax assessor shall be punished by a fine of not more than \$100 for each offense, or by imprisonment for not more than 30 days or by both such fine and imprisonment, in the discretion of the court.

**XVIII. Books; examination.** Every retailer required or authorized to collect taxes imposed by this section and every person using in this state tangible personal property purchased on or after October 1, 1941, shall keep such records, receipts, invoices, and other pertinent papers as the state tax assessor shall require, in such form as the said assessor shall require. The said assessor or any of his duly authorized agents is hereby authorized to examine the books, papers, records and equipment of any person either selling tangible personal property or liable for the tax imposed by this section, and to investigate the character of the business of any such person in order to verify the accuracy of any return made, or if no return was made by such person, to ascertain and determine the



amount due under the provisions of this section. Any such books, papers, and records shall be made available within this state for such examination upon reasonable notice when the said assessor shall deem it advisable and shall so order.

**XIX. Revoking permits.** Whenever any retailer maintaining a place of business in this state, or authorized to collect the tax herein imposed pursuant to subsection VIII, fails to comply with any of the provisions of this section or any orders, rules, or regulations of the state tax assessor prescribed and adopted under this section, the said assessor may, upon notice and hearing as hereinafter provided, by order revoke the permit, if any, issued to such retailer under the provisions of law, or if such retailer is a corporation authorized to do business in this state under the provisions of law, may certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions, orders, rules or regulations. The secretary of state shall, upon receipt of such certified copy, revoke the permit authorizing said corporation to do business in this state, and shall issue a new permit only when such corporation shall have obtained from the state tax assessor an order finding that such corporation has complied with its obligations under this section. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why such order should not be made, and he shall be given 10 days' notice of the time, place, and purpose of such hearing.

**XX. Deposit of revenue.** All revenues derived under the operation of this section shall be paid into the "Homestead Fund".

**Sec. 2. Taxation in another state.** If any article of tangible personal property has already been subjected to a tax by any other state in respect to its sale or use in an amount less than the tax imposed by this title, the provisions of this title shall apply, but at a rate measured by the difference only between the rate herein fixed and the rate by which the previous tax upon the sale or use was computed. If such tax imposed in such other state is 2% or more, then no tax shall be due on such articles.

### TITLE III

#### Homestead Exemptions

**Sec. 1. Homesteads exempted from taxation; definitions; procedure.** Every person who has the legal or beneficial title in equity to real property in the state of Maine, including vendees in possession under bona fide con-

tracts to purchase when the instruments by and under which such title is claimed are properly recorded in the registry of deeds in the county in which said real property lies; and who resides thereon and in good faith makes the same his or her permanent home shall be entitled to make a claim for an exemption from all taxation, except for special assessments for benefits, up to the assessed valuation of \$2000 on said real property. The right to claim such exemption shall extend to widows and widowers who have such title, or who reside on said property by virtue of dower or by right of descent or who have an estate therein limited in time by deed, will, jointure or settlement, or otherwise, and to widowers and other single persons who make their home upon property to which they have the legal or equitable beneficial title. The title herein referred to may be held by the entireties, jointly or in common with others, and said exemption may be apportioned among such of the owners as shall reside thereon as their respective interests shall appear, but no claim for such exemption of more than \$2000 shall be allowed to any one person or on any single parcel of real property, nor shall the amount of the claim for exemption allowed any person exceed the proportionate assessed valuation based upon the interest owned by such person.

Provided, however, that if the revenue derived from the tax imposed in titles I and II is not sufficient to reimburse the various cities and towns for the revenue that would be lost by them through granting these claims for exemption, this exemption shall be for that portion of the exempted amount claimed and granted which the total amount raised by the tax bears to the total exemptions claimed and granted.

The words "resident," "residence," "permanent residence" and those of like import, shall not be construed so as to require continuous physical residence on the property, but mean only that place which the person claiming the exemption may rightfully and in good faith call his or her home to the exclusion of all other places where he or she may, from time to time, temporarily reside. "Homestead" shall mean the house and lot in urban territory, and buildings and farm land in rural territory.

The state tax assessor shall furnish to the assessors of each city and town a sufficient number of printed forms to be filed by taxpayers claiming to be entitled to said exemption. Said forms shall be substantially as follows:

Tax Assessors of ..... Maine;

I hereby make application for an exemption from all taxation up to the valuation of \$2000 on the following described property:

.....  
 .....

The title to said property is in .....  
.....  
(Name all owners and their proportionate interest)

and my interest or title in this property is as follows: .....  
.....  
(If title is not in applicant or is held jointly with others, give relationship  
of the owner or joint owner, to applicant) .....  
.....

I reside on the above property and in good faith make the same my permanent home and do hereby declare that I am a bona fide citizen of the state of Maine.

The statements contained and agreed to herein are true and made in good faith.

.....  
Applicant

Subscribed and sworn to before me this..... day of.....  
.....194....

.....  
(See other side for copy of law)

A copy of the 1st and 2nd paragraphs of this section shall be printed on the back of the form.

It shall be the duty of each taxpayer who claims said exemption to file one of said forms, properly filled out and executed, with the tax assessors of his city or town on or before April 1st of each year; and the failure to do so shall constitute a waiver of said exemption for such year.

The tax assessors shall examine each claim for exemption filed with them or referred to them and shall allow the same if it is found to be in accordance with law, by marking the same approved subject, however, to the pro rata return to be received from the state, and by making the proper notations on the tax books. In every case the property shall be assessed whether the value be more or less than \$2000, and an appropriate notation shall be made as the case may be.

The tax assessors of the several cities and towns of the state of Maine shall, as soon as practicable after the 1st day of April of each current year and prior to the 1st Monday in May of said year, carefully consider all applications for tax exemption that shall have been filed in their respective

offices on or before the 1st day of April of that year and if upon such investigation the tax assessors find the applicant entitled to the claim for tax exemption applied for under the law they shall mark the application approved and file same in the permanent records of their office and shall make such entries upon the tax rolls of their city or town as will be necessary to allow such claim of exemption to the applicant. If, after due consideration, the tax assessors should find the applicant not to be entitled under the law to the claim of exemption asked for, it shall be the duty of such tax assessors to immediately make out in triplicate form a notice of such disapproval, giving their reasons therefor, a copy of which notice shall be served upon the applicant by the tax assessors either by personal delivery or by registered mail to the post office address given by the applicant and shall make return of the manner in which such notice was served upon said applicant upon the original notice thereof and immediately file same with the clerk of the city or town. The 3rd copy of said notice shall likewise have entered upon it the return of the tax assessors as to service had and filed among the permanent records of their office.

Three referees may be chosen in the manner hereafter specified to review the facts and to have the power and authority to reverse the decision of the assessors and grant the claim to exemption to the applicant if in their judgment the applicant is entitled thereto, or to affirm the decision of the assessors, and such decision shall be final. All referees chosen shall be persons who have adequate knowledge of real estate values in the community. The applicant may appeal from the findings by filing a notice with the clerk of the city or town within 15 days of the receipt of his notice, of his appeal together with the name of a referee. The tax assessors shall be forthwith notified of such appeal, and shall choose a referee within 7 days of such notice. The 2 referees chosen shall select a 3rd referee within 7 days of the choice of the 2nd referee. The referees shall report their decision to the tax assessors within 30 days of the time the 3rd referee has been selected, and file their report with the clerk of the city or town in which the property is located. For the purpose of administering the provisions of this section or performing any other duties pertaining to proper administration of the duties of the office of tax assessor or the making and filing of tax returns and application for tax exemption as provided under this section, the duly elected tax assessors of the several cities and towns or their lawful deputies are hereby authorized and empowered to administer oaths and to attest the same in the same manner as notaries public and justices of the peace. All claims for exemptions granted within their various precincts shall be totaled by the various cities and towns and reported to the state tax assessor on or before August 1 of each year.

**Sec. 2. "Homestead fund".** The treasurer of state shall set up a fund to be called the "Homestead Fund". The state tax assessor shall pay over to the treasurer of state all monies received under the provisions of titles I and II to be credited to said fund. All of the expenses of the state administration of the provisions of titles I and II shall be paid from this fund.

There is hereby appropriated out of the "Homestead Fund" herein created \$1,000,000 for the fiscal year ending June 30, 1942, and for each year thereafter, for the purpose of paying old age pensions as provided by the law of the state; provided, however, that in case such an appropriation or any part thereof is not necessary and is not expended for the purpose of paying old age pension, it shall lapse and shall be applied to payment of homestead exemptions.

After July 1 of each year the state tax assessor shall determine the amount of the net revenue derived from the tax imposed by titles I and II herein, less the expenditure for old age pensions under the provisions of this title, and on receipt of the returns from all of the various cities, towns, and plantations of the claims for exemptions granted under the provisions of this title which returns shall be made before August 1 of each year, shall apportion the amounts due the cities, towns and plantations and shall certify the amounts to the treasurer of state who shall forthwith pay the same out of said fund.

**Sec. 3. Reimbursement to towns; ratio.** The exemptions provided for in this title shall be effective in such proportion as the total amount of the net revenue derived from the taxes collected under the provisions of titles I and II less the expenditures for old age pensions under the provisions of this title shall bear to the total amount of the exemptions granted within the state under the provisions of this title; and the net revenue from the tax herein set forth shall be paid to the various cities, towns and plantations in such proportion as the exemptions granted under the provisions of this title in the particular city, town or plantation bear to the net revenue derived by the state from the taxes collected hereunder, less the expenditures for old age pensions under the provisions of this title. The treasurers of the various cities and towns shall grant a rebate of taxes to those whose claims of exemptions have been granted in such percentage as the total amount received from the state by the city or town for that purpose shall bear to the total amount of the claims for exemption granted in that city or town.

**Sec. 4. Appropriation.** The revenue derived from the taxes imposed

by titles I and II hereof is hereby appropriated for the purposes set forth in this title.

#### **TITLE IV**

##### **Validating Clause**

**Validating clause.** If any sentence, section, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining provisions of this act.