

# 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

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**Legislative Document**

**No. 1164**

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H. P. 1925

House of Representatives, April 21, 1941.

Reported by Report "A" (five members) of Committee on Taxation. On motion of Mr. Payson of Portland both reports tabled pending acceptance of either. This afternoon assigned. 750 copies of new draft 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 Creating a Tax on Cigarettes.**

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

**Sec. 1. Definitions.** Whenever used in this chapter, unless the context shall otherwise require, the following words or terms shall have the following meanings: "commissioner", the state tax assessor; "person", any individual, firm, fiduciary, partnership, corporation, trust or association, however formed, trustee, agency or receiver; "manufacturer", any person who manufactures or produces cigarettes, whether within or without the state of Maine; "wholesaler", any person who purchases directly from the manufacturer at least 75% of all cigarettes purchased by him and who sells at least 75% of all cigarettes purchased by him to others for resale; the term "wholesaler" shall also apply to any chain of stores retailing cigarettes to the consumer, providing 75% of its purchases are made direct from the manufacturer; "sub-jobber", any person other than a wholesaler or vending machine operator who purchases his cigarettes from manufacturers, licensed wholesalers or licensed sub-jobbers and 75% of whose business consists in the sale at wholesale of cigarettes to persons licensed under this chapter; "vending machine operator", any person other than a manufacturer, a

wholesaler or a subjobber who operates one or more vending machines and who purchases his cigarettes from a manufacturer or licensed wholesaler or licensed sub-jobber; "unclassified importer", any person other than a transportation company, who imports or acquires cigarettes from any one other than a licensed wholesaler, licensed sub-jobber, licensed vending machine operator or licensed manufacturer; "transportation company", any person operating, or supplying to a common carrier, cars, boats or other vehicles for the transportation or accommodation of passengers and engaged in the sale of cigarettes at retail; "retailer", any person other than a transportation company selling cigarettes at retail including a person selling through vending machines; "licensed", licensed under this chapter. Whenever used in this chapter, unless the context shall otherwise require, the words "sales" or "sale" in addition to their ordinary meaning shall include or apply to consumption, gifts, exchanges and barter and the term "place of business" shall mean and include any places where cigarettes are sold or where cigarettes are brought or kept for the purpose of sale or consumption, including so far as applicable any vessel, vehicle, airplane, train or cigarette vending machine.

**Sec. 2. Licenses, provisions for; fees.** No person shall carry on the business of selling cigarettes nor act as a manufacturer, wholesaler, sub-jobber, vending machine operator, unclassified importer, transportation company or retailer, in the state, unless licensed so to do as herein provided. The commissioner shall, upon proper application and the payment of the fees herein provided issue a license to each manufacturer, wholesaler, sub-jobber, vending machine operator, unclassified importer, transportation company or retailer. In the case of a retailer, each place of business shall be separately licensed. If a manufacturer, wholesaler, sub-jobber, vending machine operator or unclassified importer at any one place of business acts in more than one of said capacities, he shall procure a license for each capacity in which he acts. Every machine operated or maintained for the purpose of vending cigarettes shall for the purpose of this chapter, be deemed to constitute a place of retail business, and no person shall maintain or cause to be operated such a machine without procuring a retailer's license. Each license so issued or a duplicate copy thereof shall be prominently displayed on the premises covered by the license and in the case of vending machines there shall be attached to the same a disc or marker to be furnished by the commissioner showing it to have been licensed. The commissioner shall prescribe the forms of application for a license under this chapter and may require therein such information as he deems necessary in connection with the proper administration of said

chapter. The fees for licenses shall be as follows: a manufacturer's license, a sum determined by the commissioner not to exceed \$25; a wholesaler's license, \$100; a sub-jobber's license, \$50; a vending machine operator's license, \$20; an unclassified importer's license, a sum determined by the commissioner not to exceed \$75; a transportation company's license, \$5; a retailer's license except in the case of a vending machine operator, \$1; a retailer's license in the case of a vending machine operator, 50c per machine. No fee nor any part of any fee shall be refunded by reason of relinquishment or revocation of the license or for any other reason.

**Sec. 3. Expiration of licenses.** Each license issued under section 2 shall expire on the 30th day of June next succeeding the date of issuance unless sooner revoked by the commissioner as provided in section 4 or unless the business with respect to which such license was issued shall change ownership, or unless the holder of the license shall remove his business from the premises covered by the license, in any of which cases the holder of the license shall immediately return it to the commissioner. In the event that the holder of a license removes his business to another location within the state, the license with respect to the former place of business shall be reissued for the new location without the payment of an additional fee for the unexpired term. The holder of each license on application to the commissioner accompanied by the fee prescribed in section 2 may annually before the expiration date of the license then held by him renew his license for a further period of 1 year.

**Sec. 4. Revocation of licenses.** The commissioner may suspend or revoke any license issued under this chapter for failure of the licensee to comply with any provision of said chapter or with any provision of any other law or ordinance affecting the sale of tobacco products or if the person licensed has ceased to act in the capacity for which the license was issued. The commissioner may suspend, revoke or refuse to grant a license to any one who, in the judgment of the commissioner, is not a proper person to have a license. Any person aggrieved by such suspension or revocation may apply to the commissioner for a hearing as provided in section 13 and may further appeal to the superior court as provided in section 14.

**Sec. 5. Records.** Every manufacturer, wholesaler, sub-jobber and unclassified importer shall keep a complete and accurate record of all sales of cigarettes, including the name and address of the purchaser, the place and date of delivery, and the quantity of cigarettes and the trade name or brand thereof, and a complete and accurate record of the quantity of cigarettes imported, purchased or manufactured, and the date of importation, purchase

or manufacture. Every such person shall also deliver with every consignment of cigarettes to a purchaser within the state a written statement containing the date of purchase, the names of the purchaser and seller, the quantity of cigarettes and the trade name or brand thereof, and shall retain a duplicate of each such statement. Each vending machine operator shall keep a complete and accurate record of cigarettes imported, purchased or otherwise acquired by him, including the name and address of the seller, the place and date of receipt and the quantity of cigarettes and the trade name or brand thereof and shall also keep a detailed record of all cigarettes including the quantity of cigarettes and trade name or brand thereof placed in each vending machine, the location of the vending machine and date of placing. Said records and said statements shall be in such form as the commissioner shall prescribe and shall be preserved by said manufacturers, wholesalers, sub-jobbers, vending machine operators, unclassified importers and purchasers, respectively, for a period of 2 years and shall be offered for inspection at any time upon oral or written demand by the commissioner or his duly authorized agents. The commissioner may, in his discretion, require reports from any common or contract carrier who transports cigarettes to any point or points within the state, and from any bonded warehouseman or bailee who has in his possession any cigarettes, such reports to contain such information concerning shipments of cigarettes as the commissioner shall determine. All common and contract carriers, bailees and warehousemen shall permit the examination by the commissioner or his duly authorized agent of any records relating to the shipment or receipt of cigarettes. Whenever cigarettes are received or acquired by a licensed wholesaler, licensed sub-jobber or licensed vending machine operator, each shipping case or other container of cigarettes shall bear the name and address of such licensee who made the first purchase from the manufacturer together with the invoice number of the invoice covering such purchase from the manufacturer. Any person within the state who shall knowingly be in possession of such shipping case or other container of cigarettes not bearing such name and address and invoice number, if any, or any person having in his possession such shipping case or other container of cigarettes from which such name and address has been erased or defaced shall be punished by a fine of not less than \$25 nor more than \$100; and any cigarettes in such shipping case or other container from which such name and address and invoice number, if any, has been erased or defaced shall be deemed to be cigarettes upon which the excise has not been paid. Whenever cigarettes are shipped outside of the state every licensee so shipping them shall cause to be placed on every shipping case or other con-

tainer in which the cigarettes are shipped the name and address of the consignee to whom the shipment is made outside of the state.

**Sec. 6. Tax imposed.** Every licensee under section 2, other than a retailer, shall, on or before the 15th day of each month, file with the commissioner a return under penalties of perjury, on a form to be furnished by the commissioner, stating the number of cigarettes sold by such licensee in the state during the preceding calendar month and such return shall contain or be accompanied by such further information as the commissioner shall require. Such licensee shall, at the time of filing such return, pay to the commissioner an excise equal to 1 mill for each cigarette so sold during the calendar month covered by the return, provided that cigarettes with respect to which the excise under this chapter has once been imposed and has not been refunded shall not be subject to the excise upon a subsequent sale. The commissioner upon application in such form and manner as he may require, may allow a manufacturer, wholesaler, sub-jobber or vending machine operator such amount for expense incurred in connection with the collection of the excise as he deems just. The commissioner shall certify said amount to the controller and the treasurer of state shall pay said amount without any appropriation therefor by the legislature, out of the proceeds of the excise imposed by this chapter. The commissioner may, upon application made within 6 months of the date of any overpayment, authorize a refund of the amount overpaid, or in case cigarettes upon which the excise has been paid are shipped outside the state or sold to the federal government, may upon application made within 6 months of the shipment or sale authorize a refund to any licensee other than an unclassified importer or a retailer of the amount of excise so paid with respect thereto. Each unclassified importer shall upon importation of cigarettes into the state file with the commissioner a return under penalties of perjury, on a form to be furnished by the commissioner, stating the number of cigarettes imported. Each unclassified importer shall, at the time of filing such return, pay to the commissioner an excise equal to 1 mill for each cigarette so imported during the calendar month covered by the return and hold for sale or consumption, and cigarettes with respect to which such excise has imposed and has not been refunded shall not be subject to any further excise when subsequently sold.

**Sec. 7. Failure to file return; penalty; appeal.** If a licensee, having failed to file a return, or, having filed an incorrect or insufficient return, fails to file, within 10 days after the mailing or delivery of written notice to him by the commissioner of his delinquency, a correct and sufficient return and to pay the amount shown to be due with interest at 6% from the

15th day of the month in which the return is required to be made pursuant to section 6, the commissioner shall determine the amount due, at any time within 2 years from the date when the original return was due under section 6. The licensee may appeal to the superior court in the same manner as provided for in section 14 from the determination of the commissioner within 10 days after mailing or delivery of written notice thereof. The decision of the court shall be final. The commissioner, or, in the case of appeal, the superior court having made such determination, shall give notice in writing to the delinquent licensee of the amount determined to be due and the licensee shall forthwith after the mailing or delivery of such notice, pay to the commissioner the amount so determined with interest at 6% from the 15th day of the month in which the return is required to be made pursuant to section 6.

**Sec. 8. Further penalty.** Whenever the commissioner or his agent shall discover any cigarettes in the state in the possession of any person, which have not been returned and which are not returnable by a licensee under section 6, he is hereby authorized and empowered without any warrant forthwith to seize and take possession of such cigarettes together with any vending machine or receptacle in which they are held which shall thereupon be deemed to be forfeited to the state. The commissioner may, within reasonable time thereafter and after public notice given at least 5 days before the date of sale, sell such cigarettes at a place to be designated by him and from the proceeds of such sale shall collect the tax due thereon together with a penalty of 50% thereof and the costs incurred in such proceedings. The commissioner shall pay the balance, if any, to the person in whose possession such forfeited cigarettes were found. Such seizure and sale shall not relieve any person from fine, imprisonment or other penalty provided herein for violation of any provision of this chapter.

**Sec. 9. Collection of taxes.** Sums due to the state under this chapter may be recovered by the attorney general in an action brought in the name of the commissioner. The commissioner may suspend the license of any licensee under this chapter for failure to pay such sums when due.

Sums overdue shall bear interest at the rate of 6% per annum from the date when due to the date of payment. The commissioner may require a licensee to furnish bond issued by a surety company licensed to do business in the state, in such amount as he may fix, conditioned upon the payment of the excise provided by this chapter.

**Sec. 10. Penalties.** No person shall have in his possession a machine for vending cigarettes for a period in excess of 48 hours unless there shall

be attached to the same a disc or marker as directed in section 2 and any person who violates this provision shall be subject to the same fine as a person selling, offering for sale or possessing with intent to sell any cigarettes without a license. Any person who shall sell, offer for sale or possess with intent to sell any cigarettes or otherwise act as a manufacturer, wholesaler, sub-jobber, vending machine operator, unclassified importer, transportation company or retailer without a license as provided in section 2 shall be punished by a fine of not less than \$500 nor more than \$1000 or by imprisonment for not more than 11 months or by both such fine and imprisonment. Any person who shall knowingly purchase or possess any cigarettes not manufactured, purchased or imported by a licensed manufacturer, wholesaler, subjobber, vending machine operator, unclassified importer or transportation company shall be punished by a fine of not less than \$50 nor more than \$1000. No person, either as principal or agent, shall sell or solicit orders for cigarettes to be shipped, mailed or otherwise sent or brought into the state to any person not a licensed manufacturer, licensed wholesaler, licensed sub-jobber, licensed vending machine operator, licensed unclassified importer or transportation company. Any licensee who files any false return, affidavit or statement or who violates any provision of this chapter for which no other penalty has been provided shall be punished by a fine of not more than \$1000 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. The state police and all local police authorities shall at the request of the commissioner or his duly authorized agent enforce the preceding provisions of this section. A licensee who fails to file a return to the commissioner as required by section 6, or a corrected return as required by section 7, or who fails to make a report required by section 11 for the period of 10 days after written notice by the commissioner so to do, shall forfeit to the state and pay to the commissioner on demand the sum of \$5 for each day of delay after mailing or delivery of written notice by the commissioner of such failure. The commissioner may for cause remit the whole or a part of the amount so forfeited. Any person other than a licensee who shall knowingly sell or offer for sale or possess any cigarettes upon which the excise herein imposed has not been paid shall be liable to the state in double the amount of the excise in an action of contract, provided this provision shall not apply in the case of cigarettes included or required to be included in a return of a licensed manufacturer, wholesaler, sub-jobber, vending machine operator, unclassified importer or transportation company. Any licensee required to make return of the sale of cigarettes who shall knowingly sell cigarettes and not make return of the same shall be liable to the state in double the amount of the excise in an action of contract.



**Sec. 11. Records; examination of records.** Each retailer shall keep within the state complete and accurate records of all cigarettes purchased or otherwise acquired and sold. Such records shall be of such kind and in such form as the commissioner may prescribe and shall be safely preserved for 2 years in such manner as to insure permanency and accessibility for inspection by the commissioner or any representative authorized by him. The commissioner may require any retailer to make reports as often as he deems necessary to enable him to determine whether the tax required by this chapter has been fully paid. The commissioner and his authorized representative may examine the books, papers and records of any retailer in the state, for the purpose of determining whether the excise imposed by this chapter has been fully paid, and may investigate and examine any stock of cigarettes in or upon any premises where such cigarettes are possessed, stored or sold, for the purpose of determining whether the provisions of this chapter are being obeyed.

**Sec. 12. Hearings.** Any person aggrieved by any action of the commissioner or his authorized representative under this chapter for which an appeal is not provided in section 7 may, within 10 days after written notice of such action is delivered or mailed to him, apply to the commissioner in writing for a hearing, setting forth the reasons why such hearing should be granted and the manner of relief sought. The commissioner shall consider each such application and may grant or deny the hearing requested. If the hearing be denied, the applicant shall be notified in writing thereof; if it be granted, the commissioner shall in writing notify the applicant of the time and place fixed for such hearing. After such hearing, the commissioner shall notify the applicant of his decision. The commissioner may, by notice in writing, at any time, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of information concerning any manufacture, importation or sale of cigarettes which have escaped taxation to appear before him or his duly authorized representative with any specified books of account, papers or other documents for examination relative thereto.

**Sec. 13. Procedure at hearings.** The commissioner and any representative of the commissioner duly authorized to conduct any inquiry, investigation or hearing hereunder shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the commissioner, the commissioner or his representative authorized to conduct such hearing may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. No witnesses under subpoena authorized to be issued by the provi-

sions of this chapter shall be excused from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate him, but such evidence of the books or papers so produced shall not be used in any criminal proceeding against him. If any person shall disobey such process or, having appeared in obedience thereto, shall refuse to answer any pertinent question put to him by the commissioner or his authorized agent or to produce any books and papers pursuant thereto, the commissioner or such representative may apply to the superior court of the county wherein the taxpayer resides or wherein the business has been conducted, or to any judge of said court if the same shall not be in session, setting forth such disobedience to process or refusal to answer and said court or such judge shall cite such person to appear before said court or such judge to answer such question or to produce such books and papers, and, upon his refusal so to do, may commit him to jail until he shall testify but not for a longer period than 60 days. Notwithstanding the serving of the term of such commitment by any person, the commissioner may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the commissioner or under his authority and witnesses attending a hearing conducted by him hereunder shall receive fees and compensation at the same rates as officers and witnesses in the courts of the state, to be paid on vouchers of the commissioner or an order of the controller and the treasurer of state shall pay said amount without any appropriation therefor by the legislature.

**Sec. 14. Appeals.** Any person aggrieved because of a decision of the commissioner under the provisions of section 12 may appeal therefrom to the superior court within the county where he lives or where his principal place of business is located within 10 days after written notice of the decision has been mailed or delivered to him. The appellant shall at the time of taking an appeal file with the superior court a bond of recognizance to the state with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases to be heard, unless cause appears to the contrary, in priority to other cases and shall be heard in term time or vacation. Said court may grant such relief as may be equitable and may order the treasurer of state to pay the amount of such relief with interest at the rate of 4% per annum, to the aggrieved taxpayer. If the appeal shall have been taken without probable cause, the court may tax double or triple costs, as the case shall demand; and, upon all such appeals which may be denied, costs may be taxed against the appellant at the discretion of the court, but no costs shall be taxed against the state.

**Sec. 15. Administration.** The administration of this chapter is vested in the commissioner. All forms necessary and proper for the enforcement of this chapter shall be prescribed and furnished by the commissioner. The commissioner may prescribe regulations and rulings not inconsistent with law, to carry into effect the provisions of this chapter, which regulations and rulings, when reasonably designed to carry out the intent and purpose of this chapter shall be prima facie evidence of its proper interpretation.

**Sec. 16. Constitutionality.** If any provision or provisions of this chapter are declared unconstitutional or inoperative by a final judgment, order or decree of the supreme court of the United States or of the supreme judicial court of the state, the remaining parts of said chapter shall not be affected thereby.