

MAINE STATE LEGISLATURE

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N I N E T Y - T H I R D L E G I S L A T U R E

Legislative Document

No. 1498

House of Representatives, May 6, 1947.

Presented by Mr. Sleeper of Rockland, read and on motion of same gentleman tabled pending adoption. Specially assigned for later today.

HARVEY R. PEASE, Clerk.

STATE OF MAINE

**IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-SEVEN**

House Amendment "A" to H. P. 635, L. D. 415, Bill "An Act Relating to Tax on Cigarettes."

Amend said Bill by striking out all after the enacting clause and inserting in place thereof the following:

"Sec. 1. R. S., c. 14, § 186, amended. Section 186 of chapter 14 of the revised statutes, as amended by section 1 of chapter 89 of the public laws of 1945, is hereby further amended to read as follows:

'Sec. 186. Definitions. Whenever used in sections 186 to 205, inclusive, unless the context shall otherwise require, the following words and phrases shall have the following meanings:

"Tax assessor" or "assessor" shall mean the state tax assessor;

"Person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;

"Distributor" shall mean any person engaged in this state in the business of producing or manufacturing cigarettes, cigars and tobacco products or importing into the state cigarettes, cigars and tobacco products at least 75% of which are purchased directly from the manufacturers thereof;

"Licensed distributor" shall mean a distributor licensed under the provisions of sections 186 to 205, inclusive;

“Dealer” shall mean any person other than a distributor, as defined herein, who is engaged in this state in the business of selling cigarettes, cigars and tobacco products;

“Licensed dealer” shall mean a dealer licensed under the provisions of said sections; and

“Sale” or “sell” shall include or apply to gifts, exchanges, and barter.

“Sub-jobber” shall mean a wholesale dealer who does not qualify as a distributor.

“Tobacco products” shall include perique, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, the refuse of fine-cut chewing, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or to be made into cigarettes or otherwise, or both for chewing and smoking, and substitutes therefor.

“Unclassified importer” shall mean any person, firm, corporation or association within the state, other than a licensed distributor, sub-jobber or dealer as defined, who shall import, receive or acquire from without the state, cigarettes for use or consumption within the state.’

Sec. 2. R. S., c. 14, § 187, amended. Section 187 of chapter 14 of the revised statutes is hereby amended to read as follows:

‘Sec. 187. Dealers, unclassified importers and distributors to be licensed. Each person engaging in the business of selling cigarettes, cigars and tobacco products in this state, including any distributor or dealer, shall secure a license from the tax assessor before engaging in such business. A separate application and license shall be required for each wholesale outlet and for each retail outlet when a person shall own or control more than 1 place of business dealing in cigarettes, cigars and tobacco products. Each vending machine shall be considered a retail outlet. Such license shall be issued on forms prescribed by the assessor, and shall contain the name and address of the applicant, the address of the place of business, and such other information as the assessor may require for the proper administration of the provisions of section 186 to 205, inclusive. Each application for a wholesale outlet license shall be accompanied by a fee of \$25 and each such application for a retail outlet license shall be accompanied by a fee of \$1. Each license so issued 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 assessor showing it to have been licensed. **Each unclassified importer shall, before importing, receiving or acquiring cigarettes, cigars and tobacco products from without the state, secure a license from the tax assessor. Each application for an unclassified importer's license shall be accompanied by a fee of \$25.** Any person who shall sell, offer for sale, or possess with intent to sell any cigarettes, cigars and tobacco products, without a license as provided in this section, shall be punished by a fine of not than \$25 for the 1st offense, and not less than \$25, nor more than \$200, for each subsequent offense. **Any unclassified importer who shall import, receive or acquire from without the state cigarettes, cigars and tobacco products for use or consumption within the state without a license as provided in this section shall be punished by a fine of not more than \$25 for the 1st offense, and not less than \$25, nor more than \$200, for each subsequent offense.'**

Sec. 3. R. S., c. 14, § 188, amended. Section 188 of chapter 14 of the revised statutes, as amended by section 2 of chapter 89 of the public laws of 1945, is hereby further amended by adding at the end thereof a new paragraph to read as follows:

'Each unclassified importer's license shall expire on the 31st day of July next succeeding the date of issuance unless sooner revoked by the tax assessor. The holder of each unclassified importer's license, on application to the assessor accompanied by the fee prescribed in section 187, may annually before the expiration date of his license renew the license for a further period of 1 year.'

Sec. 4. R. S., c. 14, § 189, amended. Section 189 of chapter 14 of the revised statutes is hereby amended to read as follows:

'Sec. 189. Revocation of license. The assessor may revoke or suspend the license of any dealer, **unclassified importer** or distributor for failure to comply with any provisions of sections 186 to 205, inclusive, or if the person licensed has ceased to act in the capacity for which the license was issued. Any person aggrieved by such revocation or suspension may apply to the assessor for a hearing as provided in section 201, and may further appeal to the courts as provided in section 202.'

Sec. 5. R. S., c. 14, § 190, amended. Section 190 of chapter 14 of the revised statutes is hereby amended to read as follows:

'Sec. 190. Tax imposed. A tax is imposed on all cigarettes, cigars and tobacco products held in this state by any person for sale, said tax to be at the rate of ~~4 mill~~ 2 mills for each cigarette, at the rate of 2c for each cigar

and at the rate of 20% upon the value of all tobacco products sold at retail, measured by the usual selling price, as hereinafter provided. Any cigarette, cigar or tobacco product on which a tax has been paid, such payment being evidenced by the affixing of such stamp, shall not be subject to a further tax under the provisions of sections 186 to 205, inclusive. Nothing contained in said sections shall be construed to impose a tax on any transaction, the taxation of which by this state is prohibited by the constitution of the United States.

Each unclassified importer shall, within 24 hours after receipt of any unstamped cigarettes, cigars and tobacco products in this state, notify the tax assessor of the number of cigarettes, cigars and tobacco products received, and the name and address of consignor. The tax assessor thereupon shall notify the unclassified importer of the amount of the tax due thereon, at the rate of 2 mills per cigarette, at the rate of 2c per cigar and at the rate of 20% of the value of tobacco products sold at retail. Payment of the amount due the state shall be made within 10 days from mailing date of notice thereof.'

Sec. 6. R. S., c. 14, § 191, amended. Section 191 of chapter 14 of the revised statutes is hereby amended to read as follows:

'**Sec. 191. Assessor to provide stamps.** The tax assessor shall secure stamps, of such design and denomination as he shall prescribe, suitable to be affixed to packages of cigarettes, cigars and tobacco products as evidence of the payment of the tax imposed by the provisions of sections 186 to 205, inclusive. He shall sell such stamps to licensed distributors at a discount of ~~7%~~ 3½% of their face value and to licensed dealers at their face value. The face value of the stamps when affixed shall be considered as part of the cost of the merchandise. The assessor may, in his discretion, permit a licensed distributor or licensed dealer to pay for such stamps within 30 days after the date of purchase, provided a bond satisfactory to the assessor in an amount not less than the sale price of such stamps shall have been filed with the assessor conditioned upon payment for such stamps. He shall keep accurate records of all stamps sold to each distributor and dealer and shall pay over all receipts from the sale of stamps to the treasurer of state daily.'

Sec. 7. R. S., c. 14, § 192, amended. Section 192 of chapter 14 of the revised statutes is hereby amended to read as follows:

'**Sec. 192. Dealers and distributors not to resell stamps; redemption.** c. 208, § 7. 1943, c. 20. No distributor or dealer shall sell or transfer any

stamps issued under the provisions of sections 186 to 205, inclusive. The assessor shall redeem any unused, uncanceled stamps presented by any licensed distributor or dealer, at a price equal to the amount paid therefor by such dealer or distributor, and the said assessor may upon proof satisfactory to him, and in accordance with regulations promulgated by him, redeem, at a price equal to the amount paid therefor, Maine **tobacco tax** stamps affixed to packages of cigarettes, **cigars and tobacco products** which have become unfit for use and consumption, or unsalable, and the treasurer of state shall provide, out of money collected hereunder, the funds necessary for such redemption.'

Sec. 8. R. S., c. 14, § 193, amended. Section 193 of chapter 14 of the revised statutes is hereby amended to read as follows:

'**Sec. 193. Distributors to affix stamps.** Each distributor shall affix, or cause to be affixed, in such manner as the assessor may specify in regulations issued pursuant to the provisions of sections 186 to 205, inclusive, to each individual package of cigarettes, **cigars and tobacco products** sold or distributed by him, stamps of the proper denominations, as required by section 190. Such stamps may be affixed by a distributor at any time before the cigarettes, **cigars or tobacco products** are transferred out of his possession.'

Sec. 9. R. S., c. 14, § 194, amended. Section 194 of chapter 14 of the revised statutes is hereby amended to read as follows:

'**Sec. 194. Dealers to affix stamps.** Each dealer shall, within 72 hours after coming into possession of any cigarettes, **cigars and tobacco products** not bearing proper stamps evidencing payment of the tax imposed by sections 186 to 205, inclusive, and before selling such cigarettes, **cigars and tobacco products**, affix or cause to be affixed, in such manner as the assessor may specify in regulations issued pursuant to the provisions of said sections, to each individual package of cigarettes, **cigars and tobacco products**, stamps of the proper denomination, as required by section 190.'

Sec. 10. R. S., c. 14, § 195, amended. Section 195 of chapter 14 of the revised statutes is hereby amended to read as follows:

'**Sec. 195. Sale of unstamped cigarettes, cigars and tobacco products, prohibited.** No distributor shall sell, and no other person shall sell, offer for sale, display for sale, or possess with intent to sell, any cigarettes, **cigars and tobacco products** which do not bear stamps evidencing the payment of the tax imposed by sections 186 to 205, inclusive, provided a li-

censed dealer may keep on hand unstamped cigarettes, **cigars and tobacco products** for a period not exceeding 72 hours. Any unstamped cigarettes, **cigars and tobacco products** in the possession of a dealer shall be presumed to have been held by him for more than 72 hours unless proof be shown to the contrary. Any person who shall violate any provision of this section shall be punished by a fine of not more than \$100 for the 1st offense and, for each subsequent offense, shall be punished by a fine of not less than \$200, nor more than \$1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment.'

Sec. 11. R. S., c. 14, § 196, amended. Section 196 of chapter 14 of the revised statutes is hereby amended to read as follows:

'**Sec. 196. Unstamped cigarettes, cigars and tobacco products subject to confiscation.** Any cigarettes, **cigars and tobacco products** found at any place in this state without stamps affixed thereto as required by sections 186 to 205, inclusive, unless such cigarettes, **cigars and tobacco products** shall be in the possession of a licensed distributor, or unless they shall be in course of transit from without this state and consigned to a licensed distributor or licensed dealer, or unless they shall have been received by a licensed dealer within 72 hours, **or unless they shall have been imported, received or acquired within 24 hours by a licensed unclassified importer who has notified the tax assessor as provided in section 190,** are declared, to be contraband goods and are subject to forfeiture to the state; and sheriffs, deputy sheriffs, police officers, and duly authorized agents of the said assessor shall have the power to seize the same with or without process. In case such cigarettes, **cigars and tobacco products** are seized without a warrant, they shall be kept in some safe place for a reasonable time until a warrant can be procured. When such cigarettes, **cigars and tobacco products** are seized as provided herein, the officer or agent seizing them shall immediately file with the magistrate before whom such warrant is returnable, a libel against such cigarettes, **cigars and tobacco products** setting forth the seizure and describing the cigarettes, **cigars and tobacco products**, their containers, and the place of seizure in sufficient manner to reasonably identify them, and that they were kept or intended for unlawful sale or use in violation of law, and pray for a decree of forfeiture thereof and such magistrate shall fix a time for the hearing of such libel and shall issue his monition and notice of the same to all persons interested, citing them to appear at the time and place appointed to show cause why such cigarettes, **cigars and tobacco products** and their containers should not be declared forfeited, by causing true and attested copies of

said libel and monition to be posted in 2 public and conspicuous places in the town or place where such cigarettes, **cigars and tobacco products** were seized, 10 days at least before said libel is returnable; provided, however, that in lieu of forfeiture proceedings title to such seized, unstamped cigarettes, **cigars and tobacco products** may be transferred to the state of Maine by the owner thereof. If title to and ownership in such cigarettes, **cigars and tobacco products** is transferred to the state, a receipt for the cigarettes, **cigars and tobacco products** shall be given to the former owner by the state tax assessor or his authorized agent.'

Sec. 12. R. S., c. 14, § 197, amended. Section 197 of chapter 14 of the revised statutes is hereby amended to read as follows:

'**Sec. 197. Forfeiture proceedings.** If no claimant appears, such magistrate shall, on proof of notice as aforesaid, declare the same to be forfeited to the state. If any person appears and claims such cigarettes, **cigars and tobacco products**, or any part thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with the magistrate such claim in writing, stating specifically the right so claimed, the foundation thereof, the items so claimed, the time and place of the seizure, and the name of the officer or duly authorized agent of the said assessor by whom the same were seized, and in it declare that they were not so kept or deposited for unlawful sale and use, as alleged in said libel and monition, and also state his business and place of residence, and shall sign and make oath to the same before said magistrate. If any person so makes claim, he shall be admitted as a party to the process; and the magistrate shall proceed to determine the truth of the allegations in said claim and libel, and may hear any pertinent evidence offered by the libellant or claimant. If the magistrate is, upon hearing, satisfied that said cigarettes, **cigars and tobacco products** were not so kept or deposited for unlawful sale or use, and that the claimant is entitled to the custody of any part thereof, he shall give him an order in writing, directed to the officer or duly authorized agent of the said assessor having the same in custody, commanding him to deliver to said claimant the cigarettes, **cigars and tobacco products** to which he is so found to be entitled, within 48 hours after demand. If the magistrate finds the claimant entitled to no part of said cigarettes, **cigars and tobacco products**, he shall render judgment against him for the libellant for costs, to be taxed as in civil cases before such magistrate, and issue execution thereon, and shall declare said cigarettes, **cigars and tobacco products** forfeited to the state. The claimants may appeal and shall recognize with sureties as on appeals in civil causes from a magis-

trate. All cigarettes, **cigars and tobacco products** declared forfeited to the state, or title to which has been transferred to the state in lieu of forfeiture proceedings, shall be sold by the treasurer of state at the approximate wholesale price thereof, and the funds derived from such sales shall be paid into the state treasury.'

Sec. 13. R. S., c. 14, § 199, amended. Section 199 of chapter 14 of the revised statutes is hereby amended to read as follows:

Sec. 199. Taxpayers to keep records; assessor may examine. Each distributor and each dealer shall keep complete and accurate records of all cigarettes, **cigars and tobacco products** manufactured, produced, purchased, and sold. Such records shall be of such kind and in such form as the tax assessor may prescribe and shall be safely preserved for 2 years in such manner as to insure permanency and accessibility for inspection by the assessor and his authorized agents. The assessor and his authorized agents may examine the books, papers, and records of any distributor or dealer in this state for the purpose of determining whether the tax imposed by sections 186 to 205, inclusive, has been fully paid, and may investigate and examine the stock of cigarettes, **cigars and tobacco products** in or upon any premises where such cigarettes, **cigars and tobacco products** are possessed, stored, or sold for the purpose of determining whether the provisions of said sections are being obeyed.'

Sec. 14. R. S., c. 14, § 201, amended. Section 201 of chapter 14 of the revised statutes is hereby amended to read as follows:

Sec. 201. Hearings by assessor. Any person aggrieved by any action under the provisions of sections 186 to 205, inclusive, of the assessor or his authorized agent for which hearing is not elsewhere provided may apply to the assessor, in writing, within 10 days after the notice of such action is delivered or mailed to him, for a hearing, setting forth the reasons why such hearing should be granted and the manner of relief sought. The assessor shall promptly consider each such application and may grant or deny the hearing requested. If the hearing be denied, the applicant shall be notified thereof forthwith; if it be granted, the assessor shall notify the applicant of the time and place fixed for such hearing. After such hearing, the assessor may make such order in the premises as may appear to him just and lawful and shall furnish a copy of such order to the applicant. The assessor 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, **cigars and tobacco products**

which have escaped taxation to appear before him or his duly authorized agent with any specific books of account, papers, or other documents for examination relative thereto.'

Sec. 15. R. S., c. 14, § 204, amended. Section 204 of chapter 14 of the revised statutes is hereby amended to read as follows:

'Sec. 204. Use of metering machines. The tax assessor, if he shall determine that it is practicable to stamp by impression packages of cigarettes, cigars and tobacco products by means of a metering machine, may, in lieu of selling stamps under the provisions of section 191, authorize any licensed distributor or licensed dealer to use any metering machine approved by him, such machine to be sealed by the assessor before being used in accordance with regulations prescribed by him. Any licensed distributor or licensed dealer authorized by the tax assessor to affix stamps to packages by means of a metering machine shall file with the assessor a bond issued by a surety company licensed to do business in this state, in such amount as the tax assessor may fix, conditioned upon the payment of the tax upon cigarettes, cigars and tobacco products so stamped. The bond shall be in full force and effect for a period of 1 year and a day after the expiration of the bond, unless a certificate be issued by the tax assessor to the effect that all taxes due to the state have been paid. In the discretion of the tax assessor, cash may be accepted in lieu of a surety bond, such cash to be paid over by the tax assessor to the treasurer of state, who may deposit or hold the same subject to further order of the tax assessor. The tax assessor shall cause each metering machine approved by him to be read and inspected at least once a month and shall determine as of the time of each inspection the amount of tax due from the distributor or dealer using such machine after allowing for the discount, if any, provided for in section 191, which tax shall be due and payable upon demand of the tax assessor or his duly authorized agent.'

Sec. 16. R. S., c. 14, § 205, amended. Section 205 of chapter 14 of the revised statutes, as repealed and replaced by section 30 of chapter 207 of the public laws of 1945, is hereby amended to read as follows:

'Sec. 205. Allocation of tax. The revenue derived from the tax imposed by the provisions of sections 186 to 205, inclusive, shall be credited to the general fund of the state. Provided, however, that there shall always be available for old age assistance state moneys in an amount not less than $\frac{1}{2}$ the revenue derived from the cigarette tax imposed by the provisions of sections 186 to 205, inclusive. Provided further, that there shall always be available for increasing state aid to towns for the support of

schools and to establish minimum salaries for teachers $\frac{1}{2}$ the revenue derived from the tax imposed by the provisions of sections 186 to 205, inclusive.'

Sec. 17. P. L., 1947, c. 100, repealed; limitation. Chapter 100 of the public laws of 1947, heretofore passed by this legislature, is hereby repealed and shall not be printed as part of the session laws of 1947.