

MAINE STATE LEGISLATURE

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NINETY-FOURTH LEGISLATURE

Legislative Document

No. 1131

H. P. 1805

House of Representatives, March 1, 1949.

Referred to Committee on Taxation. Sent up for concurrence and 2,000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Paine of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

AN ACT to Enable Certain Cities to Impose a General Business and Occupation Tax.

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

R. S., c. 81, §§ 156-164, additional. Chapter 81 of the revised statutes is hereby amended by adding thereto 9 new sections to be numbered 156 to 164, inclusive, to read as follows:

Sec. 156. Authorization of tax. Any city of the state having a population of 50,000 or more inhabitants is hereby authorized and empowered by ordinance to levy and impose in any such city a tax, to be collected and administered in such manner as may be provided by any such ordinance, upon persons carrying on or exercising for gain or profit within such city any trade, business, profession, vocation or commercial activity, other than a financial business, imposed generally or upon selected types or classes thereof, measured by the gross receipts from such activities carried on, either permanently or temporarily, within such city, but not to exceed 1 percent of such gross receipts, and upon persons carrying on within any such city any financial business, measured by the gross income from such financial business carried on, either permanently or temporarily,

within such city, but not to exceed 1 percent of such gross income. Such tax shall be in place of all taxation by such city upon the personal property employed in trade by said persons within such city.

Sec. 157. Definitions. As used in section 156 to 163 inclusive, the following terms shall mean or include:

"Person." An individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals carrying on for gain or profit any trade, business, profession, vocation, commercial activity or financial business.

"Financial business." The services and transactions of private banks, private bankers, holding companies, dealers and brokers in money, credits, commercial paper, bonds, notes, securities and stocks, monetary metals, factors and commission merchants, and dealers in merchandise where the spread or difference between the cost of goods sold and the sale price is analogous to or in the nature of a commission and does not in any event exceed 3% of the cost of goods sold.

"Receipts." The gross receipts received in, or by reason of any sale made or services rendered or commercial or business transaction had, including cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of materials used, labor or service or other cost, interest or discount paid, or any other expense whatsoever.

"Gross Income." The total amount of receipts of a person engaged in a financial business, excluding the cost of property sold, or moneys or credits received in payment of advances, credits and loans, but not to exceed the principal amount thereof and excluding deposits.

"Personal property employed in trade." The inventory of stock on hand, the excess of bills and accounts receivable over bills and accounts payable; money on hand and on deposit; and all other taxable personal property of any kind whatsoever except tangible personal property not kept on hand for sale as merchandise.

Sec. 158. Exemptions. Rent derived from real estate, receipts from farming, wages and salaries, receipts of national banking associations, banks, trust companies, savings banks and institutions and loan and building associations, and receipts, not including those from sales of merchandise, of any corporation or association to the extent such corporation or association is otherwise taxed on such receipts by the state of Maine or by

the United States, shall not be subject to the tax authorized by sections 156 to 163, inclusive.

Sec. 159. Territorial application of tax. Any tax imposed under section 156 to 163, inclusive, shall have application only within the territorial limits of the city imposing such tax.

Sec. 160. Administration. Any ordinance adopted under sections 156 to 163, inclusive, may contain, to the extent consistent therewith, provisions necessary or appropriate for the proper imposition, collection and administration of the tax therein authorized including, but not limited to, provisions

I. Fixing the rate or rates for such tax, which may vary as among classes of trades, businesses or occupations, but which shall be uniform as among persons carrying on the same trade, business or occupation;

II. For the registration or licensing of persons subject to such tax; for the filing of periodic returns under oath; for the assessment of taxes on the basis of available information or external indices upon failure to file any return or a correct or sufficient return; for the making of refunds; for the maintenance, retention and inspection of records; for the subpoena of persons and records and the administration of oaths; for the enforcement of collection by execution and sale of the sheriff or otherwise; for the payment of interest and penalties in the case of delinquency;

III. For the enforcement of any such ordinance by appropriate proceedings and for making intentional violations thereof misdemeanors and prescribing the punishment, by fine or imprisonment, or both, for any such violation of the provisions of such ordinance or any rule or regulation adopted under the authority thereof;

IV. For the creation of such bureaus and the appointment and compensation of an administrator of such tax and such officers, collectors, clerks and other assistants and employees, either under existing departments or otherwise, as may be necessary or appropriate for the assessment and collection of such tax and authorizing and empowering such administrator:

A. To make, adopt and amend rules and regulations appropriate to the carrying out of the provisions of such ordinance and the purposes thereof, including rules and regulations prescribing the records to be kept by any person subject to such tax relating to the receipts of such person, such rules and regulations to be subject to the approval of the local legislative body of such city.

B. To determine the class of trade, business or occupation into which any trade, business, profession, vocation or commercial activity shall be classified, and in case any trade, business, profession, vocation or commercial activity shall be classified in part as one class of trade, business or occupation and in part as another class of trade, business or occupation, to prescribe the manner of computing the tax upon each part in accordance with such classification;

C. To assess, reassess, determine, revise and readjust the taxes imposed by such ordinance.

Sec. 161. Filing of returns. Any person wilfully failing to file a return required under any ordinance adopted under sections 156 to 163, inclusive, or filing or causing to be filed, or making or causing to be made a return which is wilfully false, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 or imprisonment for not more than 11 months or by both such fine and imprisonment.

Sec. 162. Returns to be secret. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for any officer or employee of such city to divulge or make known in any manner, except to another officer or employee of such city in connection with his official duties, the receipts, expenses or other information relating to or contained in any return the filing of which is required under any ordinance adopted under sections 156 to 163, inclusive, it shall be a misdemeanor to violate any provision of this section, punishment for which shall be a fine of not more than \$1,000 or imprisonment for not more than 11 months or by both such fine and imprisonment, and the offender shall be dismissed from office and be incapable of holding any public office or employment in such city for a period of 5 years thereafter.

Sec. 163. Appeal. Any final determination of the amount of any tax payable under any ordinance adopted under sections 156 to 163, inclusive, shall be reviewable for error, illegality, or unconstitutionality or any reason whatsoever by an appeal to the county commissioners or the superior court for the county in which the city imposing such tax is situated in accordance with the provisions of sections 41 to 45, inclusive.

Sec. 164. Referendum. The provisions of sections 156 to 163, inclusive, shall not apply to any city until they shall have been accepted by the legal voters of such city at a regular municipal election or at a special municipal election called and held for that purpose. Such election shall be called, advertised and conducted according to the law relating to municipal elections.

For the purposes of such election, the city clerk shall reduce the subject matter to the following question: "Shall 'An Act to Enable Certain Cities to Impose a General Business and Occupation Tax' be accepted?", and the voters shall indicate by a cross or check mark, placed over the words "Yes" or "No", their opinion of the same. The result in said city shall be declared by the municipal officers and due certificate filed by the city clerk with the secretary of state. If a majority of the votes cast by the legal voters of said city are in favor of the acceptance of sections 156 to 163, inclusive, the provisions of said sections shall take full effect in said city.'