

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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

Legislative Document

No. 546

H. P. 1030

House of Representatives, February 9, 1951.

Referred to Committee on Taxation. Sent up for concurrence and 1,500 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Dunham of Ellsworth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-ONE

AN ACT Imposing a Sales and Use Tax to Raise Additional Revenue.

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

R. S., c. 14, §§ 255-289, additional. Chapter 14 of the revised statutes, as amended, is hereby further amended by adding thereto new sections to be numbered 255 to 289, inclusive, to read as follows:

‘Sales Tax

Sec. 255. Title. Sections 255 to 274, inclusive, shall be known and may be cited as the “Sales Tax Law.”

Sec. 256. Definitions. The following definitions shall govern the construction of sections 255 to 274, inclusive:

I. The term “person” includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether organized for profit or not, company, estate, trust, receiver, trustee, syndicate, the United States, this state, any county, city, town or other political subdivision of this state, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

II. The term "sale at retail" means any transaction by which is transferred for consideration any of the incidents of the ownership of tangible personal property, when such transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use, or for any other purpose than for resale in the form of tangible personal property to a person licensed under the provisions of sections 255 to 289, inclusive. The term "tangible personal property" shall not include rights and credits, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership.

III. The term "sale at retail" shall also include the sale of tangible personal property to persons engaged in the business of constructing, altering, repairing or improving real estate for others except in fulfillment of a contract with any of the exempt classifications hereinafter set forth in section 259.

IV. The term "sale at retail" includes conditional sales, installment lease sales and any other transfer of such property when title is retained as security for the purchase price but is intended to be transferred later, but shall not include transactions of mortgage, pledge, or other financing arrangement whereby money is borrowed on property previously acquired.

V. The term "sale at retail" shall not include sales of transportation, electricity, natural or artificial gas, telephone and telegraph service, or water, of the kinds and natures, the rates and charges for which, are customarily determined or approved by the public utilities commission, the United States interstate commerce commission or the Federal communications commission.

VI. The term "sale at retail" shall not include an isolated transaction by a person not licensed or required to be licensed under the provisions of sections 255 to 289, inclusive, in which any tangible personal property is offered for sale, sold, transferred and delivered by the owner thereof.

VII. The term "gross proceeds" means the amount received in money, credits, property or other money's worth in consideration of sales at retail within this state, without any deduction on account of the cost of the property sold, the cost of materials used or the cost of labor or services purchased. Credits or refunds for returned goods may be deducted. It does not include interest payable under any arrangement for installment payments of the purchase price.

VIII. The term "business" includes all activities engaged in by any

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

IX. The term "taxpayer" means any person subject to any tax hereunder.

X. The term "tax" shall include all taxes, interest or penalties levied under the provisions of sections 255 to 289, inclusive.

XI. When it shall be determined by the state tax assessor that it is necessary for the efficient administration of this act to regard any unlicensed person such as salesmen, representatives, peddlers or canvassers as agents of the dealers, distributors or employers 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 or employers, the state tax assessor may so regard them and regard the dealers, distributors, supervisors or employers as making sales at retail for the purpose of sections 255 to 289, inclusive.

Sec. 257. Imposition and rate of sales tax. There is hereby levied upon and there shall be collected from each person engaged in the business of making sales at retail as hereinbefore defined, a tax for the privilege of engaging in such business equal to 2% of the gross proceeds, less exemptions allowed in section 259, of each person from all such sales at retail made on and after October 1, 1951 plus penalties and interest when applicable as hereinafter provided, less deductions allowed in section 261.

Any person engaged in the business of making sales at retail who is at the same time engaged in some other kind of business, occupation or profession not taxable under the provisions of sections 255 to 289, inclusive, shall keep books to show separately the transactions used in determining the tax herein levied. In the event of such person failing to keep such separate books, there shall be levied upon him the tax hereinbefore mentioned equal to 2% of the entire gross proceeds of both or all of his business. The taxes levied hereunder shall be a personal obligation of the taxpayer.

Sec. 258. Registration and license. If any person after October 1, 1951 shall engage or continue in any business for which a privilege tax is imposed by sections 255 to 289, inclusive, he shall under such rules and regulations as the state tax assessor shall prescribe, apply for and obtain from the state tax assessor upon the payment of a registration fee of \$1, a license to engage in and to conduct such business. A license is not assignable and is valid only for the transaction of business at the place designated therein.

If applicant shall have at any time failed, refused or neglected to pay any tax or interest or penalty upon any tax, or shall have attempted to evade the payment of any tax or interest or penalty upon any tax by means of petition in bankruptcy, or if the applicant shall be a corporation and the state tax assessor shall have reason to believe that the management or control of said corporation is under any person or persons who shall have failed to pay any tax or interest or penalty upon any tax within the purview of this section as above set forth, then it shall be the duty of the state tax assessor to require a surety bond payable to the state upon which said applicant shall be the obligor, in a sum of not less than \$1,000 nor more than \$5,000, conditioned that the applicant shall comply with the provisions of this act and will promptly file true reports and pay the taxes, interest and penalties provided for or required by the provisions of sections 255 to 289, inclusive, which bond shall be approved as to the amount and surety by the state tax assessor; provided, that said applicant may in lieu of said surety bond deposit a sum of money with the state tax assessor in such amount as he shall determine, to guarantee the payment of the tax, interest and penalties, and compliance with the provisions of sections 255 to 289, inclusive, but the amount so determined by the state tax assessor shall not exceed the estimated tax payable during a 1-year period; and he shall thereby be duly licensed to engage in and conduct such business. The state tax assessor may require said applicant taxpayer to furnish such other and further bond as he shall deem necessary, from time to time, within the limits in this section hereinbefore set forth, on the giving of 30 days' notice in writing. No person shall engage or continue in any business taxable hereunder without first securing a license.

Sec. 259. Exemptions. No person subject to a tax under the provisions of sections 255 to 289, inclusive, need include in the amount of his gross proceeds used for the computation of the tax any proceeds of his business derived from sales to the United States, its unincorporated agencies and instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the state of Maine or its departments and institutions.

No person subject to tax under the provisions of sections 255 to 289, inclusive, need include in the amount of his gross proceeds used for the computation of the tax the proceeds from:

I. Sales exempted by constitutional provisions;

- II. Sales of motor vehicle fuel, the distributions of which in this state are subject to other taxes imposed by chapter 14;
- III. Sales of cigars, tobacco and cigarettes subject to other taxes imposed by chapter 14;
- IV. Sales of vinous and spirituous liquors and malt beverages, subject to the taxes imposed by chapter 57;
- V. Sales of publications regularly issued at average intervals not exceeding 3 months;
- VI. Sales of food and food products for human consumption, including meals served on or off the premises of the retailer; provided, however, that candies and confectioneries, carbonated drinks, sodas and the like ordinarily sold or dispensed at stores, stands, or soda fountains or in connection therewith, tonics, and preparations, powdered, granular, tablet, capsule, or pill form sold as dietary supplements or adjuncts, are not exempted;
- VII. Sales of containers and other packing, packaging and shipping materials including boxes, crates, bags, bagging, cores, ties, twines, tapes, bindings, wrappings, wrapping papers, labels, barrels, carboys, or other packing packaging and shipping materials when sold to persons who use the same in packing, packaging or shipping goods produced or sold by them;
- VIII. Sales of tangible personal property which becomes an ingredient or component part of a finished product or which is used, consumed and destroyed or loses its identity in a manufacturing process; also sales of machinery and equipment and replacement parts which are used in the manufacturing or producing of a product;
- IX. Sales of machinery and equipment and replacement parts therefor installed or which otherwise becomes an integral part of a plant or system and fuel and supplies used to render service which is subject to rate or other regulation by either the public utilities commission, the United States interstate commerce commission or the federal communications commission;
- X. Sales of seed, feed, fertilizer and machinery used in agricultural production, and bait, gear and other equipment when used in fishing as a commercial enterprise;
- XI. Sales of tangible personal property to hospitals and regularly or-

ganized churches or houses of religious worship, excepting such sales in activities as are mainly commercial enterprises;

XII. Sales of bibles;

XIII. Sales of vessels, except pleasure craft;

XIV. Leases or licenses of tangible personal property subject to a bona fide lease or license arrangement pursuant to which no title is to pass to the lessee or licensee and no payment of rental or otherwise is to be received as a credit towards payment of a purchase price.

Sec. 260. Additional tax. The tax imposed by the provisions of sections 255 to 289, inclusive, shall be in addition to all other license fees and taxes levied by law as a condition precedent to engaging or continuing in any business taxable hereunder, except as in said sections otherwise specifically provided.

Sec. 261. Discount to taxpayer. At the time of transmitting the returns required under the provisions of sections 255 to 289, inclusive, to the state tax assessor, the taxpayer shall remit therewith, except as hereinafter provided, 97% of the tax due under the applicable provisions of said sections. Failure to remit such tax at the time of filing said returns shall cause said tax to become delinquent; provided, however, in the event that payment of any tax under the applicable provisions of said sections becomes delinquent for a period of 5 days the taxpayer forfeits his claim to the 3% discount and must remit the entire amount of tax plus any penalty due. This discount is allowed taxpayer to remunerate him for keeping records, filing reports and remitting the tax when due.

Sec. 262. Returns and payment. The taxpayer shall on or before the 30th day of the month following each quarterly period of 3 months, make out a return for the preceding quarter on a form prescribed by the state tax assessor, showing the entire amount of all sales and gross proceeds of his business, the allowable deductions therefrom, and the amount of tax for which he is liable, and he shall transmit the return, together with remittance for the amount of the tax, to the state tax assessor on or before said 30th day of the month. Such quarterly return shall be signed by the taxpayer or his duly authorized agent, and if prepared for the taxpayer by any other person, the return shall so state, giving the name and address of such person and be signed by such person, and giving the name of his employer, if any. The state tax assessor shall pay over all receipts from these taxes to the state treasurer daily.

Receipts of installments on account of the purchase price, or other payments under conditional sale or similar agreements and which are taxable, shall be reported and the tax paid upon the amount of such payment in each quarter.

The state tax assessor, if he deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payment of the amount of taxes for quarterly periods other than calendar quarters depending upon the principal place of business of the taxpayer.

The state tax assessor for good cause may extend for a period of time not exceeding 60 days the time for making any return or payment of any amount required to be paid under the provisions of sections 255 to 289, inclusive. The extension may be granted at any time provided a request therefor is filed with the state tax assessor within or prior to the period for which the extension may be granted. Any person to whom an extension is granted shall pay in addition to the tax, interest at the rate of $\frac{1}{2}$ of 1% per month, or fraction thereof, from the date on which the tax would have been due without the extension until the date of payment.

Sec. 263. Determination. As soon as practicable after each return is filed the state tax assessor shall examine it. If it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed and the correct tax determined. If the amount paid exceeds that which should have been paid on the basis of the tax so computed, the excess so paid may be credited without interest against a subsequent tax or such amount may be refunded if requested by the taxpayer.

If the amount paid is less than the amount which should have been paid, the deficiency, together with interest thereon at the rate of $\frac{1}{2}$ of 1% per month from the time the tax was due, shall become due and payable after notice and hearing as hereinafter provided.

If any part of the deficiency is due to negligence, but without intent to defraud, there shall be added as a penalty 5% of the total amount of the deficiency in the tax, and interest shall be collected at the rate of 1% per month on the amount of such deficiency in the tax from the time such tax was due, which interest and penalty shall become due and payable after notice and hearing as hereinafter provided.

If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty 25% of such deficiency and, in

such case, the whole amount of tax unpaid, together with the penalty, shall become due and payable after notice and hearing as hereinafter provided, and an additional 1% per month on the tax shall be added from the date such tax was due until paid. Penalties and interest as provided herein for fraudulent intent to evade the tax shall not be waived by the state tax assessor.

Whenever notice is required under the provisions of sections 255 to 289, inclusive, such notice shall be given either by personal service or by registered mail addressed to the last known or licensed address of the taxpayer.

No deficiency, interest or penalty shall be assessed for any year after the expiration of 6 years from the date due, nor shall any taxpayer claim refund of any amount paid by him after the expiration of 3 years from the date of payment thereof; provided, however, that a person not licensed shall be held liable for all taxes due for the entire period in which he has made sales at retail; provided, further, that no taxpayer shall assign his claim against the state to any other person; provided, further that if any person subject to tax under the provisions of said sections shall fraudulently conceal any liability for the tax or any part thereof, the state tax assessor shall, upon discovery of such fraud and within 2 years thereafter, proceed to assess such tax with penalties and interest as hereinbefore provided, computed from the date on which such tax liability originally accrued and such tax, penalties and interest shall become due and payable after notice and hearing as hereinafter provided, anything herein contained to the contrary notwithstanding.

Sec. 264. Determination on refusal to file return. If any person refuses to file a return within the time specified in sections 255 to 289, inclusive, the state tax assessor shall make an estimate of his gross proceeds and assess the tax against such person and shall notify him of the amount thereof together with a penalty equal to 25% of the tax.

In case of refusal to file a remittance with any return required by said sections, within the time prescribed, 25% of the tax shall be added as a penalty. The amount so added shall be collected as a part of the tax together with interest at the rate of 1% per month.

Sec. 265. Collection of tax. If the tax imposed by sections 255 to 289, inclusive, is not paid within the time allowed, the state tax assessor shall cause a demand to be made upon the taxpayer for the payment thereof. If such tax remains unpaid for 10 days after such demand has been made and no proceedings have been taken to review the same, the attorney general shall, upon the request of the state tax assessor, bring an action to enforce

the payment of the same and may attach personal or real property according to law. The proceeds of a judgment in such action shall be paid to the state tax assessor.

In addition to the above, the state tax assessor, shall also have for the collection of taxes and penalties assessed under the provisions of said sections, all of the remedies provided by chapter 81 of the revised statutes, as amended, for the collection of taxes on personal property by collectors of taxes in incorporated places.

Sec. 266. Sale of business. If any person liable for a tax levied hereunder shall sell out his business or stock of goods or shall quit the business, such person shall make a final return within 15 days after the date of selling or quitting business. His successor or succeeding successors, if any, shall be required to withhold sufficient of the purchase money to cover the amount of such taxes and interest and penalties as may be due and unpaid until such time as the former owner shall produce a receipt from the state tax assessor showing that they have been paid, or a certificate stating that no taxes are due. If the purchaser or succeeding purchasers of a business or stock of goods shall fail to withhold purchase money as above provided, he or they shall be personally liable for the payment of the taxes, interest and penalties accrued and unpaid on account of the operation of the business by the former owner.

Sec. 267. Jeopardy assessments. If the state tax assessor finds that a person liable for tax under any provisions of this act designs quickly to depart from the state or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect such tax unless such proceedings be brought without delay, the state tax assessor shall cause notice of such findings to be given such person, together with a demand for an immediate return and immediate payment of such tax. Warrant may issue immediately upon issuance of such jeopardy assessments. Thereupon such tax shall become immediately due and payable. If such person (1) is not in default in making any return or paying any tax prescribed by this act, and (2) furnishes evidence satisfactory to the state tax assessor, under regulations prescribed by the state tax assessor, that he will duly return and pay the tax to which the state tax assessor's finding relates, then such tax shall not be payable prior to the time otherwise fixed for payment.

Sec. 268. Injunction. Any person upon whom a tax is levied by section 257 may be restrained and enjoined by proper proceedings instituted

in the name of the state of Maine, brought by the attorney general at the request of the state tax assessor, from engaging or continuing in a business for which a privilege tax is required by section 257, until such tax shall have been paid, or license secured, and until such person shall have complied with the provisions of sections 255 to 274, inclusive.

Sec. 269. Records. Any person liable for any tax levied by section 257 shall keep such records, receipts, invoices and other pertinent papers in such form as the state tax assessor may require and whenever an exemption from sales tax is claimed by reason of the sale being for resale or for any of the other exemptions or deductions granted under section 259, there shall be a record kept of the name and address of the person to whom the sale is made, the date of the sale, the article purchased, the amount of the sale, and if that person has a sales tax license, that number shall also be noted thereon. Any person knowingly making a sale of tangible personal property to another not licensed under section 258, for the purpose of resale at retail, shall be liable for the tax imposed by section 257. Such records must be kept for the 6 year period as stated in section 263. Whenever in the judgment of the state tax assessor it is necessary, he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the state tax assessor deems sufficient to show whether or not such person is liable to tax. In the event the taxpayer fails to file a return or to maintain or preserve proper records as prescribed in this section or the state tax assessor has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the state tax assessor shall be empowered to assess, upon such information as is available or may come into his possession, the amount of the tax due from the taxpayer. Such assessment after notice and hearing as hereinafter provided shall be deemed to be prima facie correct for the purpose of this act and the burden of proof refuting such assessment shall be upon the taxpayer.

Sec. 270. Examination of records. The state tax assessor or his duly appointed agents, may examine the books, records, and papers of any person subject to taxation under section 257. The state tax assessor may employ subject to the provisions of the personnel law, assistants, necessary for the efficient administration of the provisions of sections 255 to 289, inclusive, and he may designate representatives to conduct hearings or to perform any other duties imposed by said sections.

Sec. 271. Administration. The state tax assessor shall enforce the provisions of sections 255 to 289, inclusive, and may prescribe, adopt and enforce rules and regulations relating to the administration and enforce-

ment of said sections. Rules and regulations shall be published. Unless in accordance with a judicial order, or as shall be required in the proper administration of said sections, neither the state tax assessor nor any person having an administrative duty under the provisions hereof, nor any other employee, shall divulge any facts or information obtained in connection with the administration of said sections.

Sec. 272. Appeals. If the state tax assessor after examining the return of any taxpayer and based upon such examination and on any additional information subsequently acquired, determines that the taxpayer is indebted to the state by reason of deficiency of the remittance accompanying such return, the state tax assessor shall give such taxpayer notice of the intention to levy such deficiency. Such taxpayer may, if he so desires, and serves notice thereof upon the state tax assessor within 20 days, demand a hearing on the question of the levy of such deficiency. Thereupon the state tax assessor shall set a time and place for hearing and shall give the taxpayer reasonable notice thereof.

The taxpayer shall be entitled to appear before the state tax assessor and present testimony and argument. After the hearing, the state tax assessor shall render his decision in writing and, by order, levy any deficiency found by him to be due and payable.

If any taxpayer is aggrieved by any decision of the state tax assessor, he may within 30 days after notice of final determination appeal to the superior court in the county of Kennebec, or the superior court in the county where the taxpayer resides, or he shall be required to pay the amount of taxes, interest and penalties found due by the state tax assessor and shall be permitted to bring an action in the superior court in the county in which the business is carried on, to recover the amount of taxes, interest and penalties alleged to have been unlawfully levied upon him. Such action shall be commenced within 90 days after payment of such taxes, interest and penalties so levied and shall be conducted in the same manner as is provided for civil actions in the superior court.

In the event any taxpayer is found entitled to recover any sums paid pursuant to the orders of the state tax assessor as hereinbefore provided, such sums shall be paid from the general fund of the state on order of the state tax assessor and deducted from current sales tax collections.

No injunction shall issue to stay proceedings for assessment or collection of any taxes levied by section 257.

Sec. 273. Unlawful advertising. No person engaged in the business of selling tangible personal property at retail shall advertise or hold out to the public or to any purchaser directly or indirectly that the tax or any part thereof will be assumed or absorbed by the taxpayer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

Sec. 274. Penalties. It shall be unlawful for any person to refuse to make the returns required by the provisions of sections 255 to 289, inclusive; or to make, or to aid, abet or assist another in making any false or fraudulent return or false statement in any return required by section 262, with intent to defraud the state or to evade the payment of the tax, or any part thereof; or for any person to aid, abet or assist another in any attempt to evade the payment of the tax, or any part thereof; or for any person or officer of any corporation or association, to make or permit to be made for any person, corporation or association any false returns, or any false statement in any return required by section 262, with intent to evade or assist in evading the payment of any tax hereunder.

Any person violating any of the provisions hereof shall be guilty of a misdemeanor and on conviction thereof, shall be fined not more than \$1,000 or imprisoned for a period not exceeding 11 months, or by both such fine and imprisonment, in the discretion of the court.

Any person who shall engage in any business in this state which is taxable under section 257 and who shall fail to secure from the state tax assessor a license to engage in such business, as required by section 258, or who shall continue to engage in business after his license so to do shall have expired or have been suspended by the state tax assessor shall be guilty of a misdemeanor, the punishment for which shall be a fine of not more than \$1,000 or by imprisonment for a period of not more than 11 months, or both such fine and imprisonment.

USE TAX

Sec. 275. Title. Sections 275 to 289, inclusive, shall be known and may be cited as the "Use Tax Law."

Sec. 276. Definitions. The following definitions shall govern the construction of sections 275 to 289, inclusive:

I. The term "person" includes any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether organized for profit or not, company, estate, trust, receiver, trustee, syndicate, the United States, this state, any county, town, city or other political subdivision of this state, or any other

group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

II. The term "use" means the exercise of any right or power over tangible personal property incident to the ownership of that property, including transfer thereof by any transaction where possession is given under an arrangement whereby the ownership of that property is to be ultimately acquired. The term "tangible personal property" shall not include rights and credits, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership.

III. The term "storage" means any keeping or retention in this state of tangible personal property for any purpose after losing its interstate character.

IV. The term "storage and use" does not include the keeping, retaining or exercising any right or power over tangible personal property purchased or delivered to the purchaser under an arrangement to purchase prior to October 1, 1951, or tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state. Nor does the term include interest payable by the purchaser under any arrangement for installment payments of the principal sales price.

V. The term "seller" means the person from whom a purchase is made and includes every person selling tangible personal property for storage, use, or other consumption in this state; and when, in the opinion of the state tax assessor, it is necessary for the efficient administration of this act to regard salesmen, representatives, peddlers, or canvassers, as the agents, of a dealer, distributor, supervisor, or employer under whom such persons operate or from whom they obtain tangible personal property, sold by them for storage, use or other consumption in this state, irrespective of whether or not they are making such sales on their own behalf, or on behalf of such dealer, supervisor, distributor, or employer, the state tax assessor may so regard them and may regard such dealer, distributor, supervisor, or employer as the "seller" for the purpose of sections 255 to 289, inclusive.

VI. The term "purchase" means ownership and possession acquired for

a consideration, whether such acquisition was effected by a transfer of title, or under an arrangement for ultimate acquisition of title; whether such transfer shall have been absolute or conditional, and by whatsoever means the same shall have been effected; and whether such consideration be a price in money, or by way of exchange or barter.

VII. The term "price" means the aggregate value in money of any thing or things, paid or delivered, or promised to be paid or delivered by a consumer to a seller in the consummation and complete performance of the transaction by which tangible personal property shall have been purchased for storage, use or other consumption in this state, without any deduction therefrom on account of the cost of the property sold, cost of materials used, or the cost of labor or services purchased. It does not include interest payable by the purchaser under any arrangement for installment payments of the principal sales price. The tax collected by the seller from the consumer under the provisions of section 277 shall not be considered as a part of the price, but shall be considered as a tax collection for the benefit of the state.

VIII. The term "consumer" means the person who shall have purchased tangible personal property for storage, use or other consumption in this state on and after October 1, 1951, and shall include a person acquiring tangible personal property when engaged in the business of constructing, altering, repairing or improving the real estate of others.

IX. The term "business" means all activities engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

X. The term "tax" shall include all taxes, interest or penalties levied under the provisions of sections 275 to 289, inclusive.

Sec. 277. Imposition and rate of use tax. There is hereby levied upon and there shall be collected from every person in this state a specific tax for the privilege of using, storing, or consuming tangible personal property in this state after October 1, 1951, which tax shall be equal to 2% of the price of such property, and to such tax there shall be added penalties and interest where applicable as hereinafter provided. For the purpose of the proper administration of this act and to prevent the evasion of tax hereby levied, it shall be presumed that tangible personal property purchased and delivered on or after October 1, 1951, by any person for delivery in this state is purchased for storage, use or other consumption in this state, until the contrary is established.

Sec. 278. Exemptions. The tax levied by section 277 shall not apply to the following:

I. Property sold in this state on which a sales tax has been paid under the provisions of sections 255 to 274, inclusive.

II. Property, the storage, use or other consumption of which in this state is prohibited from being taxed under the constitution or laws of the United States, or under the constitution of this state.

III. Property purchased for resale.

IV. Property which is brought into this state by a non-resident person thereof for storage, use or consumption while temporarily within this state, except when such property is used in this state in a business activity.

V. The storage, use or other consumption in this state of motor vehicle fuel, the distributions of which in this state are subject to other taxes imposed by chapter 14.

VI. The storage, use, or other consumption in this state of cigars, tobacco, and cigarettes, subject to other taxes imposed by chapter 14.

VII. The storage, use, or other consumption in this state of vinous and spirituous liquors and malt beverages, subject to taxes imposed by chapter 57.

VIII. The storage, use, or other consumption in this state of publications regularly issued at average intervals not exceeding 3 months.

IX. The storage, use, or other consumption in this state of food and food products for human consumption, including meals served on or off the premises of the retailer; provided, however, that candies and confectionaries, carbonated drinks, sodas and the like ordinarily sold or dispensed at stores, stands or soda fountains or in connection therewith, tonics, and preparations in liquid, powdered, granular, tablet, capsule or pill form sold as dietary supplements or adjuncts, are not exempted.

X. The storage, use, or other consumption in this state of containers and other packing, packaging and shipping materials, including boxes, crates, bags, bagging, cores, ties, twines, tapes, bindings, wrappings, wrapping papers, labels, barrels, carboys, or other packing, packaging and shipping materials when sold to persons who use the same in packing, packaging or shipping goods produced or sold by them.

XI. The storage, use or other consumption in this state of tangible personal property which becomes an ingredient or component part of a finished product or which is used, consumed and destroyed or loses its identity in a manufacturing process; also sales of machinery and equipment, and replacement parts which are used in the manufacturing or producing of a product.

XII. The storage, use, or other consumption in this state of machinery and equipment and replacement parts therefor installed or to be installed or which is otherwise to become an integral part of a plant or system and fuel and supplies used to render service which is subject to rate or other regulation by either the public utilities commission, the United States interstate commerce commission or the federal communications commission.

XIII. The storage, use, or other consumption in this state of seed, feed, fertilizer and machinery used in agricultural production, and bait, gear and other equipment when used in fishing as a commercial enterprise.

XIV. The storage, use, or other consumption in this state of property sold to hospitals and regularly organized churches or houses of religious worship, excepting when such property is used in activities as are mainly commercial enterprises.

XV. The storage or use in this state of bibles.

XVI. The storage, use, or other consumption in this state of property sold to the United States, its unincorporated agencies and instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the state of Maine or its departments and institutions.

XVII. The storage and use in this state of vessels, except pleasure craft.

XVIII. Purchases of transportation, electricity, natural or artificial gas, telephone and telegraph services or water, of the kinds and natures the rates and charges of which, are customarily determined or approved by the public utilities commission, the United States interstate commerce commission, or the federal communications commission.

XIX. Leases or licenses of tangible personal property subject to a bona fide lease or license arrangement pursuant to which no title is to pass to the lessee or licensee and no payment of rental or otherwise is to be received as a credit towards payment of a purchase price.

Sec. 279. Registration of seller. Every person engaged in the business of selling tangible personal property for storage use or other consumption in this state, shall, within 30 days after October 1, 1951, register with the state tax assessor and give the name and address of each agent, operating in this state, the location of any and all distribution or sales houses or offices, or other places of business in this state and such other information as the state tax assessor may require with respect to matter pertinent to the enforcement of the use tax; provided, however, that it shall not be necessary for a seller, holding a license obtained pursuant to the provisions of section 258, to register with the state tax assessor as herein provided. Every seller shall collect the tax imposed by section 277 from the consumer.

Sec. 280. Returns and payment of tax. Every person storing, using or consuming tangible personal property, the storage, use or consumption of which is subject to the tax imposed by sections 275 to 289, inclusive, when such tax was not paid to a seller, and every seller collecting such tax from the purchaser, shall, on or before, the 30th day of the month following each quarterly period of 3 months, file with the state tax assessor a return for the preceding quarter in such form as may be prescribed by the state tax assessor. At the same time each such person shall pay to the state tax assessor the amount of tax imposed with respect to the purchases covered by such return. Returns shall be signed by the person liable for the tax, or his duly authorized agent; if the return is prepared by any person other than the taxpayer, said return shall also be signed by such person and show his address.

Receipts of installments on account of the purchase price or other payments under conditional sale or similar agreements and which are taxable shall be reported and the tax paid upon the amount of such payment in each quarter.

Each consumer storing, using, or otherwise consuming in this state tangible personal property purchased for or subsequently converted to such purpose or purposes shall be liable for the tax imposed by section 277, and such liability shall not be extinguished until the tax has been paid to the state tax assessor. The payment to the state tax assessor of the tax, interest and any penalty assessed by the state tax assessor shall relieve the seller, who sold the property with regard to the storing, use or other consumption of which the tax was paid, from the payment of the amount of the tax he may be required to collect from the purchaser.

In case any seller who is required or authorized to collect the tax fails to do so, he shall be liable personally for such amount as he failed to collect

together with penalty and interest thereon. In such case, the state tax assessor shall have power to make an assessment against such seller, based upon any information in, or which shall come into his possession. The state tax assessor shall give to the seller written notice of such assessment. Such notice may be served upon the seller personally or by registered mail, addressed to his last known or business address.

Sec. 281. Determination. As soon as practicable after each return is filed the state tax assessor shall examine it. If it then appears that the correct amount of tax is greater or less than shown in the return, the tax shall be recomputed and the correct tax determined. If the amount paid exceeds that which should have been paid on the basis of the tax so computed, the excess so paid may be credited without interest against a subsequent tax or such amount may be refunded if requested by the taxpayer.

If the amount paid is less than the amount which should have been paid, the deficiency together with interest thereon at the rate of $\frac{1}{2}$ of 1% per month from the time the tax was due, shall become due and payable after notice and hearing as hereinafter provided.

If any part of the deficiency is due to negligence but without intent to defraud, there shall be added as a penalty 5% of the total amount of the deficiency in the tax, and interest shall be collected at the rate of 1% per month on the amount of such deficiency in the tax from the time it was due, which interest and penalty shall become due and payable after notice and hearing as hereinafter provided.

If any part of the deficiency is due to fraudulent intent to evade the tax, then there shall be added as a penalty 25% of such deficiency and, in such case, the whole amount of tax unpaid, together with the penalty, shall become due and payable after notice and hearing as hereinafter provided, and an additional 1% per month on the tax shall be added from the date such tax was due until paid. Penalties and interest as provided herein for fraudulent intent to evade the tax shall not be waived by the state tax assessor.

Whenever notice is required under the provisions of sections 255 to 289, inclusive, such notice shall be given either by personal service or by registered mail addressed to the last known or licensed address of the taxpayer.

No deficiency, interest or penalty shall be assessed for any year after the expiration of 6 years from the date due, nor shall any taxpayer claim refund of any amount paid by him after the expiration of 3 years from the date of payment thereof; provided, however, that no taxpayer shall assign his claim against the state to any other person; provided, further, that if

any person subject to tax hereunder shall fraudulently conceal any liability for the tax or any part thereof, the state tax assessor shall, upon discovery of such fraud and within 2 years thereafter, proceed to assess such tax with penalties and interest as hereinbefore provided, computed from the date on which such tax liability originally accrued and such tax, penalties and interest shall become due and payable after notice and hearing as hereinafter provided, anything herein contained to the contrary notwithstanding.

If any person refuses to file a return, within the time specified in said sections, the state tax assessor shall make an estimate of his gross proceeds and assess the tax against such person and shall notify him of the amount thereof together with a penalty equal to 25% of the tax.

In case of refusal to file a remittance with any return, required by said sections, within the time prescribed, 25% of the tax shall be added as a penalty. The amount so added shall be collected as a part of the tax together with interest at the rate of 1% per month.

Sec. 282. Collection of tax. If the tax imposed by section 277 is not paid within the time allowed, the state tax assessor shall cause a demand to be made upon the taxpayer for the payment thereof. If such tax remains unpaid for 10 days after such a demand has been made and no proceedings have been taken to review the same, the attorney general shall, upon the request of the state tax assessor, bring an action to enforce the payment of the same and may attach personal or real property according to law. The proceeds of a judgment in such action shall be paid to the state tax assessor.

In addition to the above, the state tax assessor shall also have for the collection of taxes and penalties assessed under the provisions of sections 255 to 289, inclusive, all of the remedies provided by chapter 81 of the revised statutes, as amended, for the collection of taxes on personal property by collectors of taxes in incorporated places.

Sec. 283. Sale of business. If any person liable for a tax levied hereunder shall sell out his business or stock of goods or shall quit the business, such person shall make a final return within 15 days after the date of selling or quitting business. His successor or succeeding successors, if any, shall be required to withhold sufficient of the purchase money to cover the amount of such taxes and interest and penalties as may be due and unpaid until such time as the former owner shall produce a receipt from the state tax assessor showing that they have been paid, or a certificate stating that no taxes are due. If the purchaser or succeeding purchasers of a business or stock of goods shall fail to withhold purchase money as above provided,

he or they shall be personally liable for the payment of the taxes, interest and penalties accrued and unpaid on account of the operation of the business by the former owner.

Sec. 284. Jeopardy assessments. If the state tax assessor finds that a person liable for tax under any provisions of sections 255 to 289, inclusive, designs quickly to depart from the state or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect such tax unless such proceedings be brought without delay, the state tax assessor shall cause notice of such findings to be given such person, together with a demand for an immediate return and immediate payment of such tax. Warrant may issue immediately upon issuance of such jeopardy assessments. Thereupon such tax shall become immediately due and payable. If such person (1) is not in default in making any return or paying any tax prescribed by said sections, and (2) furnishes evidence satisfactory to the state tax assessor under regulations prescribed by the state tax assessor, that he will duly return and pay the tax to which the state tax assessor's finding relates, then such tax shall not be payable prior to the time otherwise fixed for payment.

Sec. 285. Records. Every person liable for any tax levied by section 277 shall keep such records, receipts, invoices and other pertinent papers in such form as the state tax assessor may require. Such records must be kept for the 6 year period as stated in section 281. Whenever in the judgment of the state tax assessor it is necessary, he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the state tax assessor deems sufficient to show whether or not such person is liable to tax hereunder. In the event the taxpayer fails to file a return or to maintain and preserve proper records as prescribed, or the state tax assessor has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the state tax assessor shall be empowered to assess, upon such information as is available or may come into his possession, the amount of the tax due from the taxpayer. Such assessment after notice and hearing as hereinafter provided shall be deemed to be prima facie correct for the purpose of sections 255 to 298, inclusive and the burden of proof of refuting such assessment shall be upon the taxpayer.

Sec. 286. Examination of records. The state tax assessor or his duly appointed agents, may examine the books, records, and papers of any person subject to taxation under the provisions of sections 255 to 289, inclusive.

The state tax assessor may employ subject to the provisions of the personnel law, assistants, necessary for the efficient administration of said sections, and he may designate representatives to conduct hearings or to perform any other duties imposed thereby.

Sec. 287. Administration. The state tax assessor shall enforce the provisions of sections 255 to 289, inclusive, and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of said sections. Rules and regulations shall be published. Unless in accordance with a judicial order, or as shall be required in the proper administration of said sections, neither the state tax assessor nor any person having an administrative duty under the provisions of said sections, nor any other employee, shall divulge any facts or information obtained in connection with the administration of said sections.

Sec. 288. Appeals. If the state tax assessor after examining the return of any taxpayer and based upon such examination and on any additional information subsequently acquired, determines that the taxpayer is indebted to the state by reason of deficiency of the remittance accompanying such return, the state tax assessor shall give such taxpayer notice of the intention to levy such deficiency. Such taxpayer may, if he so desires, and serves notice thereof upon the state tax assessor within 20 days, demand a hearing on the question of the levy of such deficiency. Thereupon the state tax assessor shall set a time and place for hearing and shall give the taxpayer reasonable notice thereof.

The taxpayer shall be entitled to appear before the state tax assessor and present testimony and argument. After the hearing, the state tax assessor shall render his decision in writing, and, by order, levy any deficiency found by him to be due and payable.

If any taxpayer is aggrieved by any decision of the state tax assessor, he may within 30 days after notice of final determination appeal to the superior court in the county of Kennebec or the superior court in the county where the taxpayer resides, or he shall be required to pay the amount of taxes, interest and penalties found due by the state tax assessor and shall be permitted to bring an action in the superior court in the county in which the business is carried on to recover the amount of the taxes, interest and penalties alleged to have been unlawfully levied upon him. Such action shall be commenced within 90 days after payment of such taxes, interest and penalties so levied and shall be conducted in the same manner as is provided for civil actions in the superior court.

In the event any taxpayer is found entitled to recover any sums paid

pursuant to the order of the state tax assessor as hereinbefore provided, such sums shall be paid from the general fund of the state on order of the state tax assessor and deducted from current sales tax collections.

No injunction shall issue to stay proceedings for assessment or collection of any taxes levied by section 277.

Sec. 289. Penalties. It shall be unlawful for any person to refuse to make the returns required by section 280; or to make, or to aid, abet or assist another in making any false or fraudulent return or false statement in any return required by section 280, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by section 277; or for any person to aid, abet or assist another in any attempt to evade the payment of the tax, or any part thereof, imposed by section 277; or for any person or officer of any corporation or association, to make or permit to be made for any person, corporation or association any false returns, or any false statement in any return required by section 280, with intent to evade or assist in evading the payment of any tax hereunder.

Any person violating any of the provisions of sections 275 to 289, inclusive, shall be guilty of a misdemeanor and on conviction thereof, shall be fined not more than \$1,000 or imprisoned for a period not exceeding 11 months, or by both fine and imprisonment, in the discretion of the court.'