

MAINE STATE LEGISLATURE

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Legislative Document

No. 1273

H. P. 1695

House of Representatives, April 11, 1951.

Reported by a majority of Committee on Taxation. Printed under Joint Rules No. 10.

HARVEY R. PEASE, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-ONE

AN ACT Imposing a Sales and Use Tax.

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

Sec. 1. R. S., c. 14-A additional. The revised statutes are hereby amended by adding thereto a new chapter to be numbered 14-A, to read as follows:

‘CHAPTER 14-A.

SALES AND USE TAX LAW.

Sec. 1. Title. This chapter shall be known and may be cited as the “Sales and Use Tax Law.”

Sec. 2. Definitions. The following words, terms and phrases when used in this chapter have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

“Advertisement” means any public announcement of whatever kind or character, and includes any notice or announcement in any radio or television broadcast, newspaper, magazine, catalog, circular, handbill, sign, placard, or any billboard.

“Business” includes any activity 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.

“In this state” or “in the state” means within the exterior limits of the state of Maine and includes all territory within these limits owned by or ceded to the United States of America.

“Person” includes any individual, firm, co-partnership, association, society, club, corporation, estate, trust, business trust, receiver, assignee, or any other group or combination acting as a unit, and the plural as well as the singular number, also the state and federal governments and all political subdivisions or agencies of either of them.

“Retailer” means every person engaged in the business of making sales at retail.

“Retail sale” or “sale at Retail” means any sale of tangible personal property, in the ordinary course of business, for consumption or use, or for any purpose other than for resale in the form of tangible personal property. The term “retail sale” or “sale at retail” includes conditional sales, installment lease sales, and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later. The term “retail sale” or “sale at retail” does not include an isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof, or by his representative for the owner’s account, such sale, transfer, offer for sale, or delivery not being made in the ordinary course of repeated and successive transactions of a like character by such owner or on his account by his representative. “Retail sale” and “sale at retail” do not include the sale of tangible personal property which becomes an ingredient or component part of, or which is consumed or destroyed or loses its identity in the manufacture of, tangible personal property for later sale by the purchaser, but shall include fuel and electricity.

“Sale” means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration in the regular course of business and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed to be in lieu of purchase by the state tax assessor.

“Sale price” means the total amount of the sale or lease or rental price, as the case may be, of a retail sale, including any services that are a part of such sale, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of any kind or nature, and

also any amount for which credit is allowed by the seller to the purchaser, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses whatsoever; provided, however, that discounts allowed and taken on sales shall not be included, and "sale price" shall not include allowances in cash or by credit, or the price of property returned by customers when the full price thereof is refunded either in cash or by credit, nor shall "sale price" include the price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated. "Sale price" shall also not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer; excepting any manufacturer' or importers' excise tax; and shall not include transportation charges separately stated, if the transportation occurs after the purchase of the property is made.

"Storage" includes any keeping or retention in this state for any purpose, except subsequent use outside of this state, of tangible personal property purchased at retail sale.

"Storage" or "use" does not include keeping or retention or the exercise of power over tangible personal property brought into this state for the purpose of subsequently transporting it outside the state.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched, or in any other manner perceived by the senses, but shall not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership.

The words "tax assessor" or the word "assessor" means the state tax assessor.

"Use" includes the exercise in this state of any right or power over tangible personal property incident to its ownership when purchased by the user at retail sale.

Sec. 3. Sales. Tax. A tax is hereby imposed at the rate of 2% on the value of all tangible personal property, sold at retail in this state on and after October 1, 1951, measured by the sale price, except as in this chapter provided. Retailers shall pay such tax at the time and in the manner hereinafter provided, and it shall be in addition to all other taxes.

The tax imposed upon the sale and distribution of gas, water or electricity by any public utility, the rates for which sale and distribution are

established by the public utilities commission, shall be added to the rates so established. No tax shall be imposed on electrical energy sold by a wholly owned subsidiary to its parent company.

No tax shall be imposed upon such property sold at retail for 10c or less, provided the retailer is primarily engaged in making such sales and keeps records satisfactory to the state tax assessor.

Sec. 4. Use tax. A tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property, purchased at retail on or after October 1, 1951 at the rate of 2% of the sale price. Every person so storing, using or otherwise consuming is liable for the tax until he has paid the same or has taken a receipt from his seller thereto duly authorized by the assessor, showing that the seller has collected the sales or use tax, in which case the seller shall be liable for it. The assessor, under such rules and regulations as he may establish, may authorize any retailer to collect the tax. Whenever any tangible personal property whose sale or use is subject to tax under this chapter is required to be registered for use within this state by any other chapter than this, no registration shall be granted unless the applicant exhibits a receipt for the sales tax or the use tax thereon.

Sec. 5. Adding tax to sale price. Every retailer shall add the sales tax imposed by this chapter, or the average equivalent of said tax, to his sale price, except as hereafter provided, and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedules:

Amount of Sale Price	Amount of Tax
\$0.01 to \$0.24, inclusive	No tax
.25 to .74, "	1c
.75 to 1.24, "	2c

Add 1c tax plus the above rate for each 50c or fraction thereof exceeding \$1.24.

When several articles are purchased together and at the same time, the tax may be computed on the total amount of the several items.

Breakage under this section shall be retained by the retailer as compensation for the collection.

Sec. 6. Registration of Sellers. In order to facilitate the enforcement of this chapter, every seller of tangible personal property within the state, whether or not at retail, but excluding casual sellers, shall register with the

assessor. Forms for application for registration certificates shall be prescribed and furnished free by the assessor. On applying for registration, the seller shall pay the sum of \$1 for each place of business conducted by him in this state. For each such place the assessor shall issue a registration certificate, which shall be conspicuously displayed at the place for which it is issued. No certificate shall be assignable, but it may be used by the legal representative of a registrant deceased, incompetent, bankrupt or insolvent.

Sec. 7. Non-resident sellers. Every non-resident seller of tangible personal property who makes sales at retail in this state and has no regular place of business for sales in this state shall register as provided in section 6, and upon registration shall file with the assessor a bond, in such amount and with such surety or sureties as may be satisfactory to the assessor, conditioned upon such seller collecting the sale tax on tangible personal property sold by him within the state, and the payment to the state of such taxes.

Sec. 8. Presumption concerning sales. The burden of proving that a sale was not a sale at retail shall be upon the person who made it.

Sec. 9. Sales under contracts made prior to date of the chapter. Sales made subsequent to the effective date of this chapter, pursuant to contracts entered into prior thereto, shall be subject to the tax imposed by this chapter and the retailer shall add the tax and collect it from the purchaser.

Sec. 10. Exemptions. No tax on sales, storage or use shall be collected upon or in connection with:

I. Exemptions by constitutional provisions. Sales which this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

II. State and political subdivisions. Sales to the state or any political subdivision, or to the federal government, or to any agency of either of them.

III. Food products for human consumption. Sales of food products as hereinafter defined. As used herein the term "food products" shall, except as herein otherwise provided, include cereals and cereal products; milk and milk products, other than candy and confectionery, but including ice cream; oleomargarine; meat and meat products; fish and fish products; eggs and egg products; vegetable and vegetable products; fruit and fruit products, including pure fruit juices; spices, condiments and salt; sugar and sugar products other than candy and confectionery; coffee and coffee substitutes; tea, cocoa and cocoa products, other than candy and confectionery.

“Food products” shall not include spirituous, malt or vinous liquors; soft drinks, sodas or beverages such as are ordinarily dispensed at bars or soda fountains or in connection therewith; medicines, tonics, vitamins and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form, sold as dietary supplements or adjuncts, except when sold on the prescription of a physician; water, including mineral bottled and carbonated waters and ice. “Food products” also shall not include meals served on or off the premises of the retailer; or drinks or food, furnished, prepared, or served for consumption at tables, chairs or counters, or from trays, glasses, dishes or other tableware provided by the retailer.

It shall be presumed that the sale of food products ordinarily sold for immediate consumption on or near the premises of the retailer is a taxable sale unless such products are sold on a “take out” or “to go” order, and are actually packaged or wrapped and taken from the premises.

IV. Medicines. Sales of medicines sold on doctor’s prescription.

V. School meals. Sales of meals served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school.

VI. Seed, feed and fertilizer. Sales of seed, feed and fertilizer used in agricultural production.

VII. Motor vehicle fuel. Sales of gasoline and motor fuels upon which a tax is now imposed by the state, but the tax payable upon such fuels not used by vehicles on the highway shall be deducted from any refund of the gasoline tax sought by the purchaser.

VIII. Cigars, tobacco and cigarettes. Sales of cigars, tobacco and cigarettes, subject to other taxes imposed by chapter 14.

IX. Sales of liquor. Sales of spirituous or vinous liquors sold in stores operated by the state liquor commission.

X. Containers. Sales of returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

XI. Bibles. Sales of the Bible.

XII. Publications. Sales of any publication regularly issued at average intervals not exceeding 3 months.

XIII. Hospitals and churches. Sales to hospitals and regularly organized churches or houses of religious worship, excepting such sales, storage or use in activities as are mainly commercial enterprises.

Sec. 11. Advertising. It shall be unlawful for any retailer to advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the retailer, or that it will not be added to or included in the selling price of the property sold, or if added or included that it or any part thereof will be refunded. Any person violating any part of the provisions of this section shall be guilty of a misdemeanor.

Sec. 12. Collection of tax; report to assessor. Every retailer shall file with the assessor, on or before the 15th day of each month, beginning with the 15th day of November, 1951, a report made under the pains and penalties of perjury on such form as the assessor may prescribe, which shall disclose the total sale price of all sales made during the preceding calendar month, and such other information as the assessor shall require. The assessor may permit the filing of returns every 3 months instead of monthly, if in the administration of said chapter it seems advisable. The assessor, by regulation, may waive reporting non-taxable sales. Upon application of a retailer, the assessor shall issue a classified permit establishing the percentage of exempt sales. Such classified permit may be amended or revoked as to its classification whenever the assessor shall determine that the percentage of exempt sales is inaccurate. The assessor may for good cause extend for not more than 30 days the time for making returns required under the provisions of this chapter. Every person subject to the use tax shall file similar reports, at similar dates, and shall pay the tax or furnish a receipt for the same from a registered retailer.

Sec. 13. Payment of tax; interest. The taxes imposed by this chapter shall be due and payable at the time of the sale. Upon such terms and conditions as the assessor may prescribe, he may permit a postponement of payment to a date not later than the 15th of the 3rd month next following the month in which the sales so taxed were made. Any person who shall fail to pay any tax imposed by this chapter on or before the day when the same shall be required to be paid, shall pay interest on said tax at the rate of 1% each month or fraction thereof that the same remains unpaid, to be calculated from the date the tax was originally due. All such interest shall be payable to, and recoverable by, the assessor in the same manner as if it were a tax imposed by this chapter. If the failure to pay such tax when required to be paid is explained to the satisfaction of the assessor, he may abate or waive the payment of the whole or any part of such interest, and for cause may abate the whole or any part of such tax.

The assessor shall pay over all receipts collected to the treasurer of state daily and such receipts shall be credited to the general fund.

Sec. 14. Tax a debt; proceedings to recover; preference. The taxes and interest imposed by this chapter, from the time the same shall be due, shall be a personal debt of the retailer or user to the state of Maine, recoverable in any court of competent jurisdiction in an action at law in the name of the state of Maine, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment obtained hereunder shall be paid to the assessor.

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

Sec. 16. Overpayment; refunds. If the assessor determines that any tax or interest has been paid more than once, or has been erroneously or illegally collected or computed, the assessor shall certify to the state controller the amount collected in excess of what was legally due, from whom it was collected, or by whom paid, and the same shall be credited by the assessor on any taxes then due from the retailer under under this chapter, and the balance shall be refunded to the retailer or user, or his successors, administrators, executors or assigns, but no such credit or refund shall be allowed after 3 years from the date of overpayment. The assessor shall also have the right to cancel or abate any tax which has been illegally levied.

Sec. 17. Arbitrary assessment. If any person shall fail to make a report as herein required, the assessor may make an estimate of the taxable liability of such person, from any information he may obtain, and according to such estimate so made by him, assess the taxes and interest due the state from such person, give notice of such assessment to the person, and make demand upon him for payment.

Sec. 18. Deficiency assessment. After a report is filed under the provisions of this chapter, the assessor shall cause the same to be examined,

and may make such further audits or investigations as he may deem necessary, and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under this chapter, he shall assess the additional taxes and interest due the state, give notice of such assessment to the person liable, and make demand upon him for payment, but no such additional assessment can be made after 2 years.

Sec. 19. Jeopardy assessment. If the assessor finds that a person liable for a tax designs quickly to depart from this state or to remove his property therefrom, or to conceal himself or his property, or to discontinue business, or to do any other act tending to prejudice or to render wholly or partially ineffective proceedings to collect such tax, unless such proceedings be brought without delay, the assessor may make a demand on said person for an immediate report and payment of such tax.

Sec. 20. Administration. The assessor is hereby authorized and empowered to carry into effect the provisions of this chapter, and in pursuance thereof to make and enforce such reasonable rules and regulations consistent with this chapter as he may deem necessary.

Sec. 21. Assistants. The tax assessor is authorized to employ such assistants, subject to the provisions of the personnel law, as may be necessary.

Sec. 22. Power to examine records and premises. The assessor, whenever he shall deem it expedient, may make or cause to be made by any employee of the assessor engaged in the administration of this chapter, an examination or investigation of the place of business, the tangible personal property, and the books, records, papers, vouchers, accounts and documents of any retailer. It shall be the duty of every retailer and of every director, officer, agent or employee of every retailer to exhibit to the assessor or to any such employee of the assessor, the place of business, the tangible personal property, and all of the books, records, papers, vouchers, accounts and documents of the said retailer, and to facilitate any such examination or investigation so far as it may be in his or their power to do so. It shall be lawful for the assessor, or any employee of the assessor by him thereto duly authorized, to take the oath of any person signing any application, deposition, statement or report required by the assessor in the administration of this chapter. The provisions of this section shall also apply to any person who, the assessor has reason to believe, is liable to the payment of a tax under this chapter.

Sec. 23. Power to conduct hearings. The assessor or any employee of

the assessor by him thereto designated may conduct hearings, administer oaths to and examine under oath any seller and the directors, officers, agents and employees of any seller as well as all other witnesses relative to the business of such seller in respect to any matter incident to the administration of this chapter.

Sec. 24. Power to summon witnesses. The assessor or any of his authorized agents, shall have the power to compel the attendance of witnesses and the production of any books, records, papers, vouchers, accounts or documents of any retailer or of any person who, the assessor has reason to believe, is liable to the payment of a tax under this chapter, or of any person believed to have information pertinent to any matter under investigation by the assessor, to any hearing held pursuant to the provisions of this chapter. The fees of witnesses required to attend any such hearing shall be the same as those allowed to witnesses appearing in the superior court. Such fees shall be paid in the manner provided for the payment of the other expenses incident to the administration of this chapter. The powers granted by this section may be exercised by any employee of the assessor authorized by him.

Any examination on oath conducted by the state tax assessor may in his discretion be reduced to writing and false swearing therein shall be deemed perjury and be punishable as such.

Any justice of the superior court upon application of the state tax assessor may compel the attendance of witnesses and the giving of testimony before the state tax assessor in the same manner, to the same extent, and subject to the same penalties as if before said court.

Sec. 25. Notices, how given. Any notice required to be given by the assessor pursuant to this chapter to an individual may be served personally, or by sending the same by registered mail to the person for whom it is intended, addressed to such person at the address given in the last report filed by him pursuant to the provisions of this chapter, or if no report has been filed, then to the address of his last known abode; or in the case of other than an individual to the last known business address.

Sec. 26. Records of retailers. Every retailer shall keep records of his sales, the kind and form of which shall be adequate to enable the assessor to determine the tax liability. All such records shall be safely preserved for a period of 3 years in such manner as to insure their security and accessibility for inspection by the assessor or by any of his employees engaged in the administration of this chapter. The assessor may consent to the destruction of any such records at any time within said period.

Sec. 27. Confidential character of the assessor's records. The records and files of the assessor respecting the administration of this chapter shall be confidential and privileged, and neither the assessor nor any employee engaged in the administration of this chapter or charged with the custody of any such records or files shall divulge or disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person. Neither the assessor nor any employee engaged in the administration of this chapter or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceedings except in behalf of the assessor, in an action or proceeding under the provisions of this chapter to which the assessor is a party, or in behalf of any party to any action or proceeding under the provisions of this chapter, when the records or files or the facts shown thereby are directly involved in any such action or proceedings. Nothing herein contained shall be construed to prevent:

I. The delivery to a retailer or his duly authorized representative a copy of any report or any other paper filed by him pursuant to the provisions of this chapter;

II. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof.

Sec. 28. Dissolution of corporations prohibited until tax is paid. Hereafter no corporation organized under any law of this state shall be dissolved by the action of the stockholders or by the decree of any court until all taxes and interest imposed upon said corporation in accordance with the provisions of this chapter have been fully paid. No certificate of dissolution shall be issued by the secretary of state and no decree of dissolution shall be signed by any court, as the case may be, without a certificate of the assessor evidencing the payment by the corporation to be dissolved of all taxes and the interest imposed in accordance with the provisions of this chapter.

Sec. 29. Petition for reconsideration of assessment. Any person against whom an assessment shall be made by the assessor under the provisions of this chapter may petition for a reconsideration of assessment thereof within 15 days after service upon the person of notice thereof. If a petition for a reconsideration of assessment is not filed within said 15-day period the amount of the assessment becomes final at the expiration thereof. If a petition for a reconsideration of assessment is filed within said 15-day period the assessor shall reconsider the assessment, and if the pe-

tioner has so requested in his petition, shall grant said petitioner an oral hearing, and shall give the petitioner 10 days' notice of the time and place thereof. For cause shown the assessor may extend the time for filing such petition.

Sec. 30. Appeal. Any taxpayer aggrieved by the decision upon such petition may, within 30 days after notice thereof from the assessor, appeal therefrom to the next term of the superior court to be begun and held more than 30 days after such notice of said decision in any county where he has a regular place of business for making retail sales, or, if he has no such place of business within the state, to such term of the superior court in Kennebec county. The appellant shall, on or before the 3rd day of the term to which such appeal is taken, file an affidavit stating his reasons of appeal and serve a copy thereof on the assessor, and in the hearing of the appeal shall be confined to the reasons of appeal set forth in such affidavit. Jurisdiction is hereby granted to the superior court to hear and determine such appeals, and to enter such order and decrees as the nature of the case may require. Hearings may be had before the court in term time or any justice thereof in vacation and the decision of said court or justice upon all questions of fact shall be final. Decisions shall be certified to the tax assessor.

Sec. 31. Priority of tax. Whenever any person liable for any tax levied hereunder is insolvent, whenever any such person makes a voluntary assignment of his assets, whenever the estate of a deceased person liable in the hands of the executors, administrators or heirs is insufficient to pay all the debts due from the deceased, or whenever estate and effects of an absconding, concealed or absent person liable are levied upon by process of law, the tax, together with interest attaching thereto, shall be first settled; provided, however, that this section shall not be construed to give the state a preference over any recorded lien which attached prior to the date when the tax became due.

Sec. 32. Penalties. Any person required to make, render, sign or verify any report as aforesaid, who makes any false or fraudulent return with intent to defeat or evade the assessment required by law to be made, shall, upon conviction, be punished by a fine of not less than \$20, nor more than \$500, or by imprisonment for not more than 60 days, or by both such fine and imprisonment; and each such false or fraudulent return shall constitute a separate and distinct offense.

Sec. 33. Other penalties. Any violation of any provision of this chapter for which a penalty is neither prescribed above nor provided by any

other applicable statute, shall be punished by a fine of not less than \$20, nor more than \$50, or by imprisonment for not more than 11 months, or by both such fine and imprisonment. For the purpose of this section, the engaging in or conducting of a business as a seller as required under this chapter for or during the period of 1 calendar week without a registration certificate shall constitute a separate offense.

Sec. 34. Elimination of state property tax. In the event that the provisions of this chapter become effective for the purpose of collecting taxes as levied herein, there shall be no state property tax levied for the year 1952 and thereafter.

Sec. 2. R. S., c. 14, § 111, amended. The 1st paragraph of section 111 of chapter 14 of the revised statutes is hereby amended to read as follows:

'The amount of the annual excise tax on railroads shall be ascertained as follows: the amount of the gross transportation receipts as returned to the public utilities commission for the year ended on the 31st day of December preceding the levying of such tax shall be compared with the net railway operating income for that year as returned to the public utilities commission; when the net railway operating income does not exceed 10% of the gross transportation receipts, the tax shall be an amount equal to ~~3½%~~ 3¼% of such gross transportation receipts; when the net railway operating income exceeds 10% of the gross transportation receipts but does not exceed 15%, the tax shall be an amount equal to ~~4%~~ 3¾% of the gross transportation receipts; when the net railway operating income exceeds 15% of the gross transportation receipts but does not exceed 20%, the tax shall be an amount equal to ~~4½%~~ 4¼% of such gross transportation receipts; when the net railway operating income exceeds 20% of the gross transportation receipts but does not exceed 25%, the tax shall be an amount equal to ~~5%~~ 4¾% of such gross transportation receipts; when the net railway operating income exceeds 25% of the gross transportation receipts, the tax shall be an amount equal to ~~5½%~~ 5¼% of such gross transportation receipts; provided, however, that in the case of railroads operating not over 50 miles of road, the tax shall not exceed ~~2%~~ 1¾% of the gross transportation receipts; and provided further, that when the net railway operating income of any narrow gauge railroad located wholly in this state exceeds 5% but does not exceed 10% of its gross transportation receipts, the tax on such railroad shall be ~~½~~ ¼ of 1% of its gross transportation receipts; and when the net railway operating income of such railroad exceeds 10% of its gross transportation receipts, the tax shall be ~~1%~~ ¾% of its gross transportation receipts; and when the net railway operating income of such a railroad does

not exceed 5% of its gross transportation receipts, no excise tax shall be assessed upon it. When a railroad lies partly within and partly without the state, or is operated as a part of a line or system extending beyond the state, the tax shall be equal to the same proportion of the gross transportation receipts in the state as herein provided, and its amount shall be determined as follows:'