

MAINE STATE LEGISLATURE

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

Legislative Document

No. 319

S. P. 116

In Senate, February 3, 1953.

Referred to Committee on Taxation. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary.

Presented by Senator Chase of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-THREE

**AN ACT Amending the Sales and Use Tax Law as Respects Registration
and Other Matters.**

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

Sec. 1. R. S., c. 14-A, § 2, amended. The 6th paragraph of section 2 of chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended to read as follows:

“Retailer” means every person engaged in the business of making sales at retail and every person required to register by section 6 or registered under the provisions of section 7 hereof.’

Sec. 2. R. S., c. 14-A, § 6, amended. Section 6 of chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended to read as follows:

‘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~~ the following persons, other than casual sellers, shall register with the assessor:

I. Every seller of tangible personal property, whether or not at retail, maintaining within this state any office, place of manufacture, place of

distribution, sales or sample room or place, warehouse or storage place or other place of business.

II. Every seller of tangible personal property not maintaining a place as aforesaid who makes retail sales within this state or who makes delivery of tangible personal property sold at retail outside the state for use, storage or other consumption within the state.

III. Every consignee or agent who makes retail sales in the state of tangible personal property on behalf of a principal who is without the state if the principal is not the holder of a valid registration certificate.

IV. Every agent, representative, salesman, entrepreneur, solicitor, distributor or independent selling agent, when such person receives compensation by reason of sales of tangible personal property made outside the state by his principal for use, storage or other consumption in the state, if said principal is not the holder of a valid registration certificate.

Forms for application for registration certificates and 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 of business the assessor shall issue a registration certificate which shall be conspicuously displayed at ~~the such 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.

In the case of a vendor who has no fixed place of business and sells from one or more vehicles, each such vehicle shall constitute a "place of business" for the purpose of this section. In the case of a vendor who has no fixed place of business and does not sell from a vehicle, the application for license shall nevertheless set forth a place to which any notice or other communication authorized by this chapter may be sent.'

Sec. 3. R. S., c. 14-A, § 6-A, additional. Chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended by adding thereto a new section to be numbered 6-A, to read as follows :

'Sec. 6-A. Bonds. When, in the judgment of the assessor, it is necessary or advisable for the collection of sales or use taxes or both, he may accept from a taxpayer a bond written by a surety company qualified to do business in this state and in such amount and upon such condition as the assessor may determine. In lieu of such bond he may accept, for delivery

to the custody of the treasurer of state, a deposit of money or securities in such amount and of such kind as he may approve. Such deposit shall be accepted by the treasurer of state who shall safely keep the same subject to the instructions of the assessor.'

Sec. 4. R. S., c. 14-A, § 7, repealed and replaced. Section 7 of chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby repealed and replaced by the following:

'Sec. 7. Voluntary registration. Every seller of tangible personal property, not required by section 6 to register, may register upon such terms as the assessor may prescribe. Upon registration, he shall have the rights and duties of a person required to be registered and shall be subject to the same penalties. The person registered hereunder may at any time surrender his registration certificate and request that the same be cancelled. Upon receipt of such certificate and request, the assessor shall grant the same if it appear to the assessor that the registrant has satisfied all liability to the state hereunder and that he is not required by law to register. Upon surrender of his certificate, the registered person shall cease to collect sales or use taxes upon sales taking place on and after the date of such surrender.

The assessor may revoke such voluntary registration for cause by giving 15 days' notice of intention to revoke. Within said 15-day period the person registered may petition for a reconsideration. If a petition for reconsideration is not then filed, the order of revocation becomes final at the expiration of the period. If a petition is filed within the 15-day period, the assessor shall reconsider the order, and if the petitioner has so requested in his petition, shall grant the 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. Any registrant aggrieved by the decision upon such petition may appeal therefrom as provided in section 30 of this chapter.'

Sec. 5. R. S., c. 14-A, § 12, amended. Section 12 of chapter 14-A of the revised statutes as enacted by section 1 of chapter 250 of the public laws of 1951 is hereby amended by adding a new paragraph at the end thereof as follows:

'Every person incurring a use tax liability of \$25, or sales tax liability of any amount in 1 calendar month, shall pay a penalty of \$1 if he shall omit to report the same at or before the time required. This penalty shall be in addition to all others by law provided. The assessor shall have power to waive such penalty in whole or part.'

Sec. 6. R. S., c. 14-A, § 16, amended. Section 16 of chapter 14-A of the revised statutes as enacted by section 1 of chapter 250 of the public laws of 1951 is hereby amended to read as follows:

'Sec. 16. Overpayment; refunds. Upon application by the taxpayer if ~~if~~ **the assessor determines that any tax, or interest or penalty 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 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~~ 1 year from the date of overpayment. The assessor shall also have the right to cancel or abate any tax which has been illegally levied. But nothing herein shall authorize the taxpayer, or anyone in his behalf, to apply for a refund of any amount assessed when the assessment has become final as hereinafter provided.'**

Sec. 7. R. S., c. 14-A, amended. Section 17 of chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended to read as follows:

'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 and penalties** due the state from such person, give notice of such assessment to the person, and make demand upon him for payment.'

Sec. 8. R. S., c. 14-A, § 19, amended. Section 19 of chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended to read as follows:

'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~~ shall cause notice of such finding to be given such person, together with a demand for an immediate report and immediate payment of such tax. If report and payment are not made upon demand, the assessor may make an estimate of the tax-

able liability of such person, from any information he may obtain, and according to such estimate, assess the taxes and interest due the state from such person. The assessor shall give notice of said assessment and demand payment thereof, and said assessment shall be presumed to be correct, the burden of showing otherwise being on the taxpayer. Thereupon, such tax shall become immediately due and payable. The assessor may, at the same time, without delay, bring suit for the collection of the tax.'

Sec. 9. R. S., c. 14-A, § 19-A, additional. Chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended by adding thereto a new section to be numbered 19-A, to read as follows:

'Sec. 19-A. Penalties. Whenever the assessor shall determine that any tax assessed under sections 17, 18 or 19 was unpaid due to negligence or intentional disregard of the provisions of this chapter or of any ruling, rule or regulation of the assessor issued pursuant to the provisions of this chapter, but without intent to defraud, a penalty of 10% of the amount of such tax as determined by the assessor shall be added to said assessment. Whenever any tax assessed under any of the preceding 3 sections was unpaid due to fraud with intent to evade the tax imposed by this chapter, a penalty of 25% of the amount of such tax as determined by the assessor shall be added to said assessment. Such penalties shall be in addition to any interest and other penalties provided by law, but interest shall not accrue on said penalties. The cause, the assessor may waive or abate all or any part of said penalties. The provisions of this section shall apply only to taxes accruing on and after the 1st day of the month next following the effective date of this amendment.'

Sec. 10. R. S., c. 14-A, § 28, amended. Section 28 of chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended to read as follows:

'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 **and penalties** 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~~ **and penalties** imposed in accordance with the provisions of this chapter.'

Sec. 11. R. S., c. 14-A, § 30-A, additional. Chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended by adding thereto a new section to be numbered 30-A, to read as follows:

‘Sec. 30-A. Injunctions. The state tax assessor may, by petition in equity, apply for the revocation of registration and injunction from doing business of any person required to register by this chapter or any ruling, rule or regulation, who

I. Has omitted to register, or

II. Has omitted to file with the assessor any report when due after the assessor shall have demanded the same, or shall have knowingly filed a false report, or

III. Has omitted to pay any tax required of him by this chapter when the same shall be due.

The existence of other civil or criminal remedies shall be no defense to this proceeding.

The petition in equity shall be deemed adequate as to form if it sets forth

I. The name and the address of the respondent as stated in his last return filed with the assessor, or, if no such return was filed, the address, if any, known to the assessor.

II. The breach of the law or ruling or rule or regulation committed by the respondent.

III. The assessor’s prayer for relief.

The paragraphs of the petition shall be numbered. The petition need not be verified.

Such petition may be presented to any justice of the superior court or supreme judicial court in term time or vacation in any county where the respondent has a regular place of business, or, if he have no regular place, then in Kennebec county. Such justice shall forthwith fix a time and place for hearing, which may be in vacation, and cause notice thereof to be given the respondent. The respondent shall serve upon the state tax assessor a copy of his answer to the petition at least 3 days before the day of hearing. The answer shall be paragraphed and numbered to conform with the numbering of the paragraphs in the petition so far as may be. Any allegation of fact in the petition which is not denied shall be taken as true.

Jurisdiction is hereby granted to the justices of the superior court and the supreme judicial court to hear and determine such matters, and to enter and change such orders and decrees from time to time as the nature of the case may require and, if necessary, to appoint a receiver. From any final decree of such justice, an appeal lies to the next term of the law court. Either party aggrieved may take exceptions to any ruling of law. Said appeal or bill of exceptions shall be heard by the law court in the same manner as in equity cases.'

Sec. 12. R. S., c. 14-A, § 32, repealed. Section 32 of chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby repealed.

Sec. 13. R. S., c. 14-A, § 33, amended. Section 33 of chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended to read as follows:

'Sec. 33. Criminal penalties. Any violation of any provision of this chapter for which a penalty is ~~neither prescribed above nor~~ **not** provided by any other ~~applicable statute~~ **chapter of the revised statutes**, shall be punished by a fine of not less than \$20, nor more than ~~\$50~~ **\$500**, 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~~ every person required to register under section 6 who shall engage in any business for which registration is required under section 6, without being the holder of a currently valid registration certificate, shall commit a separate offense for each calendar week or part thereof during which he shall be so engaged.'