

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. 341

S. P. 141

In Senate, February 4, 1953

Referred to the 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 to Clarify the Sales and Use Tax Law.

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

Sec. 1. R. S., c. 14-A, § 2, amended. The 1st sentence of that part 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, which defines "retail sale" or "sale at retail" is hereby amended to read as follows :

“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 (**except resale as a casual sale**) in the form of tangible personal property.’

Sec. 2. R. S., c. 14-A, § 2, amended. The 3rd sentence of that part 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, which defines “retail sale” or “sale at retail” is hereby amended to read as follows :

‘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, such transactions being elsewhere sometimes referred to as "casual sales"; provided, however, that a sale made in ordinary course of business by an auctioneer or retailer, whether on his own account or for the account of another shall be a "retail sale" or "sale at retail."

Sec. 3. R. S., c. 14, § 2, amended. The last sentence of that part 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, which defines "retail sale" or "sale at retail" is hereby amended to read as follows:

' "Retail sale" or "sale at retail" do not include the sale of containers, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels and other packing, packaging and shipping materials when sold to persons for use in packing, packaging or shipping tangible personal property ~~produced or~~ sold by them **and which are transferred to the possession of the purchaser of such tangible personal property.**'

Sec. 4. R. S., c. 14-A, § 2, amended. The 1st sentence of that part 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, which defines "sale price" is hereby amended to read as follows:

"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 **made upon the return of merchandise pursuant to warranty**, 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.'

Sec. 5. R. S., c. 14-A of § 3, amended. The 2nd and 3rd sentences of the 2nd paragraph of section 3 of chapter 14-A of the revised statutes, as enacted by section 1 of chapter 250 of the public laws of 1951, are hereby amended to read as follows:

'No tax shall be imposed ~~on electrical energy sold by a wholly owned~~

subsidiary to its parent company. No tax shall be imposed on water stored for the purpose of generating electricity when the water so stored is sold by a subsidiary to its parent company upon the sale or use of electrical energy, or water stored for the purpose of generating electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation.'

Sec. 6. R. S., c. 14-A, § 4, amended. The 3rd sentence of section 4 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 the following 2 sentences enacted in place thereof:

'Retailers registered under the provisions of section 6 or 7 shall collect such tax and make remittance to the assessor. The amount of such tax payable by the purchaser shall be that provided in the case of sales taxes by section 5.'

Sec. 7. R. S., c. 14-A, § 8, amended. Section 8 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. 8. Presumption concerning sales.** The burden of proving that a sale transaction was not a sale at retail taxable shall be upon the person who made it charged with tax liability.'

Sec. 8. R. S., c. 14-A, § 10, sub-§ III, amended. The 3rd paragraph of subsection III of section 10 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:

~~It shall be presumed that the~~ **The** sale of food products ordinarily sold for immediate consumption on or near the ~~premises~~ **location** 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.'

Sec. 9. R. S., c. 14-A, § 12, amended. The 2nd sentence of 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 to read as follows:

'The assessor may permit the filing of returns ~~every 3 months instead of monthly, if in the administration of said chapter it seems advisable other than monthly.~~

Sec. 10. R. S., c. 14-A, § 13, amended. The 2nd and 3rd sentences of section 13 of chapter 14-A of the revised statutes, as enacted by section 1 of

chapter 250 of the public laws of 1951, are hereby amended to read as follows:

'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~~ **date when** the sales so taxed ~~were made~~ **are required to be reported**. 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 $\frac{1}{2}$ of 1% each month or fraction thereof that the same remains unpaid, to be calculated from the date the tax was ~~originally due~~ **required to be paid.**'

Sec. 11. R. S., c. 14-A, § 23, amended. Section 23 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 at the end thereof the following sentence:

'The provisions of this section shall also apply to any person who, the assessor has reason to believe, is liable for the payment of a tax under this chapter.'

Sec. 12. R. S., c. 14-A, § 24, amended. The 2nd sentence of section 24 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:

'The fees of witnesses required to attend any such hearing shall be the same as those allowed to witnesses appearing in the superior court but no fee shall be payable to a witness charged with use or sales tax liability.'

Sec. 13. R. S., c. 14-A, § 25, amended. Section 25 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. 25. Notices, how given. Any notice required to be given by the assessor pursuant to this chapter to ~~an individual~~ **any person** 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. 14. R. S., c. 14-A, § 27, sub-§ I, amended. Subsection I of section 27 of chapter 14-A, as enacted by section 1 of chapter 250 of the public laws of 1951, is hereby amended to read as follows:

'I. The delivery to a ~~retailer~~ **taxpayer** or his duly authorized represen-

tative a copy of any report or any other paper filed by him pursuant to the provisions of this chapter;'

Sec. 15. R. S., c. 14-A, § 27, amended. Section 27 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 at the end thereof a new subsection to be numbered III, to read as follows:

'III. The disclosure of information to duly authorized officers of the United States and of other states, districts and territories of the United States, and of the provinces and Dominion of Canada; provided, however, that such information may be given only on the written request of the duly authorized officer when the said officer's government permits the exchange of like information with the taxing officials of the state of Maine and when the said officer agrees that such information shall be used only for tax collection purposes.'

Sec. 16. R. S., c. 14-A, § 29, amended. Section 29 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. 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~~ **notice shall have been given such person as provided in section 25.** 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 **as to law and fact.** If a petition for a reconsideration of assessment is filed within said 15-day period the assessor shall reconsider the assessment, and if the petitioner 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. **If appeal is not taken as provided in section 30, the amount of the assessment upon reconsideration becomes final as to law and fact at the expiration of the 30-day period therein allowed for the taking of appeals.'**