

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

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. 1580

H. P. 1311

House of Representatives, September 21, 1954

Received out of order and under suspension of the rules. Referred to the Committee on Taxation. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Low of Rockland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-FOUR

AN ACT to Repeal the Tax on Cigars and Tobacco Products.

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

Sec. 1. Definitions. Whenever used in this act unless the context shall otherwise require, the following words and phrases shall have the following meanings :

“Tax assessor” or “assessor” shall mean the state tax assessor ;

“Person” shall mean any individual, firm, fiduciary, partnership, corporation, trust or association, however formed ;

“Distributor” shall mean any person engaged in this state in the business of producing or manufacturing cigarettes or importing into the state cigarettes at least 75% of which are purchased directly from the manufacturers thereof :

“Licensed distributor” shall mean a distributor licensed under the provisions of this act ;

“Dealer” shall mean any person other than a distributor, as defined herein, who is engaged in this state in the business of selling cigarettes ;

“Licensed dealer” shall mean a dealer licensed under the provisions of this act;

“Sale” or “sell” shall include or apply to gifts, exchanges and barter;

“Sub-jobber” shall mean a wholesale dealer who does not qualify as a distributor;

“Unclassified importer” shall mean any person, firm, corporation or association within the state, other than a licensed distributor, sub-jobber or dealer as defined, who shall import, receive or acquire from without the state, cigarettes for use or consumption within the state.

Sec. 2. Dealers, unclassified importers and distributors to be licensed.

Each person engaging in the business of selling cigarettes in this state, including any distributor or dealer, shall secure a license from the tax assessor before engaging in such business. A separate application and license shall be required for each wholesale outlet and for each retail outlet when a person shall own or control more than 1 place of business dealing in cigarettes. Each vending machine shall be considered a retail outlet. Such license shall be issued on forms prescribed by the assessor, and shall contain the name and address of the applicant, the address of the place of business, and such other information as the assessor may require for the proper administration of the provisions of this act. Each application for a wholesale outlet license shall be accompanied by a fee of \$25 and each such application for a retail outlet license shall be accompanied by a fee of \$1. Each application for a sub-jobber's license, to be known as a “wholesale dealer's license,” shall be accompanied by a fee of \$10. Each license so issued shall be prominently displayed on the premises covered by the license and in the case of vending machines there shall be attached to the same a disc or marker to be furnished by the assessor showing it to have been licensed. Each unclassified importer shall, before importing, receiving or acquiring cigarettes from without the state, secure a license from the tax assessor. There shall be no charge for a license issued to an unclassified importer. Any person who shall sell, offer for sale, or possess with intent to sell any cigarettes, without a license as provided in this section, shall be punished by a fine of not more than \$25 for the 1st offense, and not less than \$25, nor more than \$200, for each subsequent offense. Any unclassified importer who shall import, receive or acquire from without the state cigarettes for use or consumption within the state without a license as provided in this section shall be punished by a fine of not more than \$25 for the 1st offense, and not less than \$25, nor more than \$200, for each subsequent offense.

Sec. 3. Tax imposed. A tax is imposed on all cigarettes held in this

state by any person for sale, said tax to be at the rate of 2 mills for each cigarette and the payment thereof to be evidenced by the affixing of stamps to the packages containing the cigarettes as hereinafter provided. Any cigarette on which a tax has been paid, such payment being evidenced by the affixing of such stamp, shall not be subject to a further tax under the provisions of this act. Nothing contained in this act shall be construed to impose a tax on any transaction, the taxation of which by this state is prohibited by the constitution of the United States.

Each unclassified importer shall, within 24 hours after receipt of any unstamped cigarettes in this state, notify the tax assessor of the number of cigarettes received, and the name and address of consignor. The tax assessor thereupon shall notify the unclassified importer of the amount of the tax due thereon, which shall be at the rate of 2 mills per cigarette. Payment of the amount due the state shall be made within 10 days from mailing date of notice thereof.

Sec. 4. Assessor to provide stamps. The tax assessor shall secure stamps, of such design and denomination as he shall prescribe, suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by the provisions of this act. To licensed distributors he shall sell such cigarette stamps at a discount of $3\frac{1}{2}\%$ of their face value. To licensed dealers he shall sell all stamps at face value. The face value of the stamps when affixed shall be considered as part of the cost of the merchandise. The assessors may, in his discretion, permit a licensed distributor or licensed dealer to pay for such stamps within 30 days after the date of purchase, provided a bond satisfactory to the assessor in an amount not less than the sale price of such stamps shall have been filed with the assessor conditioned upon payment for such stamps. He shall keep accurate records of all stamps sold to each distributor and dealer and shall pay over all receipts from the sale of stamps to the treasurer of state daily.

Sec. 5. Dealers and distributors not to resell stamps; redemption. No distributor or dealer shall sell or transfer any stamps issued under the provisions of this act. The assessors shall redeem any unused, uncanceled stamps presented by any licensed distributor or dealer, at a price equal to the amount paid therefor by such dealer or distributor, and the said assessor may upon proof satisfactory to him, and in accordance with regulations promulgated by him, redeem, at a price equal to the amount paid therefor, Maine cigarette tax stamps affixed to packages of cigarettes which have become unfit for use and consumption, or unsalable, and the treasurer of state shall provide, out of money collected hereunder, the funds necessary for such redemption.

Sec. 6. Distributors to affix stamps. Each distributor shall affix, or cause to be affixed, in such manner as the assessor may specify in regulations issued pursuant to the provisions of this act, to each individual package of cigarettes sold or distributed by him, stamps of the proper denominations, as required by section 3. Such stamps may be affixed by a distributor at any time before the cigarettes are transferred out of his possession.

Sec. 7. Dealers to affix stamps. Each dealer shall, within 72 hours after coming into possession of any cigarettes not bearing proper stamps evidencing payment of the tax imposed by this act, and before selling such cigarettes, affix or cause to be affixed, in such manner as the assessor may specify in regulations issued pursuant to the provisions of this act, to each individual package of cigarettes stamps of the proper denomination, as required by section 3.

Sec. 8. Sale of unstamped cigarettes prohibited. No distributor shall sell, and no other person shall sell, offer for sale, display for sale, or possess with intent to sell, any cigarettes which do not bear stamps evidencing the payment of the tax imposed by this act, provided a licensed dealer may keep on hand unstamped cigarettes for a period not exceeding 72 hours. Any unstamped cigarettes in the possession of a dealer shall be presumed to have been held by him for more than 72 hours unless proof be shown to the contrary. Any person who shall violate any provision of this section shall be punished by a fine of not more than \$100 for the 1st offense and, for each subsequent offense, shall be punished by a fine of not less than \$200, nor more than \$1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

Sec. 9. Possession of unstamped cigarettes, prima facie evidence. The possession by any person, other than a licensed distributor or licensed dealer of cigarettes which do not bear stamps, shall be prima facie evidence that the cigarettes have been imported and that they are intended for use or consumption within the state.

Sec. 10. Unstamped cigarettes subject to confiscation. Any cigarettes found at any place in this state without stamps affixed thereto as required by this act, unless such cigarettes shall be in the possession of a licensed distributor, or unless they shall be in course of transit from without this state and consigned to a licensed distributor or licensed dealer, or unless they shall have been received by a licensed dealer within 72 hours, or unless they shall have been imported, received or acquired within 24 hours by a licensed unclassified importer who has notified the tax assessor as provided

in section 3, are declared to be contraband goods and are subject to forfeiture to the state; and sheriffs, deputy sheriffs, police officers and duly authorized agents of the said assessor shall have the power to seize the same with or without process. In case such cigarettes are seized without a warrant, they shall be kept in some safe place for a reasonable time until a warrant can be procured. When such cigarettes are seized as provided herein, the officer or agent seizing them shall immediately file with the magistrate before whom such warrant is returnable, a libel against such cigarettes setting forth the seizure and describing the cigarettes, their containers and the place of seizure in sufficient manner to reasonably identify them, and that they were kept or intended for unlawful sale or use in violation of law, and pray for decree of forfeiture thereof and such magistrate shall fix a time for the hearing of such libel and shall issue his monition and notice of the same to all persons interested, citing them to appear at the time and place appointed to show cause why such cigarettes and their containers should not be declared forfeited, by causing true and attested copies of said libel and monition to be posted in 2 public and conspicuous places in the town or place where such cigarettes were seized, 10 days at least before said libel is returnable; provided, however, that in lieu of forfeiture proceedings title to such seized, unstamped cigarettes may be transferred to the state of Maine by the owner thereof. If title to and ownership in such cigarettes is transferred to the state, a receipt for the cigarettes shall be given to the former owner by the state tax assessor or his authorized agent.

Sec. 11. Forfeiture proceedings. If no claimant appears, such magistrate shall, on proof of notice as aforesaid, declare the same to be forfeited to the state. If any person appears and claims such cigarettes or any part thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with the magistrate such claim in writing, stating specifically the right so claimed, the foundation thereof, the items so claimed, the time and place of the seizure, and the name of the officer or duly authorized agent of the said assessor by whom the same were seized, and in it declare that they were not so kept or deposited for unlawful sale and use, as alleged in said libel and monition, and also state his business and place of residence, and shall sign and make oath to the same before said magistrate. If any person so makes claim, he shall be admitted as a party to the process; and the magistrate shall proceed to determine the truth of the allegations in said claim and libel, and may hear any pertinent evidence offered by the libelant or claimant. If the magistrate is, upon hearing, satisfied that said cigarettes were not so kept or deposited for

unlawful sale or use, and that the claimant is entitled to the custody or any part thereof, he shall give him an order in writing, directed to the officer or duly authorized agent of the said assessor having the same in custody, commanding him to deliver to said claimant the cigarettes to which he is so found to be entitled, within 48 hours after demand. If the magistrate finds the claimant entitled to no part of said cigarettes he shall render judgment against him for the libellant for costs, to be taxed as in civil cases before such magistrate, and issue execution thereon, and shall declare said cigarettes forfeited to the state. The claimants may appeal and shall recognize with sureties as on appeals in civil causes from a magistrate. All cigarettes declared forfeited to the state, or title to which has been transferred to the estate in lieu of forfeiture proceedings, shall be sold by the treasurer of state at the approximate wholesale price thereof, and the funds derived from such sales shall be paid into the state treasury.

Sec. 12. Taxpayers to keep records; assessors may examine. Each distributor and each dealer shall keep complete and accurate records of all cigarettes manufactured, produced, purchased and sold. Such records shall be of such kind and in such form as the tax assessor may prescribe and shall be safely preserved for 2 years in such manner as to insure permanency and accessibility for inspection by the assessor and his authorized agents. The assessors and his authorized agents may examine the books, papers and records of any distributor or dealer in this state for the purpose of determining whether the tax imposed by this act has been fully paid, and may investigate and examine the stock of cigarettes in or upon any premises where such cigarettes are possessed, stored or sold for the purpose of determining whether the provisions of this act are being obeyed.

Sec. 13. Hearings by assessor. Any person aggrieved by any action under the provisions of this act of the assessor or his authorized agent for which hearing is not elsewhere provided may apply to the assessor, in writing, within 10 days after the notice of such action is delivered or mailed to him, for a hearing, setting forth the reasons why such hearing should be granted and the manner of relief sought. The assessor shall promptly consider each such application and may grant or deny the hearing requested. If the hearing be denied, the applicant shall be notified thereof forthwith; if it be granted, the assessor shall notify the applicant of the time and place fixed for such hearing. After such hearing, the assessor may make such order in the premises as may appear to him just and lawful and shall furnish a copy of such order to the applicant. The assessor may, by notice in writing, at any time, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of

information concerning any manufacture, importation or sale of cigarettes which have escaped taxation to appear before him or his duly authorized agent with any specific books of accounts, papers or other documents for examination relative thereto.

Sec. 14. Use of metering machines. The tax assessor, if he shall determine that it is practicable to stamp by impression packages of cigarettes by means of a metering machine, may, in lieu of selling stamps under the provisions of section 4, authorize any licensed distributor or licensed dealer to use any metering machine approved by him, such machine to be sealed by the assessor before being used in accordance with regulations prescribed by him. Any licensed distributor or licensed dealer authorized by the tax assessor to affix stamps to packages by means of a metering machine shall file with the assessor a bond issued by a surety company licensed to do business in this state, in such amount as the tax assessor may fix, conditioned upon the payment of the tax upon cigarettes so stamped. The bond shall be in full force and effect for a period of 1 year and a day after the expiration of the bond, unless a certificate be issued by the tax assessor to the effect that all taxes due to the state have been paid. In the discretion of the tax assessor, cash may be accepted in lieu of a surety bond, such cash to be paid over by the tax assessor to the treasurer of state, who may deposit or hold the same subject to further order of the tax assessor. The tax assessor shall cause each metering machine approved by him to be read and inspected at least once a month and shall determine as of the time of each inspection the amount of tax due from the distributor or dealer using such machine after allowing for the discount, if any, provided for in section 4, which tax shall be due and payable upon demand of the tax assessor or his duly authorized agent.

Sec. 15. Tax is levy on consumer. The liability for, or the incidence of, the tax on cigarettes is hereby declared to be a levy on the consumer. The distributors shall add the amount of the tax on cigarettes presently levied to the price of the cigarettes and the distributor may state the amount of the taxes separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills and statements which advertise or indicate the price of such cigarettes. The provisions of this section shall in no way affect the method of collection of such taxes on cigarettes as now provided by existing law.

Sec. 16. Repealing and amending clause. All acts and resolves or parts thereof inconsistent herewith are hereby repealed or amended to conform to the provisions of this act.

Sec. 17. Effective date. The provisions of this act shall become effective on January 1, 1955.