

MAINE STATE LEGISLATURE

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Legislative Document

No. 895

H. P. 628

House of Representatives, February 19, 1957.

On motion of Mr. Brockway of Milo tabled pending reference and 750 copies ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Besse of Clinton.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-SEVEN

AN ACT Imposing a Tax on Poultry Producers for Promotional Purposes.

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

R. S., c. 16, §§ 282-298, additional. Chapter 16 of the Revised Statutes is hereby amended by adding thereto 16 new sections to be numbered 282 to 298, inclusive, to read as follows:

‘Maine Poultry Tax.

Sec. 282. Purpose. The production of poultry is one of the most important agricultural industries of this State, and sections 282 to 298, inclusive, are enacted into law to promote the prosperity and welfare of this State and of the poultry industry of the State by the fostering of promotional, educational, advertising and research programs of the said poultry industry of the State.

Sec. 283. Terms defined. The terms used in sections 282 to 298, inclusive, shall be construed as follows:

“Chickens” shall mean male and female birds, over 4 weeks and under 24 weeks of age.

“Fowl” shall mean female birds 24 weeks of age and over.

“Person” means any individual, partnership, corporation, association or any other business unit.

“Poultry” shall mean, for the purpose of sections 282 to 298, inclusive, only chicken, fowl and roosters as hereinafter defined, and shall not include turkeys or any other domesticated or commercially produced game bird.

“Poultry buyer” shall mean any person engaged in the business of purchasing, for sale, shipment or processing, live poultry produced in the State of Maine.

“Processing” means any operation or combination of operations whereby poultry which is intended for sale for human consumption is killed, dressed, eviscerated, cut up, heat treated, canned, packed, frozen, repacked, reprocessed, or changed in size, shape or form, for marketing for human consumption and includes the combining of poultry and poultry products with other edible ingredients for marketing for human consumption.

“Processor” means any person, engaged in the processing, as defined in this section, of live poultry produced within the State.

“Producer” shall mean any person, engaged in the production of poultry within the State, regardless whether such poultry be raised by the producer himself, his agents or by agreement with independent contractors.

“Producer-shipper” shall mean any producer who ships live poultry produced by him to other than a registered poultry buyer or processor as herein defined.

“Roosters” shall include male birds 24 weeks of age and over.

“Shipment” shall be deemed to take place when the poultry are located within the State in the car, truck or other conveyance in which the poultry are to be shipped.

“Taxpayer” shall mean any person who collects and pays over, or becomes liable to collect and pay over, any tax imposed under the provisions of this chapter.

Sec. 284. Tax on poultry. A tax is levied and imposed on all live poultry produced in this State, except as exempted herein, at the following rates: chickens, 5c per hundredweight; fowl and roosters, $2\frac{1}{2}c$ per bird; all taxes are to be computed on the basis of live weight.

Sec. 285. Collection of tax. The tax imposed under section 284 shall be collected by the following persons and in the following manner:

I. Each poultry buyer, purchasing live poultry and paying over, or becoming liable to pay over, the tax imposed by section 284 shall charge and collect from the seller a tax on all classes of poultry purchased by him at the rates set forth in said section 284, the said tax to be deducted from the purchase price of all poultry received or so purchased, except that such tax shall not apply to the purchase of any poultry with respect to which a tax has been paid, prior to such purchase under any of the provisions of this chapter.

II. Each processor processing live poultry on his own account shall pay a tax on the live weight of all such poultry processed at the rates specified in section 284, except that such tax shall not apply to the processing of any poultry with respect to which a tax has been paid, prior to such processing, under any of the provisions of this chapter.

III. Each processor, processing live poultry as agent or contractor, shall charge and collect from the owner of such poultry, a tax on all classes of

poultry processed by him at the rates set forth in section 284, except that such tax shall not apply to any poultry with respect to which a tax has been paid prior to such processing under any of the provisions of this chapter.

IV. Each producer-shipper who ships live poultry other than to registered poultry buyers or processors shall pay a tax at the rate specified in section 284 on all such poultry so shipped.

Sec. 286. Exemptions.

I. The sale of poultry for the production of eggs or for breeding purposes shall not be taxable under this chapter.

II. Any buyer or processor who purchases or processes less than 2,400 pounds of live poultry per annum whether as agent, owner, or otherwise, shall be exempt from the collection and payment of taxes imposed under this chapter.

III. Any producer-shipper who ships less than 2,400 pounds of live poultry other than to registered buyers or processors shall be exempt from taxation under this chapter.

Sec. 287. Registration. In order to facilitate the enforcement of this chapter, the following persons shall register with the assessor:

I. Poultry buyers who during the preceding year have purchased more than 2,400 pounds of live poultry of all classes.

II. Poultry processors who, during the preceding year, have processed more than 2,400 pounds of live poultry of all classes.

III. Producer-shippers who, during the preceding year, have shipped in excess of 2,400 pounds of live poultry of all classes other than to registered buyers or processors.

Each such buyer, processor or producer-shipper shall file an application with the State Tax Assessor on forms prescribed and furnished by the State Tax Assessor which shall contain the name under which said buyer, processor or producer-shipper is transacting business within the State, their place or places of business, the names and addresses of the several persons constituting a firm or partnership, and, if a corporation, the corporate name and names and addresses of its principal officers and agents within the State. The State Tax Assessor will then issue a certificate to such buyer, processor producer-shipper.

No buyer, processor or producer-shipper shall purchase, process or ship live poultry except as here exempted, other than to a registered processor or buyer, until such certificate is furnished as required by this section. No certificate shall be assignable, but it may be used by the legal representative of a registered deceased, incompetent, bankrupt or insolvent.

Sec. 288. Injunctions. Any buyer, processor or producer-shipper who shall engage in any transaction taxable under this chapter, without a currently valid certificate, as provided in these sections, may be enjoined from further buying, processing or shipping, as the case may be, until he has acquired such a certificate. Procedures for obtaining such injunction shall be governed by the provisions of section 34 of chapter 17, including the notice provision thereof.

Sec. 289. Bonds. When, in the judgment of the Assessor, it is necessary or advisable for the collection of taxes herein imposed, he may require 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. 290. Reports and payment of tax.

I. Every taxpayer shall keep as a part of his permanent records a record of all purchases, processing or shipments of live poultry other than to registered buyers or processors, which said records shall be open for inspection at all times as hereinafter provided.

II. Every taxpayer shall, on or before the 20th day of each month, render a report to the State Tax Assessor stating the quantity of live poultry purchased, processed or shipped, other than to registered buyers or processors; except that on application to the State Tax Assessor, the Assessor may permit the filing of returns other than monthly. Such reports shall be on forms to be furnished by the Tax Assessor and shall contain such further information as the said Tax Assessor shall prescribe.

III. On the filing of the report, each taxpayer shall pay to the State Tax Assessor all taxes due under sections 284 and 285, as reported. The State Tax Assessor shall pay over all receipts from such tax to the Treasurer of State daily.

Sec. 291. Authority to inspect. The State Tax Assessor or his duly authorized agent shall have authority to enter any place of business of a taxpayer, or any car, truck or other conveyance in which poultry is to be transported, and duly inspect any books or records of any taxpayer for the purpose of determining what poultry is taxable under this law, or for the purpose of determining the truth or falsity of any statement or return made by any taxpayer, and he shall have authority to delegate such powers to the Commissioner of Agriculture, his deputies, agents, servants or employees.

Sec. 292. Determination of tax by Assessor. If any taxpayer, whether the holder of a certificate or not, shall neglect or refuse to make and file any report as required by section 290, or shall file an incorrect or fraudulent report, the State Tax Assessor shall determine after an investigation the tax liability of such taxpayer for any particular month or months, and the State Tax Assessor shall assess the tax due the State, giving notices of such assessment to the taxpayer liable therefor, and make demand upon him for payment thereof.

In any action or proceeding for the collection of the poultry tax, the assessment by the State Tax Assessor of the tax due to the State shall constitute prima facie evidence of the claim of the State and the burden of proof shall be upon the taxpayer to show the assessment was incorrect.

Sec. 293. Penalty for false return or violation of provisions; tax may be collected by civil action; jurisdiction. Any taxpayer, as defined herein, who shall make any false or fraudulent report or return required by sections 282 to

298, inclusive, or who shall evade or violate any of the provisions of said sections, shall be punished by a fine of not more than \$500. Whenever any taxpayer shall fail to pay any tax due under the provisions of said section, within the time limited herein, the Attorney General shall enforce payment of such tax by civil action against such taxpayer for the amount of such tax, either in the Superior Court or municipal court in and for the county in which such taxpayer has his residence or established place of business, or in the Superior Court for Kennebec county.

Whenever any taxpayer shall fail to pay any tax due, or shall fail to file any report at the time it is required to be filed, for 2 consecutive reporting periods, the State Tax Assessor may revoke the taxpayer's certificate of such taxpayer; and such revocation shall become effective upon notice to the taxpayer. Any taxpayer aggrieved by such revocation may apply in writing, within 15 days after notice thereof, to the State Tax Assessor for a hearing, setting forth the reasons for the hearing, and the manner of relief sought. Upon receipt of such application the Assessor shall set a time and place for such hearing and give the taxpayer 10 days' notice thereof. After such hearing the Assessor may make such order as may appear to him just and lawful and shall give notice by furnishing a copy of such order to the applicant. Any taxpayer aggrieved by such order of the Assessor may appeal therefrom within 20 days after notice of such order to the Superior Court. Not less than 14 days before the sitting of said Superior Court, the appellant shall serve upon the State Tax Assessor or his duly authorized representative a copy of said petition stating the reasons for the appeal and notifying the State Tax Assessor when the appeal is to be heard. Pending judgment of the Court, the order of the State Tax Assessor shall remain in full force and effect. Any notice required to be given by the State Tax Assessor under this section may be given in hand or by registered mail.

Sec. 294. Appropriation and use of moneys received. Money received under the provisions of sections 282 to 298, inclusive, by the Treasurer of State shall be appropriated and used for the following purposes:

I. For the collection of the tax and enforcement of all provisions of sections 282 to 296, inclusive.

II. The balance in such amounts as shall be from time to time determined by the Maine Poultry Council to be used for such purposes as are defined in section 282, and for carrying out the provisions of sections 282 to 298, inclusive. The Council may cooperate with similar groups in other states and is authorized to pay to regional or national groups organized in whole or in part for the purpose of promoting the poultry industry, such part of its receipts as it deems for the best interests of the poultry industry of Maine.

Sec. 295. Maine Poultry Council. The Maine Poultry Council is hereby established and shall consist of 7 members to be appointed by the Commissioner of Agriculture. Four members of said Council shall constitute a quorum for the transaction of all business and the carrying out of the duties of the Council. Such members shall be practical poultry operators, operating within the State, who shall have been actively engaged in the poultry business for not less than 5 years and each shall be so actively engaged during his continuance in office. A

person shall be considered actively engaged in the poultry business if he has during the period derived a substantial portion of his income therefrom, or has been the directing or managing head of an entity that derives a substantial portion of its income from the poultry business.

All segments of the poultry industry shall be fairly represented on the Council, and the Commissioner of Agriculture shall, prior to the appointment, consult with the various poultry associations, individuals or unorganized groups of poultry operators in the State.

Regular appointments shall be for a term of 4 years, and each member shall serve until his successor is duly appointed and qualified. In case of a vacancy caused by death, resignation or otherwise, the vacancy shall be filled promptly by the Commissioner of Agriculture for the unexpired period of the term. Original appointments shall be 2 members for one year, 2 members for 2 years, 2 members for 3 years and one member for 4 years. No member appointed for a 4-year term may succeed himself.

The members of the Council shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties. They are authorized to select and employ such agents and personnel as may be necessary in their judgment and to fix their compensation.

Sec. 297. Advertising. It shall be unlawful for any poultry buyer to advertise or hold out or state to the public or any vendor, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the buyer, or that it will not be deducted from the selling price of the poultry sold, or if deducted, 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. 298. Tax in addition to other taxes. All taxes imposed and collected under the provisions of sections 282 to 298, inclusive, shall be in addition to any other taxes legally imposed or collected under any other provision of the law of the State now or hereafter in force.'