

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

FIRST REGULAR SESSION

January 3, 1979 to June 15, 1979

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PUBLIC LAWS
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by adding at the end the following new sentence:

There shall be a right to trial by jury in any action brought under this section.

Effective September 14, 1979

CHAPTER 452

H. P. 206 — L. D. 254

AN ACT to Amend the Law Relating to the Maine Milk Tax Committee.

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

Sec. 1. 36 MRSA § 4502, is repealed and the following enacted in its place:

§ 4502. Definitions

As used in this chapter unless the context otherwise indicates, the following terms shall have the following meanings.

1. Dealer. “Dealer” means any person who purchases or receives milk for sale as the consignee or agent of a producer, or handles milk for sale, shipment, storage or processing within the State and shall include a producer-dealer, or a store.

2. Milk. “Milk” means cows’ milk and shall include cream in the proportion that one quart of cream shall be considered the equivalent of 4 quarts of milk.

3. Producer. “Producer” means any person who produces milk and sells milk to a dealer.

4. Producer-dealer. “Producer-dealer” means any dealer who himself produces a part or all of his milk and sells milk other than to a dealer.

5. Class 1 milk. “Class 1 milk” means:

A. All fluid milk sold, distributed or disposed of as or in milk which contains not more than 11% butterfat and skim milk and cultured buttermilk sold for human consumption; and

B. All milk products sold, distributed or disposed of for human consumption as or in flavored milk and flavored skim milk.

6. Board. “Board” means the Maine Dairy Promotion Board.

7. **Records.** "Records" means books, records, accounts, memoranda or other data pertaining to the purchase and distribution of milk.

8. **Store.** "Store" means a grocery store, dairy products store, canteen, milk vending machine operator, milk dispensing operator or any similar commercial establishment or outlet or any other sale where milk is sold to consumers for consumption off the premises.

9. **Consumer.** "Consumer" means any person other than a milk dealer who purchases milk for fluid consumption.

Sec. 2. 36 MRSA § 4503 is repealed and the following enacted in its place:

§ 4503. **Maine Dairy Promotion Board**

There is hereby established the "Maine Dairy Promotion Board" consisting of the following 5 members: The Commissioner of Agriculture and 4 producers, who shall be appointed by the commissioner on recommendation of the various producer associations, individuals or unorganized groups of producers in the State. Each appointed member shall serve for 2 years or until his successor is duly appointed and qualified. In case of a vacancy caused by death, resignation or otherwise, the vacancy shall be filled by the commissioner for the unexpired period of the term. The appointed members shall be allowed actual traveling and other necessary expenses incurred in the performance of their duties and each member shall receive a per diem compensation for the time actually spent in the performance of his duties. This compensation shall be determined by the Governor. The members of the board shall elect a chairman. The commissioner may employ a director and such clerks and assistants as he may deem necessary and may prescribe their duties and fix their compensation, subject to the Personnel Law.

Sec. 3. 36 MRSA § 4505, as last amended by PL 1969, c. 213, § 1, is repealed and the following enacted in its place:

§ 4505. **Tax**

A tax is levied and imposed on all dealers at the rate of .8 of 1% of the average Class 1 price per hundredweight, rounded to the nearest 10th of 1¢, paid to Maine producers by Maine dealers for milk of 3.5% butterfat content during the previous calendar year on all milk produced, purchased or imported for sale within this State. No tax shall be imposed upon the milk consumed on the farm where produced. The average Class 1 milk price shall be certified to the State Tax Assessor by the Commissioner of Agriculture.

Sec. 4. 36 MRSA § 4506, as last amended by PL 1969, c. 213, § 2, is repealed and the following enacted in its place:

§ 4506. **Dealer may deduct tax from purchase price**

Each dealer purchasing milk and paying, or becoming liable to pay, the tax imposed by section 4505 may charge and collect the tax from the producer to be deducted from the purchase price of all milk purchased and received by the dealer.

In case the same milk is handled by more than one dealer, the first dealer within the State dealing in or handling the milk shall be deemed to be the dealer within the meaning of this section.

Sec. 5. 36 MRSA §§ 4507 to 4510, as amended, are further amended to read:

§ 4507. Applications for certificate; no activity until certificate issued

Each ~~handler dealer~~ 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 such ~~handler dealer~~ is transacting business within the State, the place or places of business and location of said ~~handler's dealer's~~ plants. The State Tax Assessor will then issue a certificate to the ~~handler dealer~~ and no ~~handler dealer~~ shall receive or sell any milk until such certificate is furnished as required by this section. Such certificate shall remain in force until surrendered or revoked. Every ~~handler dealer~~ who shall cease to receive or sell milk shall surrender such certificate to the State Tax Assessor. The certificate shall not be deemed to be a "license" within the meaning of that term in the Maine Administrative Procedure Act.

Any ~~handler dealer~~ who shall receive or sell any milk without a currently valid ~~handler's dealer's~~ certificate may be enjoined from further receiving or selling any milk until he has acquired such a certificate. Jurisdiction is granted to the Superior Court to hear such cases and to enter such orders and decrees as the nature of the case may require.

§ 4508. Determination of tax by State Tax Assessor

If any ~~handler dealer~~, whether the holder of a certificate or not, shall neglect or refuse to make and file any report as required by section 4509, or shall file an incorrect or fraudulent report, the State Tax Assessor shall determine after an investigation the tax liability of such ~~handler dealer~~ for any particular month or months, and the State Tax Assessor shall assess the tax due the State, giving notice of such assessment to the ~~handler dealer~~ liable therefor, and make demand upon him for payment thereof.

In any action or proceeding for the collection of the milk 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 ~~handler dealer~~ to show the assessment was incorrect.

§ 4509. Reports; payment of tax

Every ~~handler dealer~~ shall keep as a part of his permanent records a record of

all purchases, sales and shipments of milk, which said records shall be open for inspection at all times, and every **handler dealer** shall, on or before the 20th day of each month, render a report to the State Tax Assessor stating the quantity of milk received by him during the preceding calendar month, ~~and every handler who is a producer dealer shall include in such report the quantity of milk produced and sold by him other than to a handler~~ except that upon application to the State Tax Assessor, **handlers dealers** who sell less than 100 quarts of milk per day may be permitted by the State Tax Assessor to file reports quarterly upon the 20th day of the month following the quarter. Such reports shall be on forms to be furnished by said State Tax Assessor, and shall contain such further information as said State Tax Assessor shall prescribe. On the filing of said a report, each **handler dealer** shall pay to the State Tax Assessor a tax at the rate of ~~5¢ per hundredweight~~ **imposed by section 4505** upon all milk so reported. The State Tax Assessor shall pay over all receipts from such tax to the Treasurer of State daily.

§ 4510. Inspections

The State Tax Assessor or his duly authorized agent shall have authority to enter any place of business of any **handler dealer** and to inspect any books and records of any **handler dealer** for the purpose of determining what milk is taxable under this chapter or for the purpose of determining the truth or falsity of any statement or return made by any **handler dealer**, and he shall have authority to delegate such power to the Commissioner of Agriculture, his deputies, agents, servants or employees.

Sec. 6. 36 MRSA § 4511, sub-§ 3, as enacted by PL 1971, c. 594, § 18, is repealed.

Sec. 7. 36 MRSA § 4511, last ¶ is amended to read:

The ~~committee~~ **board** may cooperate with similar **boards and committees** in other states and is authorized to pay to a New England committee such part of its receipts as it deems for the best interests of the dairy industry of Maine.

Sec. 8. 36 MRSA § 4512, as last amended by PL 1977, c. 694, § 714, is further amended to read:

§ 4512. Penalties; civil action to collect tax; jurisdiction

Whenever any **handler dealer** shall fail to pay any tax due under this chapter, within the time limited, the Attorney General shall enforce payment of such tax by civil action against such **handler dealer** for the amount of such tax, either in the Superior Court in and for the county or the District Court in the division in which such **handler dealer** has his residence or established place of business or in the Superior Court for Kennebec County.

Whenever any **handler dealer** 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 ~~handler's~~ **dealer's** certificate of such ~~handler~~ **dealer**. The revocation shall be reviewable in accordance with section 151.

Sec. 9. Effective date. This Act shall not take effect unless the producers required to pay the tax have approved the tax by an affirmative vote. At least 51% of the producers eligible to vote must vote and a majority of that number must vote in the affirmative. The Commissioner of Agriculture shall mail a ballot and copy of this Act and a self-addressed stamped envelope, within 30 days after the effective date of this Act, to each producer required to pay the tax, whose name appears on a list certified to him to be accurate, according to available information, by the Division of Inspections. The question on the ballot shall be as follows:

"Shall a tax be levied and imposed on all certified producers at the rate of .8 of 1% of the average Class 1 price per hundredweight, rounded to the nearest 10th of 1%, paid to Maine milk producers by Maine milk dealers for milk of 3.5% butterfat content during the previous calendar year on all milk produced or imported for sale within this State, except milk consumed on the farm where produced?"

Yes No

I hereby certify that I am a producer of milk in Maine.

If this farm is a partnership or is incorporated, I am authorized to cast this ballot in behalf of that partnership or corporation.

Signature of Producer

Signature of Witness

The commissioner shall review the returns received by him within 50 days after the date of mailing the ballots to the producers and certify to the State Tax Assessor the results of the election.

If a majority of those producers voting approve the provision, section 3 of this Act which repeals and replaces the Maine Revised Statutes, Title 36, section 4505, the Act shall take effect on January 1, 1980.

Effective September 14, 1979 unless otherwise indicated

CHAPTER 453

H. P. 728 — L. D. 915

AN ACT to Amend the Standard Valuation Law.