

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND ELEVENTH LEGISLATURE

**SECOND SPECIAL SESSION**

November 18, 1983

AND AT THE

**SECOND REGULAR SESSION**

January 4, 1984 to April 25, 1984

AND AT THE

**THIRD SPECIAL SESSION**

September 4, 1984 to September 11, 1984

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH  
IN ACCORDANCE WITH MAINE REVISED STATUTES  
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

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J.S. McCarthy Co., Inc.  
Augusta, Maine  
1986

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND ELEVENTH LEGISLATURE  
JANUARY 4, 1984 TO APRIL 25, 1984

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1984-85

EDUCATIONAL AND CULTURAL SERVICES,  
DEPARTMENT OF

Education in Unorganized Territory	
All Other	\$520,000
This appropriation provides for improvements to the Edmunds School.	

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 27, 1984.

## CHAPTER 828

H.P. 1871 - L.D. 2473

### AN ACT Providing for Administrative Changes in Maine Tax Laws.

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

Sec. 1. 6 MRSA §53, sub-§5, as amended by PL 1981, c. 80, is further amended to read:

5. Use of aircraft on market for sale. Aircraft dealers whose principal occupation is the sale of aircraft, and who properly register their aircraft under this section, may use the aircraft while placed upon the market for sale as if the aircraft were registered under section 52; including Federal Air Regulation, Part 135, operations. Nothing in this section ~~shall~~ may permit aircraft brokers ~~from using to use~~ aircraft offered for sale for more than 15 months from the date that the aircraft is first offered for sale without registration required under section 52.

Sec. 2. 36 MRSA §584, as amended by PL 1975, c. 771, §§400 and 401, is repealed.

Sec. 3. 36 MRSA §1484, sub-§3, ¶C, as amended by PL 1979, c. 732, §§26 and 31, is further amended to read:

C. If the motor vehicle is owned by a corporation or a partnership, the excise tax shall be paid in the following manner.

(1) If it is a corporation or partnership other than one described in subparagraph (2), the excise tax shall be paid to the municipality place in which the registered or main office of that organization is located, except that if the organization has an additional permanent place, or places, of business where motor vehicles are customarily kept, the tax on these vehicles shall be paid to the municipality place where such permanent place of business is located. The temporary location of an office and the stationing of vehicles in connection with a construction project of less than 24 months duration is not considered to constitute a permanent place of business. In the case of a foreign corporation or partnership not maintaining a place of business within the State, the excise tax shall be paid to the State.

(2) In the case of corporations described in Title 35, section 2301, any excise taxes owed shall be paid to the municipality place in which the registered or main office of that organization is located.

(3) If a municipality, county or motor vehicle owner feels the excise tax has been improperly levied under the authority of this paragraph, the owner, county or municipality may request a determination of this question by the State Tax Assessor. The State Tax Assessor's determination shall be binding on all parties. Any party may seek review of the determination in accordance with the Maine Rules of Civil Procedure, Rule 80-B.

Sec. 4. 36 MRSA §1752, sub-§14, as amended by PL 1971, c. 479, is further amended to read:

14. Sale price. "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 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. Discounts allowed and taken on sales shall not be included. "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 nor shall "sale price" include an amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when said amount is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages, nor shall a sales tax be charged or collected on the value in money of meals and all lodging provided to employees at their place of employment when the amount of said value in money is allowed as a credit towards the wages of said employees. "Sale price" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales, including sales of telephone or telegraph service, whether imposed upon the retailer or the consumer, excepting any manufacturers' ~~or~~ importers', alcohol or tobacco excise tax; and shall not include the cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser provided such charges are separately stated and provided such transportation occurs by means of common carrier, contract carrier or the United States mails.

Sec. 5. 36 MRSA §1760, sub-§28, as amended by PL 1981, c. 493, §2, is repealed and the following enacted in its place:

28. Community mental health facilities and community mental retardation facilities. Sales to mental health facilities or mental retardation facilities which are:

A. Contractors under or receiving support under the Federal Community Mental Health Centers Act or its successors; or

B. Receiving support from the Department of Mental Health and Mental Retardation pursuant to Title 34-B, section 1206, 3604 or 5433.

Sec. 6. 36 MRSA §1760, sub-§43, as enacted by PL 1983, c. 560, §§3 and 6, is amended to read:

43. Nursery schools and day-care centers. Sales to licensed, incorporated nonprofit nursery schools and day-care centers.

Sec. 7. 36 MRSA §3202, sub-§9, as enacted by PL 1983, c. 94, Pt. D, §§6 and 9, is amended to read:

9. User. "User" means any person who is the registered owner of a motor vehicle who uses and consumes special fuel within this State in an internal combustion engine for the generation of power to propel vehicles of any kind or character, except in noncommercial vehicles having a fuel tank capacity of 30 gallons or less which are owned by nonresidents of this State and are not required to be registered in this State, and except in noncommercial vehicles having a fuel tank capacity of 30 gallons or less owned by residents of this State who purchase only special fuel upon which the tax imposed by section 3203 has been paid by the user.

If the registered owner of a motor vehicle which uses and consumes special fuel within this State fails to secure a user's license, or report or pay the tax due, any person who operates or causes to be operated that vehicle in this State shall be deemed to be a "user" and shall be required to be licensed, report and pay the tax due.

Sec. 8. 36 MRSA §3203, as enacted by PL 1983, c. 94, Pt. D, §§6 and 9, is amended to read:

§3203. Tax levied

An excise tax is levied and imposed upon all suppliers of special fuel sold or used in this State on each gallon of distillates at the rate prescribed in section 2903 and on each gallon of low-energy fuel at the rate prescribed in section 2903, less 1¢, except sales of special fuel made to the State or any political subdivision thereof; such special fuel sold or used in such form and under such circumstances as shall preclude the collection of this tax by reasons of the laws of the United States; sold only for exportation from this State; brought into the State in a noncommercial vehicle having a standard fuel tank capacity of 30 gallons or less owned by a nonresident; delivered into a tank used solely for heating or cooking purposes, sold for resale to a licensed supplier; and sold to a person for the generation of power for resale or manufacturing. Where special fuel is delivered by a supplier on a consignment basis to a consumer or to a retail outlet, whether the re-

tail outlet is wholly owned by the supplier or not, it shall be considered to have been "sold" within the meaning of the Special Fuel Tax Act. All taxes collected under this section shall be credited to the Highway Fund. Where kerosene is delivered into a separate tank for retail sale, the excise tax is not to be collected by the supplier, rather licensed users shall remit the tax in accordance with section 3207.

Sec. 9. 36 MRSA §3209, first ¶, as enacted by PL 1983, c. 94, Pt. D, §§6 and 9, is amended to read:

Every licensed supplier shall file on or before the last day of each month a report with the State Tax Assessor stating the gallons of special fuel received, taxable gallons sold, exempt gallons sold, taxable gallons used and exempt gallons used in this State by him during the preceding calendar month, on forms to be furnished by the State Tax Assessor. The report shall contain any further information pertinent thereto as the State Tax Assessor shall prescribe. The State Tax Assessor may make such other rules regarding the enforcement of the special fuel tax as he may deem necessary, including provision for a certificate of exemption for certain purchases of special fuels for nonhighway use. At the time of filing his report, each supplier shall pay to the State Tax Assessor a tax as prescribed in sections 2903 and 3203 upon each gallon reported as a taxable sale or as taxable gallons used.

Sec. 10. 36 MRSA §3218, first ¶, as enacted by PL 1983, c. 94, Pt. D, §§6 and 9, is amended to read:

Any person, association of persons, firm or corporation who shall buy and use an internal combustion engine fuel, as defined in this chapter, for the purpose of operating or propelling motor boats, tractors used for agricultural purposes not operating on public ways, or in such vehicles as run only on rails or tracks, in stationary engines, in the mechanical or industrial arts, for registered vehicles operating off the highways of this State, or for any other ~~commercial~~ use except in registered motor vehicles operated on the highways of this State, and who shall have paid any tax on internal combustion engine fuel levied or directed to be paid as provided by this chapter, either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of that tax to the price of that fuel and paid by that consumer, shall be reimbursed and repaid, less 1¢, upon presenting to the State Tax Assessor a sworn statement accompanied by the origi-



nal invoices or other evidence as the State Tax Assessor may require showing those purchases, which statement shall show the total amount of the fuel so purchased and used by that consumer other than in registered motor vehicles operated on the highways of this State, and in the operation of aircraft. Applications for refunds shall be filed with the State Tax Assessor within 15 months from the date of purchase.

Sec. 11. 36 MRSA §3742, as amended by PL 1983, c. 480, Pt. A, §56, is repealed.

Sec. 12. 36 MRSA §4361, as amended by PL 1979, c. 378, §29, is further amended to read:

§4361. Definitions

Whenever used in this chapter, unless the context shall otherwise require, the following words and phrases shall have the following meanings:

1. Dealer. "Dealer" shall mean means any person other than a distributor, who is engaged in this State in the business of selling cigarettes.

1-A. Cigarette. "Cigarette" means a cigarette, as defined in the United States Internal Revenue Code of 1954, Chapter 52-A, as amended.

2. Distributor. "Distributor" shall mean means 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.

~~3. Licensed dealer. "Licensed dealer" shall mean a dealer licensed under this chapter.~~

4. Licensed distributor. "Licensed distributor" shall mean means a distributor licensed under this chapter.

4-A. Licensed wholesale dealer. "Licensed wholesaler dealer" means a sub-jobber licensed under this chapter.

5. Person. "Person" shall mean means any individual, firm, fiduciary, partnership, corporation, trust or association, however formed.

6. Sale or sell. "Sale" or "sell" shall include includes or apply to gifts, exchanges and barter.

7. Sub-jobber. "Sub-jobber" ~~shall mean~~ means a wholesale dealer who does not qualify as a distributor.

9. Unclassified importer. "Unclassified importer" ~~shall mean~~ means any person, firm, corporation or association within the State, other than a licensed distributor, ~~sub-jobber~~ or licensed wholesale dealer who shall import, receive or acquire from without the State, cigarettes for use or consumption within the State.

Sec. 13. 36 MRSA §4362, as amended by PL 1979, c. 508, §1, is further amended to read:

§4362. Licenses

Each person engaging in the business of selling cigarettes in this State, including any distributor or dealer, excepting a dealer who exclusively sells at retail or through a vending machine, shall secure a license from the State Tax Assessor before engaging in such business. A separate application and license shall be required for each wholesale outlet. Such license shall be issued on forms prescribed by the State Tax Assessor, and shall contain the name and address of the applicant, the address of the place of business and such other information as the State Tax Assessor may require for the proper administration of this chapter. Each application for a wholesale outlet license shall be accompanied by a fee of \$25. 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. Each unclassified importer shall, before importing, receiving or acquiring cigarettes from without the State, secure a license from the State 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, commits a civil violation for which a forfeiture not to exceed \$25 may be adjudged for the first violation and a forfeiture of not less than \$25 nor more than \$200 shall be adjudged for each subsequent violation. 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 commits a civil violation for which a forfeiture not to exceed \$25 may be adjudged for the first violation and a forfeiture of not less than \$25 nor more than \$200 shall be adjudged for each subsequent violation.

Sec. 14. 36 MRSa §4364 is amended to read:

§4364. -- revocation

The State Tax Assessor may revoke or suspend the license of any ~~dealer~~ sub-jobber, unclassified importer or distributor for failure to comply with any provisions of this chapter, or if the person licensed has ceased to act in the capacity for which the license was issued. Any person aggrieved by such revocation or suspension may apply to the State Tax Assessor for a hearing as provided in section 4377, and may further appeal to the courts as provided in section 4378 151.

Sec. 15. 36 MRSa §4366, as amended by PL 1981, c. 364, §47, is further amended to read:

§4366. Stamps provided by State Tax Assessor

The State 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 this chapter. To licensed distributors he shall sell such cigarette stamps at a discount of 2 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 State Tax Assessor 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 State Tax Assessor in an amount not less than the sale price of such stamps shall have been filed with the State Tax Assessor conditioned upon payment for such stamps. He shall keep accurate records of all stamps sold to each distributor and dealer.

Sec. 16. 36 MRSa §4369, as amended by PL 1979, c. 508, §3, is further amended to read:

§4369. Stamps affixed by licensed dealers

Each ~~licensed~~ dealer shall, within 72 hours after coming into possession of any cigarettes not bearing proper stamps evidencing payment of the tax imposed by this chapter, and before selling such cigarettes, affix or cause to be affixed, in such manner as the State Tax Assessor may specify in regulations issued pursuant to this chapter, to each individual package of cigarettes, stamps of the proper denomination as required by section 4365.

Sec. 17. 36 MRSA §4370, as amended by PL 1979, c. 508, §4, is further amended to read:

§4370. Sale of unstamped cigarettes prohibited

No distributor shall ~~may~~ may sell, and no other person shall ~~may~~ may 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 chapter, provided a ~~licensed~~ licensed dealer may keep on hand unstamped cigarettes for a period not exceeding 72 hours, and provided a distributor may sell to another distributor, subject to regulations prescribed by the State Tax Assessor, cigarettes stamped with the indicia of another state. Any unstamped cigarettes in the possession of a ~~licensed~~ licensed dealer shall be presumed to have been held by him for more than 72 hours unless proof be shown to the contrary. Any person violating any provision of this section shall be guilty of a Class E crime, provided that no imprisonment penalty shall ~~may~~ may be imposed for a first offense.

Sec. 18. 36 MRSA §4371 is amended to read:

§4371. Possession of unstamped cigarettes; prima facie evidence

The possession by any person, other than a licensed distributor or ~~licensed~~ 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. 19. 36 MRSA §4372, first ¶, as amended by PL 1975, c. 31, §§1 and 2, is further amended to read:

Any cigarettes found at any place in this State without stamps affixed thereto as required by this chapter, 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~~ licensed dealer, or unless they shall have been received by a ~~licensed~~ 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 State Tax Assessor as provided in section 4365, are declared to be contraband goods and are subject to forfeiture to the State. Sheriffs, deputy sheriffs, police officers and duly authorized agents of the ~~said~~ said State Tax 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, the officer or agent seizing them shall immediately file with the judge before whom such warrant is returnable, a libel against such cigarettes setting forth the seizure and describing the cigarettes, their packaging 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 a decree of forfeiture thereof. Such judge 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 packaging should not be declared forfeited, by causing true and attested copies of ~~said~~ the 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~~ the libel is returnable. 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. 20. 36 MRSA §4373, as amended by PL 1979, c. 615, §1, is further amended to read:

§4373. Forfeiture proceedings

If no claimant appears, such judge shall, on proof of notice, 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 judge 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~~ State Tax 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~~ the libel and monition, and state his business and place of residence and shall sign and make oath to the same before ~~said~~ the judge. If any person so makes claim, he shall be admitted as a party to the process; and the judge shall proceed to determine the truth of the allegations in ~~said~~ the claim and libel, and may hear

any pertinent evidence offered by the libelant or claimant. If the judge is, upon hearing, satisfied that said the cigarettes were not so kept or deposited for unlawful sale or use, and that the claimant is entitled to the custody of any part thereof, he shall give him an order in writing, directed to the officer or duly authorized agent of the said State Tax Assessor having the same in custody, commanding him to deliver to said the claimant the cigarettes to which he is so found to be entitled, within 48 hours after demand. If the judge finds the claimant entitled to no part of said the cigarettes, he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such judge, and issue execution thereon, and shall declare said the cigarettes forfeited to the State. The claimants may appeal and shall recognize with sureties as on appeals in civil actions from a judge. All cigarettes declared forfeited to the State, or title to which has been transferred to the State in lieu of forfeiture proceedings, shall be sold by the State Purchasing Agent, and the funds derived from such sales shall be paid into the State Treasury. In the case of cigarettes seized from any ~~licensed~~ dealer because of insufficient stamps, the owner from whom they are seized shall be reimbursed within 30 days of forfeiture for the face value of any Maine cigarette tax stamps affixed to the packages, provided the face value of such stamps exceeds \$1. The Treasurer of State shall provide, out of money collected under this chapter, the funds necessary for such reimbursement.

Sec. 21. 36 MRSA §4380 is amended to read:

§4380. Use of metering machines

The State 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 section 4366, authorize any licensed distributor or ~~licensed~~ dealer to use any metering machine approved by him, such machine to be sealed by the State Tax Assessor before being used in accordance with regulations prescribed by him. Any licensed distributor or ~~licensed~~ dealer authorized by the State Tax Assessor to affix stamps to packages by means of a metering machine shall file with the State Tax Assessor a bond issued by a surety company licensed to do business in this State, in such amount as the State 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 one year and a day after the expira-

tion of the bond, unless a certificate be issued by the State Tax Assessor to the effect that all taxes due to the State have been paid. In the discretion of the State Tax Assessor, cash may be accepted in lieu of a surety bond, such cash to be paid over by the State Tax Assessor to the Treasurer of State, who may deposit or hold the same subject to further order of the State Tax Assessor. The State 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 4366, which tax shall be due and payable upon demand of the State Tax Assessor or his duly authorized agent.

Sec. 22. 36 MRSA §5122, sub-§2, ¶A, as amended by PL 1983, c. 519, §25, is further amended to read:

A. Interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States or on a seller-sponsored loan, as defined by Title 10, section 974 983, subsection 16 to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, provided that the amount subtracted shall be decreased by any expenses incurred in the production of the interest or dividend income to the extent that these expenses, including amortizable bond premiums, are deductible in determining federal adjusted gross income; and

Effective July 25, 1984.

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## CHAPTER 829

H.P. 1774 - L.D. 2352

AN ACT to Amend the Potato Price  
Stabilization Program.

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

Sec. 1. 5 MRSA §711, sub-§2, ¶A, as amended by PL 1983, c. 349, §2; c. 480, §3; c. 489, §4; and c.