

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

Sec. 51. 24-A MRSA §4361, first ¶, as amended by PL 1973, c. 585, §12, is further amended to read:

A certified copy of any order to show cause issued under section 4360, and a copy of the petition upon which the same is made, ~~shall~~ must be served upon the insurer by delivering the same to its president, vice-president, secretary, treasurer, director or to its managing agent or attorney in fact, if a reciprocal insurer; or if no such officer or functionary can readily be found in this State, then such process may be served upon the insurer by service thereof upon the superintendent pursuant to ~~sections~~ section 421 and 422.

Sec. 52. 24-A MRSA c. 63, as amended, is repealed.

Sec. 53. 24-A MRSA §6402, sub-§7, as enacted by PL 1991, c. 828, §33, is amended to read:

7. Producer. "Producer" means an insurance ~~agent or broker~~ producer licensed pursuant to chapter ~~17~~ 16.

Sec. 54. 39-A MRSA §403, sub-§12, as amended by PL 1995, c. 594, §5, is further amended to read:

12. Qualifications for claims personnel. Persons who investigate, settle or negotiate the settlement of claims on behalf of self-insurers or employees of self-insurers are required to be licensed as insurance adjusters pursuant to Title 24-A, ~~chapter 17,~~ subchapters I and V chapter 16.

Sec. 55. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 5, section 12004-I, subsection 70-A; Title 24-A, section 601, subsection 5; section 1905, subsection 3; section 1907, subsection 1; section 1955, subsection 2; section 2012, subsection 4; section 2013, subsection 2; section 3354, subsection 5; section 3628, first paragraph; section 3629, subsection 9; section 4128, first paragraph; and section 6402, subsection 7 take effect October 1, 1997. Those sections of this Act that repeal Title 5, section 12004-I, subsection 71; Title 24, section 2312; section 2313 and Title 24-A, section 601, subsection 6; and chapter 17 take effect October 1, 1997. That section of this Act that enacts Title 24-A, chapter 16 takes effect October 1, 1997.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved unless indicated otherwise.

Effective June 11, 1997, unless otherwise indicated.

CHAPTER 458

H.P. 1150 - L.D. 1615

An Act to Modernize Maine's Cigarette Tax Laws

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

Sec. 1. 36 MRSA §4361, as amended by PL 1983, c. 828, §12, is further amended to read:

§4361. Definitions

~~Whenever~~ As used in this chapter, unless the context ~~shall~~ otherwise ~~require~~ indicates, the following ~~words and phrases shall~~ terms have the following meanings.

1. Dealer. "Dealer" 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~~ Section 5702 of the Code.

2. Distributor. "Distributor" means any person engaged in this State in the business of producing or manufacturing cigarettes ~~or in this State,~~ importing cigarettes into the this State or making wholesale purchases or sales of cigarettes at least 75% of which are purchased directly from the manufacturers thereof in this State on which the tax imposed by this chapter has not been paid.

4. Licensed distributor. "Licensed distributor" 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" means any individual, firm, fiduciary, partnership, corporation, trust or association, however formed.

6. Sale or sell. "Sale" or "sell" includes or ~~apply~~ applies to gifts, exchanges and barter.

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

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

10. Unstamped cigarettes. "Unstamped cigarettes" means cigarettes to which stamps issued by the State Tax Assessor pursuant to section 4366-A are not affixed.

Sec. 2. 36 MRSA §4362, as amended by PL 1983, c. 828, §13, is repealed.

Sec. 3. 36 MRSA §4362-A is enacted to read:

§4362-A. Licenses

1. Generally. A distributor doing business in this State shall obtain a license from the assessor. A license must be obtained for each wholesale outlet maintained by the distributor. A distributor's license must be prominently displayed on the premises covered by the license.

2. Applications; fees; forms. An application for a distributor's license must be made on a form prescribed and issued by the assessor and must be accompanied by a fee of \$250. Licenses are issued in the form prescribed by the assessor and must contain the name and address of the license holder, the address of the place of business and such other information as the assessor may require for the proper administration of this chapter.

3. Expiration and reissuance. A distributor's license expires one year from the 31st day of July next succeeding the date of issuance unless sooner revoked by the assessor pursuant to subsection 5 or unless the business with respect to which the license was issued is sold, in either of which cases the holder of the license shall immediately surrender it to the assessor. A license holder may submit an application to the assessor before the expiration date for a renewal of the license for a further period of 2 years, with the fee prescribed by subsection 2.

4. Penalties. A distributor who imports into this State, sells at wholesale, offers for sale at wholesale or possesses with intent to sell at wholesale any cigarettes without holding a distributor's license issued by the assessor pursuant to this section commits a civil violation for which a forfeiture of not less than \$250 nor more than \$500 must be adjudged for the first violation and a forfeiture of not less than \$500 nor more than \$1,000 must be adjudged for each subsequent violation.

5. Revocation or suspension. The assessor may revoke or suspend the license of a license holder for failure to comply with any provision of this chapter or if the license holder no longer imports or sells cigarettes. Any person aggrieved by a revocation or suspension may apply to the assessor for a hearing as provided in section 151.

Sec. 4. 36 MRSA §4363, as amended by PL 1979, c. 508, §2, is repealed.

Sec. 5. 36 MRSA §4364, as amended by PL 1983, c. 828, §14, is repealed.

Sec. 6. 36 MRSA §4365, as amended by PL 1989, c. 588, Pt. D, §1, is repealed and the following enacted in its place:

§4365. Rate of tax

A tax is imposed on all cigarettes imported into this State or held in this State by any person for sale at the rate of 18.5 mills for each cigarette. Payment of the tax is evidenced by the affixing of stamps to the packages containing the cigarettes.

Sec. 7. 36 MRSA §4365-A, as amended by PL 1989, c. 588, Pt. D, §2, is repealed.

Sec. 8. 36 MRSA §§4365-B and 4365-C, as enacted by PL 1989, c. 588, Pt. D, §3, are repealed.

Sec. 9. 36 MRSA §4366, as amended by PL 1983, c. 828, §15, is repealed.

Sec. 10. 36 MRSA §§4366-A and 4366-B are enacted to read:

§4366-A. Cigarette tax stamps

1. Generally. A distributor may not sell, offer for sale or display for sale any cigarettes within this State that do not bear stamps evidencing the payment of the tax imposed by this chapter. The face value of the stamps must be considered as part of the retail cost of the cigarettes.

2. Provided to sellers. The State Tax Assessor shall provide stamps suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by this chapter. The assessor shall sell cigarette stamps to licensed distributors at a discount of 2 1/2% of their face value. The assessor may permit a licensed distributor to pay for the stamps within 30 days after the date of purchase, if a bond satisfactory to the assessor in an amount not less than the sale price of the stamps has been filed with the assessor conditioned upon payment for the stamps.

3. Affixed to cigarettes. A distributor shall affix, or cause to be affixed, in such manner as the assessor may specify, stamps of the proper denominations to individual packages of cigarettes sold or distributed by the distributor in this State. The distributor shall affix the stamps prior to the time the cigarettes are transferred out of the possession of the distributor.

4. Resale and reuse of stamps prohibited; redemption. Cigarette stamps issued by the assessor

pursuant to this chapter may not be sold, transferred or used more than once by a distributor. The assessor shall redeem any unused, uncanceled stamps presented within one year of the date of purchase by any licensed distributor, at a price equal to the amount paid for them. The assessor may also redeem, at face value, cigarette tax stamps affixed to packages of cigarettes that have become unsalable, provided application is made within 90 days of the return of the unsalable cigarettes to the manufacturer, and the Treasurer of State shall provide, out of money collected pursuant to this chapter, the funds necessary for the redemption.

5. Possession of unstamped cigarettes; presumption of intent for sale. The possession in this State by any person other than a licensed distributor of unstamped cigarettes is prima facie evidence that the cigarettes have been imported and that they are intended for sale in this State.

6. Penalties. A person who sells, offers for sale, displays for sale or possesses with intent to sell unstamped cigarettes in violation of this section is guilty of a Class D crime, except that violation of this section is a Class C crime when the person has 2 or more prior convictions for violation of any provision of this chapter. A person who sells or transfers cigarette stamps, or uses stamps more than once in violation of this section, is guilty of a Class D crime, except that violation of this section is a Class C crime when the person has one or more prior convictions for violation of any provision of this chapter. For purposes of this section, the date of the prior conviction must precede the commission of the offense being enhanced by no more than 10 years. The date of conviction is deemed the date that sentence is imposed.

§4366-B. Importation of cigarettes

1. Generally. Except as provided in subsection 2, only a licensed distributor or a dealer may import cigarettes into this State.

2. Exception for personal use. An individual who is not a licensed distributor or a dealer may transport cigarettes into this State and may transport cigarettes from place to place within this State for the individual's personal use in a quantity not greater than 4 cartons.

3. Evidence. The possession of more than 2 cartons of unstamped cigarettes by a person who is not a licensed distributor or a dealer is prima facie evidence of a violation of this section.

4. Penalties. A person who violates this section is guilty of a Class E crime, except that violation of this section is a Class D crime when the person has one or more prior convictions for violation of this

section. For purposes of this section, the date of the prior conviction must precede the commission of the offense being enhanced by no more than 10 years. The date of conviction is deemed the date that sentence is imposed.

Sec. 11. 36 MRSA §4367, as amended by PL 1971, c. 22, is repealed.

Sec. 12. 36 MRSA §4368, as amended by PL 1985, c. 535, §11, is repealed.

Sec. 13. 36 MRSA §4369, as amended by PL 1985, c. 535, §12, is repealed.

Sec. 14. 36 MRSA §4370, as amended by PL 1983, c. 828, §17, is repealed.

Sec. 15. 36 MRSA §4371, as amended by PL 1983, c. 828, §18, is repealed.

Sec. 16. 36 MRSA §4372, as amended by PL 1983, c. 828, §19, is repealed.

Sec. 17. 36 MRSA §4372-A is enacted to read:

§4372-A. Seizure and forfeiture of contraband cigarettes

1. Generally. Except as provided in subsection 2, any unstamped cigarettes that are found in this State are hereby declared to be contraband goods subject to seizure by and forfeiture to the State. All law enforcement officers and duly authorized agents of the State Tax Assessor may seize contraband cigarettes under the process described in subsection 3.

2. Exceptions. The following cigarettes are not subject to seizure:

A. Unstamped cigarettes in the possession of a licensed distributor;

B. Unstamped cigarettes in the course of transit from without the State and consigned to a licensed distributor; and

C. Unstamped cigarettes in a quantity of 4 cartons or less in the possession of an individual who is not a licensed distributor.

3. Procedure for seizure. Contraband cigarettes may be seized by law enforcement officers and by duly authorized agents of the State Tax Assessor who have probable cause to believe that the cigarettes are unstamped cigarettes under the following circumstances:

A. When the cigarettes are discovered in a place where the law enforcement officer or agent has

the lawful right to be in the performance of official duties; or

B. When the seizure is incident to a search under a valid search warrant or an inspection under a valid administrative inspection warrant.

4. Procedure for forfeiture. A petition for forfeiture must be filed as provided in this subsection.

A. A district attorney or assistant district attorney, or the Attorney General or an Assistant Attorney General, may petition the District Court in the name of the State in the nature of a proceeding in rem to order the forfeiture of contraband cigarettes.

B. There may be no discovery other than under the Maine Rules of Civil Procedure, Rule 36, except by order of the court upon a showing of substantial need. An order permitting discovery must set forth in detail the areas in which substantial need has been shown and the extent to which discovery may take place.

C. A petition for forfeiture filed pursuant to this section must be accepted by the District Court without the assessment or payment of civil entry or filing fees otherwise provided for by rule of court.

5. Jurisdiction and venue. Cigarettes subject to forfeiture under this section must be declared forfeited by the District Court having jurisdiction over the cigarettes. Venue is in the location where the contraband cigarettes are seized or in Kennebec County.

6. Type of action; burden of proof. A proceeding instituted pursuant to this section is an in rem civil action. The State has the burden of proving all material facts by a preponderance of the evidence and the owner of the cigarettes or other person claiming the cigarettes has the burden of proving by a preponderance of the evidence one of the exceptions set forth in subsection 2.

7. Hearings; disposition; deposit of funds. At a hearing, other than a default proceeding, the court shall hear evidence, make findings of fact, enter conclusions of law and file a final order from which the parties have the right of appeal. When cigarettes are ordered forfeited, the final order must provide for the disposition of the cigarettes by the State Tax Assessor by public auction or by the State Purchasing Agent. Proceeds must be deposited in the General Fund.

8. Default proceedings. Default proceedings must be held in the same manner as default proceedings in other civil actions, except that service of

motions and affidavits related to the default proceedings need not be served upon any person who has not answered or otherwise defended in the action.

Sec. 18. 36 MRSA §4373, as amended by PL 1983, c. 828, §20, is repealed.

Sec. 19. 36 MRSA §4373-A is enacted to read:

§4373-A. Records required; inspection and examination; assessment of tax deficiency

1. Generally. Distributors and dealers shall keep complete and accurate records of all cigarettes that they manufacture, produce, transfer or sell. The records must be of a kind and in the form prescribed by the State Tax Assessor and must be safely preserved for 6 years in a manner that ensures permanency and accessibility by authorized agents of the assessor. Records maintained by dealers must include an inventory of stamped cigarettes, by pack size. Records maintained by distributors must include the following data on either a calendar or fiscal year basis:

A. An inventory of unaffixed Maine cigarette stamps by denomination;

B. An inventory of stamped cigarettes, by pack size;

C. An inventory of unstamped cigarettes, by pack size; and

D. Copies of all documents supporting redemption for tax on unused, uncancelled stamps and for unsalable cigarettes.

If the rate of tax imposed by section 4365 is changed, a distributor shall take a new inventory.

2. Inspection and examination. The assessor or any authorized agent may enter into or upon any premises where there is reason to believe that cigarettes are possessed, stored or sold, and may examine the books, papers, records and cigarette stock of any distributor or dealer to determine compliance with the provisions of this chapter.

3. Assessment of tax deficiency; presumptions. If the assessor determines that a distributor has not purchased sufficient stamps to cover sales of cigarettes or that a dealer has made sales of unstamped cigarettes, the assessor shall assess the tax deficiency pursuant to section 141. When a distributor can not produce evidence of sufficient stamp purchases to cover receipts and sales or other disposition of cigarettes, it is presumed that the cigarettes were sold without having the proper stamps affixed to them.

Sec. 20. 36 MRSA §4374, as repealed and replaced by PL 1977, c. 696, §291, is repealed and the following enacted in its place:

§4374. Fraudulent stamps

Any person who, with the intent to defraud, makes, forges or counterfeits any stamp prescribed by the State Tax Assessor under this chapter or who causes or procures the same to be done, who knowingly utters, publishes, passes or renders as true any false, altered, forged or counterfeited stamp or who knowingly possesses any such false, altered, forged or counterfeited stamp, for the purpose of evading the tax imposed by this chapter, commits a Class C crime.

Sec. 21. 36 MRSA §4379, as amended by PL 1985, c. 785, Pt. B, §169, is further amended to read:

§4379. Administration; rules

The administration of this chapter is vested in the State Tax Assessor. All forms necessary and proper for the enforcement of this chapter shall ~~shall~~ **must** be prescribed and furnished by the ~~State Tax Assessor~~ **assessor**. The ~~State Tax Assessor~~ **assessor** shall appoint ~~such any agents, clerks, stenographers and other assistants as he may deem necessary~~ for effecting the purpose of this chapter, ~~subject to the Civil Service Law~~. The ~~State Tax Assessor~~ **assessor** may ~~prescribe regulations and rulings, not inconsistent with law, adopt rules~~ to carry into effect this chapter, ~~which regulations and rulings, when reasonably designed to carry out the intent and purpose of this chapter, shall be prima facie evidence of its proper interpretation. The State Tax Assessor shall, at least annually, and oftener in his discretion, publish for distribution all regulations prescribed and such rulings as appear to him to be of general interest.~~

Sec. 22. 36 MRSA §4380, as amended by PL 1983, c. 828, §21, is repealed.

See title page for effective date.

CHAPTER 459

S.P. 74 - L.D. 213

**An Act to Create the Position of
Director of Econometric Research
within the Bureau of Taxation**

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

Sec. 1. 2 MRSA §6, sub-§3, as amended by PL 1993, c. 410, Pt. CCC, §1, is further amended to read:

3. Range 89. The salaries of the following state officials and employees are within salary range 89:

Director, Bureau of General Services;
Director, Bureau of Alcoholic Beverages and Lottery Operations;
State Budget Officer;
State Controller;
Director of the Bureau of Forestry;
Chief of the State Police;
Director, State Planning Office;
Director, Energy Resources Office;
Public Advocate;
Commissioner of Defense and Veterans' Services;
Director of Human Resources;
Director, Bureau of Children with Special Needs; ~~and~~
Director, Bureau of Information Services; ~~and~~
Director of Econometric Research.

Sec. 2. 5 MRSA §931, sub-§1, ¶L, as amended by PL 1995, c. 625, Pt. A, §3, is further amended to read:

L. The executive director, deputy director, general counsel and staff attorneys of the Maine Health Care Finance Commission; ~~and~~

Sec. 3. 5 MRSA §931, sub-§1, ¶L-2 is enacted to read:

L-2. The Director of Econometric Research within the Bureau of Taxation; and

Sec. 4. 36 MRSA §112, sub-§2, as amended by PL 1985, c. 785, Pt. B, §168, is further amended to read:

2. Organization. The State Tax Assessor may employ ~~such~~ deputies, assistants and employees as necessary, subject to the Civil Service Law, ~~as are necessary unless otherwise provided~~, and distribute the duties given to ~~him~~ the assessor or to the Bureau of Taxation among ~~such those~~ persons or divisions in that bureau ~~as he deems the assessor considers necessary~~ for economy and efficiency in administration. An officer within each division of the bureau shall must be designated by the ~~State Tax Assessor~~ assessor as director of that division. Notwithstanding