REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

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THE MICHIE COMPANY
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The powers and duties of the special police officers so appointed and employed shall be to patrol all of the public ways and parking areas subject to sections 55 to 60, enforce rules and regulations made under section 56, arrest any violator thereof and prosecute any offender against the same.

The state police, sheriffs and deputy sheriffs, constables and police officers of the city of Augusta shall, so far as possible, cooperate with the special police officers appointed and employed under this section in the enforcement of rules and regulations made pursuant to section 56. (1959, c. 33, § 13.)

Sec. 58. Jurisdiction.—The municipal court of the city of Augusta shall have jurisdiction in all proceedings brought under sections 55 to 60, which court shall take judicial notice of all rules and regulations adopted pursuant to section 56. In any prosecution for violation of any rule and regulation, the complaint may allege the offense as in prosecutions under a general statute and need not recite the rule or regulation. (1959, c. 33, § 13.)

Sec. 59. Fines and costs of court.—Any person found guilty of violating any rule or regulation made pursuant to section 56 shall, upon conviction, pay a fine and costs of court as follows:

I. For the first offense in any calendar year, a fine of $1 plus the costs of court;

II. For the 2nd offense in any calendar year, a fine of $2 plus the costs of court;

III. For each offense in excess of 2 in any calendar year, a fine of $5 plus the costs of court.

Notwithstanding any other provisions of law, the fines and costs of court paid under this section shall inure to the city of Augusta. (1959, c. 33, § 13.)

Sec. 60. Offenses not covered by rules and regulations. — Offenses not covered by the rules and regulations made under section 56 shall be dealt with as otherwise provided by law. (1959, c. 33, § 13.)

Chapter 16.

Department of Finance and Administration. Accounts and Control. Purchasing. Taxation.

Sections 77-A to 77-D. Assessment of State Property Taxes.
Sections 200-221 Cigarette Tax.
Sections 282-293. Maine Dry Bean Tax.
Sections 294-301. Quahog Tax.

Commissioner of Finance and Administration. Bureau Chiefs.

Sec. 1. Repealed by Public Laws 1957, c. 340, § 2.

Cross reference.—See now c. 15-A and notes thereto.

Editor's note.—P. L. 1957, c. 340, provided in § 12 thereof that such act should be retroactive to July 1, 1957.

P. L. 1957, c. 429, §§ 15, 16, 17 and 18 repealed §§ 25, 30, 31 and 33, respectively, of chapter 16, previously repealed by P. L. 1957, c. 340, § 2. P. L. 1957, c. 340, repealing §§ 1-53 of chapter 16, also inserted chapter 15-A, relating to the same subject matter. Amendments to §§ 1-53 of chapter 16, passed subsequent to the repeal thereof by P. L. 1957, c. 340, § 2, have been carried in footnotes under the appropriate sections of chapter 15-A, relating to the same subject matter. As to the editorial disposition and treatment of P. L. 1957, c. 429, §§ 15-18, see chapter 15-A, §§ 20, 23, 43 and 44.

P. L. 1957, c. 401, inserted an additional section to chapter 16 of the Revised Statutes, designating same as section 34-A. P. L. 1957, c. 340, repealed sections 1 to 53 of chapter 16, and inserted chapter 15-A, in lieu thereof. In view of the repeal, the editors of the 1957 Cumulative Supplement codified P. L. 1957, c. 401 as sec-

tion 33-A of chapter 15-A. P. L. 1957, c. 429, § 19 repealed R. S. c. 16, § 34-A. This has been treated as a repeal of section 33-A of chapter 15-A.

Bonds of State Officials and Employees.

Secs. 2-4. Repealed by Public Laws 1957, c. 340, § 2.

Fiscal Year.

Sec. 5. Repealed by Public Laws 1957, c. 340, § 2.

Budget Officer and Budget.

Secs. 6-14. Repealed by Public Laws 1957, c. 340, § 2.

Organization of Department of Finance and Administration.

Sec. 15. Repealed by Public Laws 1957, c. 340, § 2.

Bureau of Accounts and Control. State Controller.

Secs. 16-29. Repealed by Public Laws 1957, c. 340, § 2.

Automobile Travel by State Employees.

Secs. 30, 31. Repealed by Public Laws 1957, c. 340, § 2.

Disposition of Uncollectible Accounts.

Sec. 32. Repealed by Public Laws 1957, c. 340, § 2.

Annual Financial Statement.

Sec. 33. Repealed by Public Laws 1957, c. 340, § 2.

Financial Reports of Federal Funds.

Sec. 34. Repealed by Public Laws 1957, c. 340, § 2.

Bureau of Purchases. State Purchasing Agent.

Secs. 35-53. Repealed by Public Laws 1957, c. 340, § 2.

Board of Equalization.

Sec. 66. Duties.—The board of equalization shall have the duty of equalizing the state and county taxes among the several towns and unorganized territory. It shall equalize and adjust the assessment list of each town, by adding to or deducting from it such amount as will make it equal to its just value. Notice of the proposed valuations of municipalities within each county shall be sent by certified mail to the chairman of the board of assessors of each municipality within that county on or before the first day of November preceding the regular sessions of the legislature. (R. S. c. 14, § 64. 1961, c. 376.)

Effect of amendment.—The 1961 amendment added the last sentence.

State Valuation. Abatements.

Sec. 67. State valuation filed with secretary of state biennially; appeal; procedure.—A statement of the amount of the assessed valuation for each town, township and lot or parcel of land in any unorganized township and lot or parcel of land not included in any township, after adjustment as provided by section 66, the aggregate amount for each county, and for the entire state as fixed by the board of equalization, shall be certified by said board and deposited

in the office of the secretary of state as soon as completed, and before the 1st day of December preceding the regular sessions of the legislature. The valuation thus determined shall be the basis for the computation and apportionment of the state and county taxes until the next biennial assessment and equalization. If any owner or owners of an unorganized township, or a lot or parcel of land in any unorganized township, or lot or parcel of land not included in any unorganized township, in either case with or without improvements, or right to cut timber and grass from public reserved lots in any township, who has filed the list and answered any and all interrogatories addressed to him under the provisions of section 71, shall deem himself or themselves aggrieved by the assessed valuation certified and deposited as above provided, he or they may appeal therefrom to the superior court for the county within which said lands or interests therein are located. Such appeal shall be entered not less than 30 days after such statement of assessed valuation shall have been so deposited, and notice thereon shall be ordered by said court. Said appeal shall be tried, heard and determined by the court without a jury and with the rights provided by law in other civil cases so heard. If upon such appeal it is found that the valuation is excessive, the court hearing the same shall determine the true valuation of said lands or interest therein, and the clerk of said court shall certify its final determination to the board of equalization and to the state tax assessor. The valuation thus determined by the court, instead of the valuation certified and deposited in accordance with the previous provisions of this section, shall be the basis for the computation and apportionment of the state, county and forestry district taxes until the next biennial assessment and equalization, and the state tax assessor shall in all proceedings relative to the collection of taxes against said lands or interest therein proceed in accordance with the valuation so fixed by the court. In the event that prior to such final decision any owner or owners so appealing shall have paid any tax is fixed by the valuation so appealed from, the controller shall, if said valuation is found excessive, issue his warrant to the treasurer of state for a return of so much of said tax as was based upon the excessive portion of said valuation. Such appeal shall be tried at the term at which the notice is returnable, unless delay shall be granted for good cause, and may be referred by the court in its discretion to a commissioner to hear the parties and to report to the court the facts, or the facts with the evidence, which report shall be prima facie evidence of the facts thereby found. The fees of the commissioner shall be paid in the same manner as those of auditors appointed by the court, and the court may make such order relating to the payment of costs as justice shall require and issue execution therefor. In all such appeals, the state shall be regarded as the appellee; and all notices required by statute, rule or order of court shall be served upon the chairman of the said board of equalization or upon the attorney general. An appeal may be taken to the law court as in other actions. Any and all liens created by statute on any of said lands or interest therein shall continue until 1 year after final determination of the appeal. (R. S. c. 14, § 65. 1945, c. 41, § 1. 1959, c. 317, §§ 2, 3.)

Effect of amendment.—The 1959 amendment divided the fourth sentence into two sentences, rewrote the part now constituting the present fourth sentence and rewrote the next to the last sentence of this section.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 68. Supervision over administration of assessment and taxation laws and over local assessors; notice of meetings; town assessors to attend meetings and answer questions.—The state tax assessors shall

have and exercise general supervision over the administration of the assessment and taxation laws of the state, and over local assessors and all other assessing officers in the performance of their duties, to the end that all property shall be assessed at the just value thereof in compliance with the laws of the state. The state tax assessor, or any agent he may designate, shall visit officially every county in the state at least once each year, and at other times as may be necessary in the performance of his duties, and shall there hold sessions at such times and places as he may deem necessary to inquire into the methods of assessment and taxation and to confer with and give necessary advice and instruction to local assessors as to their duties under the laws of the state, and to secure information to enable him to perform his duties as herein provided. The state tax assessor shall give such public notice of said meetings as he deems proper, and shall give to each board of town assessors in the county in which meetings are to be held a notice by mail of the time and place of such meetings. Each board of town assessors, or some member or members of each of them, shall attend said meeting, having with them the then last lists or books giving the valuation of all taxable property in their respective towns. They shall answer, under oath if required, such questions pertaining to the valuation of the property in their towns as the state tax assessor or such agent may put to them. Said meeting shall be under the general direction of the state tax assessor and governed by such rules of order as said state tax assessor shall make. Any town, whose assessors shall fail to attend said meetings without excuse, satisfactory to the state tax assessor, shall be liable to pay the reasonable expenses of the state tax assessor, or of any person appointed by him, incurred in making examination of the lists or books of said town or in getting other evidence pertaining to the valuation of the property in such town. Such expenses shall be reported to the legislature by the state tax assessor and shall be added to the amount of the next state tax levied against such town, or may be recovered in a civil action against such town in the name of the treasurer of state. (R. S. c. 14, § 66. 1947, c. 61. 1957, c. 165, § 1. 1961, c. 317, § 3.)

Effect of amendments. — The 1957 amendment deleted the former last three sentences of this section which pertained to compensation and expenses of town assessors, collectors and treasurers and to the number of meetings.

The 1961 amendment substituted "a civil action" for "an action of debt" in the last sentence of this section.

Sec. 68-A. Compensation of assessors, collectors and treasurers. —Municipalities shall pay to said assessors a reasonable compensation and actual expenses incurred in complying with the requirements of this chapter. Municipalities shall also pay to collectors, treasurers and assessors a reasonable compensation and actual expenses incurred in attending meetings and schools called by the state tax assessor. (1957, c. 165, § 2.)

Assessment of State Property Taxes.

Sec. 77-A. State property tax.—For necessary expenses of local and state government, a tax is assessed annually at the rate of 11 mills on the dollar upon each municipality, township and each lot and parcel of land not included in any township in the state. The valuation as determined by the board of equalization, as set forth in the statement filed by said board as provided by section 67, shall be the basis for the computation and apportionment of the tax assessed. (1955, c. 128. 1961, c. 369.)

Effect of amendment.—The 1961 amendment increased the rate from 7¼ mills to 11 mills and made other minor changes.

Effective date.—The act which inserted §§ 77-A to 77-D of this chapter became effective April 1, 1955.

Sec. 77-B. Tax lists to be filed with treasurer; tax warrant of treasurer of state.—As soon as practicable after April 1, annually, the state tax assessor shall file with the treasurer of state lists of the taxes provided by the preceding section. The treasurer of state shall as soon as practicable after April 1, annually, send his warrant with a copy of the lists named herein directed to the mayor and aldermen, selectmen or assessors of each municipality, taxed as aforesaid, requiring them respectively to assess, in dollars and cents, the sum so charged, according to the provisions of the law for the assessment of taxes and add the amount of such tax to the amount of county and town taxes, to be by them assessed in each municipality or other place respectively. (1955, c. 128.)

Cross reference.—See note to § 77-A of this chapter.

Sec. 77-C. Distribution of state tax to municipalities and apportionment thereof.—The treasurer of state, in his said warrants, shall require the said mayor and aldermen, selectmen or assessors, respectively, to pay or to issue their several warrants requiring the collectors of their several municipalities to collect and pay to the treasurers of their respective municipalities the sums against said municipalities required by the provisions of sections 77-A to 77-D, inclusive.

The sum so collected in each municipality shall be paid when collected to the treasurer thereof to be by him disbursed for necessary expenses of local government as determined or appropriated by the legislative body of such municipality for the public welfare within the purposes specified in chapter 90-A, which chapter sets forth those purposes for the public welfare for which municipalities are themselves authorized to raise money by taxation.

The sum so collected from each township and each lot or parcel of land not included in any township in the state shall be disbursed by the treasurer of state to each township and each lot or parcel of land not included in any township which is assessed for school or highway purposes in an amount not to exceed ¾ of the amount assessed for school and highway purposes and shall be credited to such purposes. (1955, c. 128. 1957, c. 405, § 5.)

Cross reference.—See note to § 77-A of this chapter.

Effect of amendment. — The 1957 amendment changed the reference in the second paragraph from chapter 91 to chapter 90-A.

Sec. 77-D. Payment of tax in town whose charters are surrendered.—When the charter of any municipality listed in the statement filed with the secretary of state by the board of equalization under the provisions of section 67 is subsequently surrendered by act of the legislature, the tax hereby assessed shall be an outstanding obligation of such municipality, and it shall be paid, and funds for payment thereof shall be raised by the state tax assessor in the same manner as provided by law in the case of other outstanding obligations of such municipality. (1955, c. 128.)

Cross reference.—See note to § 77-A of this chapter.

Taxes on Lands in Places Not Incorporated.

Sec. 84. Filing of certificate to create mortgage; foreclosure provisions; notice; discharge.

Part payments accepted during the redemption period shall not interrupt or extend the redemption period or in any way affect the foreclosure proceedings. If the total amount necessary for redemption is not paid before the mortgage is foreclosed, the mortgagor shall be entitled to a refund of such part payments made after the filing of the certificate provided for in section 83.

(1959, c. 85.)

Effect of amendment.—The 1959 amendment added the above paragraph as a new paragraph to be inserted after the first paragraph in this section. Since the rest of this section was not affected by the amendment, it was not set out.

Duties of State Tax Assessor and Treasurer of State Regarding Taxes.

Sec. 93. State tax assessor may bring action to recover taxes.—The state tax assessor may bring a civil action in his own name to enforce the lien on real estate created by chapter 91-A, section 5, to secure the payment of state, county and forestry district taxes assessed under sections 78 and 81 upon lands not liable to be assessed in any town. Such action shall be begun after the expiration of 8 months and within one year after the publication of the advertisement named in section 82. The proceedings shall be in accordance with chapter 91-A, section 87, except that the preliminary notice and demand for payment of said tax as provided in said section shall not be required. (R. S. c. 14, § 91. 1945, c. 41, § 16. 1957, c. 397, § 8; c. 429, § 20. 1961, c. 317, § 4.)

Effect of amendments.—The first 1957 amendment changed the statutory references from sections of chapter 92 to sections of chapter 91-A. The second 1957 amendment substituted "section 5 of chapter 91-A" for "section 4 of chapter 91-A" in the first sentence of this section.

The 1961 amendment substituted "a civil action" for "an action of debt", substituted "chapter 91-A, section 5" for "section 5 of chapter 91-A" and substituted "chapter 91-A, section 87" for "section 87 of chapter 91-A" in this section.

Effective date. — P. L. 1957, c. 429, amending this section became effective on its approval, October 31, 1957.

Sec. 94. Taxes on lands in unorganized townships, collected by state tax assessor. — In addition to the methods of collecting state, county and forestry district taxes provided by law, owners of lands in unorganized townships shall be liable to pay such taxes to the state tax assessor upon demand. If such taxes shall not be paid within 30 days after such demand, the state tax assessor may collect the same, with interest as provided by law, by a civil action in the name of the state. Such action shall be brought in the superior court in the county where such unorganized townships are located, and the attorney general may begin and prosecute such actions when thereto requested by the state tax assessor. The demand herein provided for shall be sufficient if made by a writing mailed to such landowner or his agent at his usual post office address. In case such owner resides without the state and has no agent within the state known to the state tax assessor, such demand shall be sufficient if made upon the forest commissioner. Such action shall be brought not less than 30 days after the giving or mailing of the demand herein provided for. The beginning of such action, obtaining execution and collecting the same shall be deemed a waiver of the rights of the state under the provisions of sections 83 and 84. (R. S. c. 14, § 92. 1945, c. 41, § 17. 1961, c. 317, § 5.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in the second sentence of this section.

Sec. 97. Tax to be paid to state tax assessor on or before October 1st, to be turned over to counties; proceedings when taxpayer is delinquent.—Taxes levied under the provisions of section 95 shall be paid to the state tax assessor on or before October 1st of each year. Interest on such state and county taxes shall be charged at the rate of 6% per year after the 1st day of October following the date of the assessment. A lien is created on all personal property for such taxes and expenses incurred in accordance with the provisions of section 96, and such property may be sold for the payment of such taxes and expenses at any time after October 1st. When the time for the payment of the tax to the state tax assessor has expired, and it is unpaid, the state tax assessor shall give notice thereof to the delinquent property owner, and unless such tax shall be paid within 60 days, the state tax assessor may issue his warrant to the sheriff of the county, requiring him to levy by distress and sale upon the personal property of said property owner, and the sheriff or his deputy shall execute such warrants. Any balance remaining after deducting taxes and necessary additions made in accordance with sections 95 to 97 shall be returned to the owner or person in

possession of such property or the state tax assessor may certify such unpaid taxes to the attorney general, who shall bring a civil action in the name of the state. (R. S. c. 14, § 95. 1945, c. 41, § 20. 1947, c. 6. 1953, c. 156, § 5. 1961, c. 317, § 6.)

Effect of amendment.—The 1961 amendment divided the former last sentence of this section into two sentences, substituted "a civil action" for "an action of debt," and deleted "the provisions of" preceding "sections 95 to 97" in the present last sentence.

Sec. 100. Treasurer to issue warrants for taxes.—The treasurer of state shall issue warrants or executions against delinquent towns, assessors, constables and collectors to enforce the collection and payment of state taxes in cases prescribed in chapter 91-A. (R. S. c. 14, § 98. 1949, c. 349, § 4. 1957, c. 397, § 9.)

Effect of amendment. — The 1957 amendment changed the statutory references from chapter 92 to chapter 91-A.

Poll Taxes in Unorganized Territory.

Sec. 104. Poll taxes in unorganized territory.

Poll taxes collected by the state tax assessor from the residents of Connor in the year in which the biennial state election is held shall be paid by the state to the town of Limestone. (1949, c. 349, § 5. 1951, c. 19; c. 398, § 2. 1953, c. 200, § 2; c. 220, § 2. 1961, c. 20.)

Effect of amendment.—The 1961 amendment eliminated "provided the state tax assessor receives from the officials of the town of Limestone a request therefor by June 1st of the following year" at the end of the fourth paragraph.

As the rest of the section was not affected by the amendment, it is not set out.

Taxation of Corporate Franchises.

Sec. 106. Taxation and rate.—Every corporation incorporated under the laws of this State, having a fixed capital, except such as are excepted by section 41 of chapter 53, shall pay an annual franchise tax of $10, provided the authorized capital of said corporation does not exceed $50,000; of $20, provided said authorized capital exceeds $50,000 and does not exceed $200,000; of $50, provided said authorized capital exceeds $200,000 and does not exceed $500,000; of $100, provided said authorized capital exceeds $500,000 and does not exceed $1,000,000; and the further sum of $50 for each $1,000,000, or any part thereof in excess of $1,000,000; also on all shares without par value; of $10, provided the authorized number thereof does not exceed 250 shares; of $20, provided said authorized number thereof exceeds 250 shares and does not exceed 1,000 shares; of $40, provided said authorized number thereof exceeds 1,000 shares and does not exceed 3,000 shares; of $50, provided said authorized number thereof exceeds 3,000 shares and does not exceed 5,000 shares; of $100, provided said authorized number thereof exceeds 5,000 shares and does not exceed 10,000 shares; and the further sum of $50 for each 10,000 shares, or any part thereof, authorized in excess of 10,000 shares. (R. S. c. 14, § 102. 1955, c. 359, § 7.)

Effect of amendment.—The 1955 amendment, which became effective July 1, 1955, doubled the tax rates throughout the section.

Sec. 107. Taxes, how assessed, when due and payable.—The secretary of state shall certify to the state tax assessor the corporate name, the name of the treasurer and the amount of authorized capital stock of each of such corporations and shall thus certify to the state tax assessor whenever a new corporation has been organized and whenever a change has occurred in the corporate name or the name of the treasurer or the amount of authorized capital stock of a corporation already organized. The state tax assessor shall, on or before the 1st day of July, 1955 and annually thereafter, assess the tax provided by the preceding sec-

tion upon the authorized capital stock of each of said corporations and shall thereupon notify each of said corporations of the amount of said tax assessed to it, and such tax shall become due and payable from said corporation to the state tax assessor on the 1st day of September thereafter. The state tax assessor shall pay over all receipts from such tax to the treasurer of the state daily. (R. S. c. 14, § 103. 1945, c. 42, § 1. 1949, c. 349, § 6. 1955, c. 359, § 8.)

Effect of amendment.—The 1955 amendment, which became effective July 1, 1955, inserted "1955 and" before the word "annually" and "thereafter" after the word "annually" near the beginning of the second sentence.

Sec. 108. Tax to be a debt due from corporation. — The tax assessed under section 107 shall be a debt due from such corporation to the state, for which a civil action may be maintained after the same shall have been in arrears for the period of one month. Such tax shall be a preferred debt in case of insolvency under the laws of this state or in any process of liquidation in its courts. (R. S. c. 14, § 104. 1961, c. 317, § 7.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted "a civil action" for "an action of debt" in the present first sentence.

Sec. 110. Company in arrears 6 months.—The state tax assessor, whenever any tax due under sections 106 to 109 from any company shall have remained in arrears for a period of 6 months after the same shall have become payable, shall report the same to the attorney general, who shall, if he deems it advisable, apply to the superior court for equitable relief in the name of the state for the forfeiture of the charter of such delinquent corporation, and said court shall order such notice to all parties interested as it may deem proper and shall have jurisdiction in said cause to appoint receivers, issue injunctions and pass interlocutory decrees and orders according to the usual procedure in civil actions in which equitable relief is sought, and to make such final orders and decrees as the nature of the case may require. (R. S. c. 14, § 106. 1945, c. 42, § 2. 1947, c. 30, § 1. 1961, c. 317, § 8.)

Effect of amendment.—The 1961 amendment substituted "sections 106 to 109" for "the provisions of the four preceding sections" near the beginning of this section, deleted "supreme judicial court or the" preceding "superior court", substituted "for equitable relief" "for in equity" and substituted "procedure in civil actions in which equitable relief is sought" for "course of proceedings in equity" therein.

Taxation of Railroad Companies.

Sec. 113. Annual returns of railroad companies.

Cross reference.—See c. 91-A, § 125, re exemption of vehicles subject to excise taxes under §§ 113-136, from payment of excise tax under c. 91-A, §§ 123-132.

Sec. 114. Penalty.—Any corporation, company or person willfully neglecting to make returns as provided in section 113 forfeits $5 for every day's neglect, to be recovered by a civil action in the name of the state. Any officer, agent or employee of such railroad company who willfully violates any provision of section 113 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (1945, c. 42, § 5. 1961, c. 317, § 9.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in this section.

Sec. 115. Annual excise tax; state to pay cities and towns 1% on stock held therein.—Every corporation, person or association operating any railroad in the state under lease or otherwise shall pay to the state tax assessor, for the use of the state, an annual excise tax for the privilege of exercising its franchises and the franchises of its leased roads in the state, which, with the tax

provided for in chapter 91-A, section 22, is in place of all taxes upon such railroad and its property. There shall be apportioned and paid by the state from the taxes received under this and the 6 following sections to the several cities and towns in which, on the 1st day of April in each year, is held railroad stock of either such operating or operated roads exempted from other taxation, an amount equal to 1% on the value of such stock on that day, as determined by the state tax assessor; provided, however, that the total amount thus apportioned on account of any railroad shall not exceed the sum received by the state as tax on account of such railroad; and provided further, that there shall not be apportioned on account of any railroad and its several parts, if any, operated by lease or otherwise, a greater part of the whole tax received from such railroad and its several parts, than the proportion which the amount of capital stock of such railroad and its several parts owned in this state bears to the whole amount of the capital stock of said railroad and its several parts. Apportionments of less than $1 under this section shall accrue to the state, and no payment of less than $1 shall be made to any city or town. (R. S. c. 14, § 110. 1945, c. 42, § 6. 1957, c. 397, § 10. 1959, c. 116, § 1; c. 363, §§ 6, 55. 1961, c. 223, § 1.)

Effect of amendments. — The 1957 amendment changed the statutory reference from section 4 of chapter 92 to section 22 of chapter 91-A.

Section 6, c. 363, P. L. 1959, added the last sentence of the section. Section 1, c. 116, P. L. 1959, which had added two sentences at the end of the section, was repealed by § 55, c. 363, P. L. 1959.

The 1961 amendment substituted "chapter 91-A, section 22" for "section 22 of chapter 91-A" and substituted "and its property" for "its property and stock" in the first sentence.

Sec. 116. Amount of tax.—The amount of the annual excise tax on railroads shall be ascertained as follows: The amount of the gross transportation receipts as returned to the public utilities commission for the year ended on the 31st day of December preceding the levying of such tax shall be compared with the net railway operating income for that year as returned to the public utilities commission. When the net railway operating income does not exceed 10% of the gross transportation receipts, the tax shall be an amount equal to 3¼% of such gross transportation receipts. When the net railway operating income exceeds 10% of the gross transportation receipts but does not exceed 15%, the tax shall be an amount equal to 3¾% of the gross transportation receipts. When the net railway operating income exceeds 15% of the gross transportation receipts but does not exceed 20%, the tax shall be an amount equal to 4¼% of such gross transportation receipts. When the net railway operating income exceeds 20% of the gross transportation receipts but does not exceed 25%, the tax shall be an amount equal to 4¾% of such gross transportation receipts. When the net railway operating income exceeds 25% of the gross transportation receipts, the tax shall be an amount equal to 5¼% of such gross transportation receipts. When net railway operating income for the preceding year is less than 5¾% of investment in railway property used in transportation service, less depreciation and plus cash, including temporary cash investments and special deposits, and material and supplies, as reported by the railroad in its annual report to the public utilities commission, the tax payable shall be diminished by a sum which added to said net railway operating income would equal 5¾% of the investment as aforesaid; except that in any event the tax payable shall not be diminished below a minimum amount equal to 2⅝% of the gross transportation receipts for the year 1961 and the year 1962, and equal to 2% of the gross transportation receipts for the year 1963 and the year 1964 and equal to 1% of the gross transportation receipts for each succeeding year. In the case of railroads operating not over 50 miles of road, the tax shall not exceed 1¾% of the gross transportation receipts.

When a railroad lies partly within and partly without the state, or is operated as a part of a line or system extending beyond the state, the tax shall be equal to the same proportion of the gross transportation receipts in the state, and its

amount shall be determined as follows: The gross transportation receipts of such railroad, line or system, as the case may be, over its whole extent, within and without the state, shall be divided by the total number of miles operated to obtain the average gross transportation receipts per mile, and the gross transportation receipts in the state shall be taken to be the average gross transportation receipts per mile multiplied by the number of miles operated within the state, and the net railway operating income within the state shall be similarly determined.

The term "net railway operating income" means the railway operating revenues less the railway operating expenses, tax accruals and uncollectible railway revenues, including in the computation thereof debits and credits arising from equipment rents and joint facility rents. The public utilities commission, after notice and hearing, may determine the accuracy of any returns required of any railroad, and if found inaccurate, may order proper corrections to be made therein. (R. S. c. 14, § 111. 1951, c. 250, § 2. 1961, c. 368, § 1.)

Effect of amendment.—The 1961 amendment divided the former first sentence into seven sentences, added the present seventh sentence, eliminated at the end of the former first sentence a proviso relating to narrow gauge railroads and made other minor changes.

Sec. 117. Tax, how fixed; notice to companies.—The state tax assessor, on the 1st day of each May, shall determine the amount of the tax on railroad companies and shall forthwith give notice thereof to the corporation, person or association upon which the tax is levied. (R. S. c. 14, § 112. 1945, c. 42, § 7. 1957, c. 274, § 1.)

Effect of amendment. — Prior to the 1957 amendment the time mentioned in this section was "on or before the 1st day of each May".

Sec. 118. Tax, to whom and when payable.—The tax on railroad companies shall be payable ⅓ on the 15th day of June next after the levy is made, ⅓ on the 15th day of September and ⅓ on the 15th day of December next following. Such tax shall be payable to the state tax assessor, who shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 113. 1945, c. 42, § 8. 1957, c. 274, § 2.)

Effect of amendment. — The 1957 amendment deleted a former provision relating to time tax should be deemed an asset and credit of the state and inserted the words "next after the levy is made" following the word "June".

Sec. 120. Further returns; public utilities commission to have access to books.—If the returns required by law in relation to railroads are found insufficient to furnish the basis upon which the tax on railroads is to be levied, the public utilities commission shall require such additional facts in the returns as may be found necessary; and, until such returns are so required, or, in default of such returns when required, the state tax assessor shall act upon the best information that he may obtain. The public utilities commission shall have access to the books of railroad companies to ascertain if the required returns are correctly made. Any railroad corporation, association or person operating any railroad in the state, which refuses or neglects to make returns required by law or to exhibit to the public utilities commission its books for the purposes aforesaid, or makes returns which the president, clerk, treasurer or other person certifying to such returns knows to be false forfeits not less than $1,000 nor more than $10,000, to be recovered by indictment or by a civil action in any county into which the railroad operated extends. (R. S. c. 14, § 115. 1961, c. 317, § 10.)

Effect of amendment.—The 1961 amendment divided the former last sentence of this section into two sentences and substituted "a civil action" for "an action of debt" in the present last sentence.

Taxation of Street Railroad Corporations.

Sec. 121. Repealed by Public Laws 1957, c. 85, § 4.

Taxation of Parlor Cars.

Sec. 124. Penalty.—Any corporation or person willfully neglecting to make returns according to section 123 forfeits $5 for every day's neglect, to be recovered by a civil action in the name of the state. Any officer, agent or employee of such companies operating parlor cars who willfully violates any provision of section 123 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (R. S. c. 14, § 119. 1945, c. 42, § 11. 1961, c. 317, § 11.)

Effect of amendment.—The 1961 amendment substituted "section 123" for "the provisions of the preceding section" and substituted "a civil action" for "an action of debt" in the first sentence of this section.

Taxation of Telephone and Telegraph Companies.

Sec. 125. Returns of corporations or persons operating telephone or telegraph lines.—Every corporation, association or person operating in whole or in part a telephone or telegraph line for toll or other compensation within the state shall annually, on or before May 15th, return to the treasurer of state signed by the treasurer clerk or secretary of the corporation, the amount of the capital stock of the corporation, the number and par value of the shares and a complete list of its shareholders resident within the state, with their places of residence and the number of shares belonging to each on the 1st day of April; if the line is operated by an association or person, the owner or owners or the members of the association, or one of them, shall annually make a return to the treasurer of state, on or before May 15th of the names and residences of the owner or owners, or members of an association, and the relative interest each owner has in the line so operated, or that each member has in any such association on the 1st day of April; provided that any corporation may include in its return a statement of the whole amount of its capital stock owned in the state and if no apportionment or payment is required to be made by the state to the several cities and towns under the provisions of section 127, it may exclude from its return the list of its shareholders resident within the state and the number of shares belonging to each. Such corporation, association or person shall also annually, between the 1st and 15th days of April, return to the state tax assessor, signed by its treasurer or its chief accounting officer if a corporation, or by the owner or owners, or by the members of an association or one of them, if a person or association, a statement of the total gross operating revenues of such corporation, association or person from its or his operations within this state during the preceding year ending December 31st. (R. S. c. 14 § 120. 1945, c. 42, § 12. 1955, c. 410, § 1.)

Effect of amendment.—The 1955 amendment substituted the words "total gross operating revenues" for the words "gross receipts" and the words "from its or his operations" for the words "collected" in the last sentence. It also deleted the words "on account of its telephone and telegraph business" following the word "state" near the end of the last sentence.

Sec. 126. Penalty. — Any corporation, association or person willfully neglecting to make returns as provided in section 125 forfeits $5 for every day's neglect, to be recovered by a civil action in the name of the state. Any officer, agent or employee of such telephone or telegraph company who willfully violates any provision of section 125 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (1945, c. 42, § 13. 1961, c. 317, § 12.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in the first sentence of this section.

Sec. 127. Taxation; apportionment to cities and towns.—Every corporation, association or person operating in whole or in part a telephone or telegraph line within the state for tolls or other compensation shall pay to the state tax assessor, for the use of the state, an annual excise tax for the privilege of conducting such business within the state, which tax, with the tax provided for in section 132, is in place of all taxes upon the property of such corporation, association or person employed in such business.

There shall be apportioned and paid by the state from the taxes collected under this section to the several cities and towns in which on the 1st day of April in each year is held stock of any such corporation, or in which resides the owner or owners of an interest in any telegraph or telephone lines operated by any association or person not a corporation and taxed under this section, an amount equal to 1% on the value of such stock on that day as determined by the state tax assessor, if a corporation; and, if not a corporation, such proportion of the amount of such excise tax paid to the state tax assessor by the association, person or persons operating such line as such interest owned by a resident in any such municipality bears to the whole ownership; provided, however, that the total thus apportioned on account of such stock, if a corporation, shall not exceed the sum received by the state as a tax on account of such corporation; and provided further, that there shall not be apportioned on account of any such corporation a greater part of the whole tax received by the state from such corporation than the proportion which the amount of capital stock of such corporation owned in this state bears to the whole amount of the capital stock of such corporation, and that, in the case of any corporation of which not exceeding 2% of the capital stock is owned in the state, no apportionment and payment shall be made unless the amount to be apportioned and paid shall exceed the sum of $250. Apportionments of less than $1 under this section shall accrue to the state, and no payment of less than $1 shall be made to any city or town. (R. S. c. 14, § 121. 1945, c. 42, § 14. 1959, c. 116, § 2; c. 363, §§ 7, 55. 1961, c. 223, § 2.)

Effect of amendments.—Section 7, c. 363, P. L. 1959, added the last sentence of the section. Section 2, c. 116, P. L. 1959, which had added two sentences at the end of the section, was repealed by § 55, c. 363, P. L. 1959.

The 1961 amendment deleted "and of all taxes upon the shares of the capital stock of any such corporation" at the end of the first paragraph.

Sec. 128. Computation of telephone tax.—The amount of the annual excise tax on telephone companies shall be ascertained as follows: when the total gross operating revenues of such corporation, association or person from its or his operations within this State during the calendar year preceding the year for which the tax is assessed on such corporation, association or person exceed $1,000 and do not exceed $5,000, the tax shall be 1¼% of such total gross operating revenues; when such total gross operating revenues exceed $5,000 and do not exceed $10,000, the tax shall be 1½% of such total gross operating revenues; when such total gross operating revenues exceed $10,000 and do not exceed $20,000, the tax shall be 1¾% of such total gross operating revenues; when such total gross operating revenues exceed $20,000 and do not exceed $40,000, the tax shall be 2% of such total gross operating revenues; and so on, increasing the rate of tax ¼% of 1% for each additional $20,000 or fractional part thereof, of such total gross operating revenues, provided that the rate shall in no event exceed 7% of such total gross operating revenues. (R. S. c. 14, § 122. 1955, c. 410, § 2. 1957, c. 357, § 1.)

Effect of amendments. — The 1955 amendment rewrote this section, substituting "total gross operating revenues" for "gross receipts" throughout the section, increasing the maximum rate from 6% of gross receipts to 7% of total gross operating revenues and making other changes.

Prior to the 1957 amendment this section was also applicable to telegraph companies.

Sec. 128-A. Computation of telegraph tax.—The amount of the annual excise tax on telegraph companies shall be 6% of its total gross operating revenues from its operations within this state during the calendar year preceding the year for which the tax is assessed. (1957, c. 357, § 2.)

Sec. 131. Books of corporations to be open to assessors.—The state tax assessor or his duly authorized agent shall have access to the books of any corporation, association or person operating telephone or telegraph lines in this state, to ascertain if the required returns are correctly made. Any corporation, association or person refusing or neglecting to make the returns required by law or to exhibit to the said assessor or to his duly authorized agent, its or his books for the purpose aforesaid, or making returns which the president, clerk, treasurer or other person certifying such returns knows to be false shall forfeit not less than $1,000 nor more than $10,000, to be recovered by indictment or by a civil action in any county into which the said telegraph or telephone lines extend. (R. S. c. 14, § 125. 1961, c. 317, § 13.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted "a civil action" for "an action of debt" in the present second sentence.

Sec. 132. Tax to be in lieu of all taxes.—The excise tax collected under sections 125 to 131 shall be in lieu of all taxes upon any corporation therein designated, upon its property including, without limiting the generality of the foregoing, poles, wires, conduits, cables, booths, central office equipment, and machinery or equipment incidental and peculiar to the business of such corporation whether located on or off its premises. The land and buildings thereon owned by such corporation, association or person shall be taxed in the municipality in which the same are situated. The assessment of taxes on such land and buildings shall be legal, whether assessed as resident or nonresident property. (R. S. c. 14, § 126. 1949, c. 349, § 8. 1955, c. 399, § 3. 1957, c. 357, § 3. 1961, c. 223, § 3.)

Effect of amendments. — The 1955 amendment inserted all of the provisions of the present first sentence beginning with the word "including". The 1957 amendment made a former proviso of the first sentence into a separate sentence and substituted "sections 125 to 131, inclusive" for "the 7 preceding sections" in the first sentence.

The 1961 amendment deleted a reference to shares of capital stock in the first sentence.

Taxation of Express Companies.

Sec. 136. Penalty.—Any corporation, company or person willfully neglecting to make returns according to section 134 forfeits $5 for every day's neglect, to be recovered by a civil action in the name of the state. Any officer, agent or employee of such express company who wilfully violates any provision of section 134 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (R. S. c. 14, § 130. 1945, c. 42, § 19. 1961, c. 317, § 14.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in the first sentence of this section.

Taxation of Insurance Companies.

Sec. 144. Neglect to make return, assessment; failure to pay.—If any insurance company or association refuses or neglects to make the return required by the 2 preceding sections, the state tax assessor shall make such assessment on such company or association as he deems just, and unless the same is paid on demand, the state tax assessor shall certify to the insurance commissioner that payment of such tax has not been made and such company or association shall do no more business in the state, and the insurance commissioner shall give notice ac-

cordingly. Whoever, after such notice, does business for such company or association shall be punished by a fine of not more than $500 or by imprisonment for not more than 90 days, or by both. (R. S. c. 14, § 138. 1947, c. 188, § 3. 1959, c. 378, § 2.)

Effect of amendment.—The 1959 amendment, effective on its approval, January 29, 1960, rewrote the last sentence.

Failure to Make Returns and Pay Tax.

Sec. 153. Failure to make returns and pay tax; authority of state tax assessor to examine books. — If any corporation, company, association or person fails to make the returns required by sections 123, 125, 134 and 154, the state tax assessor shall make an assessment of a state tax upon such corporation, company, association or person on such valuation, or on such gross receipts thereof, as the case may be, as he thinks just, with such evidence as he may obtain, and such assessment shall be final. The state tax assessor or his duly authorized agent shall have access to the books of any corporation, company, association or person required to make returns under the provisions of sections 123, 134, 142, 143, 145, 146 and 154, to ascertain if the required returns are correctly made. If any corporation, company, association or person fails to pay the taxes required or imposed by sections 115, 122, 127, 133 and 155, the state tax assessor shall forthwith commence a civil action, in the name of the state, for the recovery of the same with interest at the rate of 10% a year. In addition to other remedies for the collection of state taxes upon any corporation, such taxes with interest at the rate of 10% a year may be recovered by a civil action in the name of the state. (R. S. c. 14, § 155. 1945, c. 42, § 30. 1947, c. 188, § 6. 1949, c. 438, § 4. 1951, c. 406, § 4. 1961, c. 317, § 15.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in the last two sentences of this section.

Taxation of Shares of Stock in Trust Companies and National Banking Institutions.

Sec. 155. Tax on stock; payable to state tax assessor; appeal. Any party in interest aggrieved by the valuation of the shares of any trust company or national banking institution made by the said state tax assessor may appeal to the superior court at any time before said 1st day of July. Such appeal shall be filed in the office of the clerk of said court in the county where such trust company or banking institution is located and shall be heard and determined at the next term thereof held after said date. Notice and hearing of such appeal shall be given and held in the manner provided by section 52 of chapter 91-A. The decision of the court upon such appeal shall be certified by the clerk to the said state tax assessor who shall thereupon assess a tax of 15 mills upon the valuation of such shares as fixed by the court, and shall give notice thereof to the trust company or banking institution whose shares are affected thereby, and the tax so assessed, with interest at 6% from July 1st of the year for which the tax is assessed, shall be paid to the state tax assessor within 30 days thereafter. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 157. 1945, c. 42, § 32; c. 378, § 11. 1957, c. 397, § 11. 1961, c. 317, § 16.)

Effect of amendment. — The 1957 amendment changed the reference in the third sentence of the last paragraph from section 44 of chapter 92 to section 52 of chapter 91-A.

The 1961 amendment deleted "claim and" preceding "appeal" in the first sentence of the last paragraph of this section.

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 157. Penalty.—Any trust company or national banking institution willfully neglecting to make returns according to section 154 forfeits $5 for every day's neglect, to be recovered by a civil action in the name of the state. Any officer, agent or employee of such trust company or national banking institution who willfully violates any provision of section 154 shall be punished by a fine of not less than $100 nor more than $500 for each offense, to be recovered by indictment to the use of the state. (1945, c. 42, § 33. 1961, c. 317, § 17.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in the first sentence of this section.

Gasoline Tax.

Sec. 159. Definitions.

"Internal combustion engine" shall mean any engine operated by explosion or quick burning therein of gasoline, benzol or other product.

"Internal combustion engine fuel", except as respects fuel used for propelling aircraft, shall mean all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classification or uses; and any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) show not less than 10% distilled (recovered) below 347° Fahrenheit (175° Centigrade) and not less than 95% distilled (recovered) below 464° Fahrenheit (240° Centigrade). The term "internal combustion engine fuel" shall not include commercial solvents or naphthas which distil, by American Society for Testing Materials Method D-86, nor [not] more than 9% at 176° Fahrenheit and which have a distillation range of 150° Fahrenheit, or less, or liquefied gases which would not exist as liquids at a temperature of 60° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

"Internal combustion engine fuel" shall also mean any motor fuel used or sold for use in the propulsion of aircraft. (R. S. c. 14, § 159. 1959, c. 332, § 1.)

Effect of amendment.—The 1959 amendment struck out the words "except kerosene", formerly appearing at the end of the third paragraph, divided the fourth paragraph into two sentences, adding the words "except as respects fuel used for propelling aircraft", near the beginning of the first sentence of the fourth paragraph, and struck out the words "provided that the", formerly appearing after "(240° Centigrade)" and before the word "term" in the original fourth paragraph. It also added the present fifth paragraph.

As the first two paragraphs were not affected by the amendment, they are not set out.

Effective date.—The 1959 act amending this section became effective on its approval, May 28, 1959.

Sec. 160. Tax levied; rebates.—An excise tax is levied and imposed at the rate of 7¢ per gallon upon internal combustion engine fuel sold or used within this state, including such sales when made to the state or any political subdivision thereof, for any purpose whatsoever, excepting such internal combustion engine fuel sold or used in such form and under such circumstances as shall preclude the collection of this tax by reason of the provisions of the laws of the United States, or sold wholly for exportation from the state, or brought into the state in the ordinary standardized equipment fuel tank attached to and forming a part of a motor vehicle and used in the operation of such vehicle within the state. On the same fuel only one tax shall be paid to the state, for which tax the distributor first receiving the fuel in the state shall be primarily liable to the state, except when such fuel has been sold and delivered to another distributor in the state, in which case the purchasing distributor shall be primarily liable to the state for the tax. Six cents of the tax so paid, and no more, upon such internal combustion engine fuel used in motor boats, in tractors used for agricul-

tural purposes not operating on public ways, or in such vehicles as run only on rails or tracks, or in stationary engines or in the mechanical or industrial arts, shall be refunded as provided. Three cents of the tax so paid, and no more, upon such internal combustion engine fuel used in vehicles used in common carrier passenger service shall be refunded as provided in section 166-A. Eight mills of the tax so paid on fuel used in motor boats, which is not refunded under the provisions of section 166, shall be paid to the treasurer of state, to be made available to the commissioner of sea and shore fisheries for the purpose of conducting research, development and propagation activities by the department. It is the responsibility of said commissioner to select activities and projects that will be most beneficial to the commercial fisheries of the state. (R. S. c. 14, § 160. 1947, c. 247; c. 349, § 1; c. 379, § 1. 1949, c. 349, § 9. 1955, c. 436, § 1. 1959, c. 329, § 1.)

Effect of amendments. — The 1955 amendment substituted "7¢" for "6¢" in line two and "6¢" for "5¢" in line fourteen. The amendatory act was made effective on its approval and became law by virtue of a two-thirds vote of the members of the legislature over the objections of the governor, May 21, 1955. Section 6 of the amendatory act provides: "No tax imposed by the provisions of this act shall be levied prior to June 1, 1955. With respect to internal combustion engine fuel as defined in section 159 of chapter 16 of the revised statutes, this act shall apply only to such fuel which the distributor shall sell, distribute or use on and after June 1, 1955."

The 1959 amendment divided the former first paragraph into four sentences, inserted the present fourth sentence, and added the former second paragraph to the end of the first, to make one paragraph.

Sec. 162. Distributor entitled to collect 7¢ additional.—Each distributor paying or becoming liable to pay the tax imposed by sections 158 to 168, inclusive, shall be entitled to charge and collect 7¢ per gallon only as a part of the selling price of the internal combustion engine fuels subject to the tax. (R. S. c. 14, § 162. 1947, c. 349, § 2. 1955, c. 436, § 2.)

Effect of amendment.—The 1955 amendment substituted "7¢" for "6¢". The amendatory act was made effective on its approval and became law by virtue of a two-thirds vote of the members of the legislature over the objections of the governor, May 21, 1955. Section 6 of the amendatory act provides: "No tax imposed by the provisions of this act shall be levied prior to June 1, 1955. With respect to internal combustion engine fuel as defined in section 159 of chapter 16 of the revised statutes, this act shall apply only to such fuel which the distributor shall sell, distribute or use on and after June 1, 1955."

Sec. 163. Rules and regulations; reports; assessment of tax.—Every distributor shall on or before the last day of each month render a report to the state tax assessor stating the number of gallons of internal combustion engine fuel received, sold and used in the state by him during the preceding calendar month, on forms to be furnished by the state tax assessor. Such report shall contain such further information pertinent thereto as the state tax assessor shall prescribe and the state tax assessor may make such other reasonable rules and regulations regarding the administration and enforcement of the provisions of the gasoline tax act as he may deem necessary or expedient, copies of which shall be sent to distributors and he or his duly authorized agent shall have access during reasonable business hours to the books, invoices and vouchers of the distributor which may show the fuel handled by the distributor. At the time of the filing of said report each distributor shall pay to the state tax assessor a tax of 7¢ upon each gallon so reported as sold, distributed or used and the state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. If such report is not filed by the last day of the month such distributor shall be liable to a penalty of $5 a day for each day in arrears, due on demand by the state tax assessor and recoverable in a civil action. Each distributor shall, within 15 days after demand made on him by the state tax assessor, pay a tax of 7¢ per gallon upon each gallon of such fuel upon which the tax has not been paid, which upon an audit

the state tax assessor may find to have been received into the state during the preceding year by the distributor and not properly accounted for in a distributor's report or in accordance with law. An allowance of not more than 1% from the amount of fuel received by the distributor, plus 1% on all transfers in vessels, tank cars or full tank truck loads by a distributor in the regular course of his business from one of his places of business to another within the state, may be allowed by the tax assessor to cover the loss through shrinkage, evaporation or handling sustained by the distributor. The total allowance for such losses shall not exceed 2% of the receipts by such distributor and no further deduction shall be allowed unless the state tax assessor is satisfied on definite proof submitted to him that a further deduction should be allowed by him for a loss sustained through fire, accident or some unavoidable calamity. (R. S. c. 14, § 163. 1945, c. 31, § 2. 1947, c. 349, § 3; c. 379, § 2. 1949, c. 349, § 10. 1955, c. 436, § 3. 1961, c. 48; c. 317, § 18.)

Effect of amendments.—The 1955 amendment substituted "7¢" for "6¢" in the third and fifth sentences. The amendatory act was made effective on its approval and became law by virtue of a two-thirds vote of the members of the legislature over the objections of the governor, May 21, 1955. Section 6 of the amendatory act provides: "No tax imposed by the provisions of this act shall be levied prior to June 1, 1955. With respect to internal combustion engine fuel as defined in section 159 of chapter 16 of the revised statutes, this act shall apply only to such fuel which the distributor shall sell, distribute or use on and after June 1, 1955."

Chapter 48, P. L. 1961, divided the former last sentence into two sentences and added "or full tank truck loads" in the present next to last sentence. Chapter 317, P. L. 1961, substituted "a civil action" for "an action of debt" in the fourth sentence.

Sec. 166. Refund of 6/7 of tax collected in certain cases; time limit for application.—Any person, association of persons, firm or corporation who shall buy and use any internal combustion engine fuel as defined in sections 158 to 168, inclusive, 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, or in stationary engines, or in the mechanical or industrial arts, or for any other commercial use except in motor vehicles operated or intended to be operated upon any of the public highways of this state, or turnpikes operated and maintained by the Maine Turnpike Authority, or except, as provided in section 167, for the use in the operation of aircraft, and who shall have paid any tax on internal combustion engine fuel levied or directed to be paid as provided by sections 158 to 168, inclusive, either directly by the collection of such tax by the vendor from such consumer, or indirectly by adding the amount of such tax to the price of such fuel and paid by such consumer, shall be reimbursed and repaid to the extent of 6/7 of the amount of such tax paid by him upon presenting to the state tax assessor a sworn statement accompanied by the original invoices showing such purchases, which statement shall show the total amount of such fuel so purchased and used by such consumer other than in motor vehicles operated or intended to be operated upon any of the public highways of the state and in the operation of aircraft.

Applications for refunds must be filed with the state tax assessor within 12 months from the date of purchase. (R. S. c. 14, § 166. 1945, c. 31, § 3. 1947, c. 101, § 1; c. 349, § 4. 1949, c. 349, § 11. 1951, c. 222. 1955, c. 436, § 4. 1957, c. 193.)

Effect of amendments. — The 1955 amendment increased the amount of the refund from 5/6 to 6/7 of the tax paid. Such amendatory act was made effective on its approval and became law by virtue of a two-thirds vote of the members of the legislature over the objections of the governor, May 21, 1955. Section 6 of the 1955 amendatory act provides: "No tax imposed by the provisions of this act shall be levied prior to June 1, 1955. With respect to internal combustion engine fuel as defined in section 159 of chapter 16 of the revised statutes, this act shall apply only to such fuel which the distributor shall sell, distribute or use on and after June 1, 1955."

The 1957 amendment changed the num-

ber of months mentioned in the last paragraph from "9" to "12" and deleted the words "provided that" formerly appearing at the beginning of such paragraph and the words "as provided herein" formerly appearing following the word "refunds".

Sec. 166-A. Refund of 3/7 of tax paid by certain common carriers. —Any person, firm or corporation engaged in furnishing common carrier passenger service under a certificate issued by the public utilities commission shall be reimbursed and repaid to the extent of 3/7 of the amount of such tax paid by him upon that proportion of the internal combustion engine fuel used in locally encouraged vehicles operated by him which his tax-exempt passenger fare revenue derived from such service bears to his total passenger fare revenue. Tax-exempt passenger fare revenue means revenue attributable to fares which were exempt from the federal tax upon transportation of persons imposed by section 4261 of the Federal Internal Revenue Code, by reason of the provisions of sections 4262 or 4263 of said internal revenue code. Total passenger fare revenue means all revenue attributable to the claimant's passenger operations, whether or not pursuant to the certificate issued by the public utilities commission. The refund provided for in this section shall be made only if the claimant's tax-exempt passenger fare revenue is at least 60% of the claimant's total passenger fare revenue derived during the calendar quarter for which such refund is claimed. "Locally encouraged vehicles" means busses upon which no excise tax is collected under chapter 91-A, section 125, subsection XII.

The claimant shall present his claim to the state tax assessor in such form and with such information as the state tax assessor may prescribe accompanied by original invoices showing such purchases. Applications for refunds as provided must be filed with the state tax assessor within 9 months from the date of purchase. (1959, c. 329, § 2; c. 378, § 3.)

Effect of amendment.—P. L. 1959, c. 378, effective on its approval, January 29, 1960, substituted "chapter 91-A, section 125, subsection XII" for "chapter 22, section 49" at the end of the first paragraph.

Sec. 167. Provisions for refund of 3/7 of tax paid by users of aircraft.—Any person, association of persons, firm or corporation who shall buy and use any internal combustion engine fuel as defined in section 159 for the purpose of propelling piston engine aircraft, and who shall have paid any tax on internal combustion engine fuel levied or directed to be paid as provided by sections 158 to 168, inclusive, either directly by the collection of such tax by the vendor from such consumer, or indirectly by adding the amount of such tax to the price of such fuel and paid by such consumer, shall be reimbursed and repaid to the extent of 3/7 of the amount of such tax paid by him upon presenting to the state tax assessor a statement accompanied by the original invoices showing such purchases. Applications for refunds must be filed with the state tax assessor within 12 months from the date of purchase. (1947, c. 349, § 4-A. 1955, c. 436, § 4-A. 1959, c. 332, § 2.)

Effect of amendments. — The 1955 amendment increased the amount of the refund from 1/3 to 3/7 of the tax paid. The amendatory act was made effective on its approval and became law by virtue of a two-thirds vote of the members of the legislature over the objections of the governor, May 21, 1955. Section 6 of the amendatory act provides: "No tax imposed by the provisions of this act shall be levied prior to June 1, 1955. With respect to internal combustion engine fuel as defined in section 159 of chapter 16 of the revised statutes, this act shall apply only to such fuel which the distributor shall sell, distribute or use on and after June 1, 1955."

The 1959 amendment substituted "section 159" for "sections 158 to 168, inclusive" near the beginning of the first sentence, substituted "propelling piston engine" for "operating" in that sentence, deleted "Provided that" and "as provided herein" from the second sentence and increased the period for filing from 9 to 12 months in that sentence.

Effective date.—The 1959 act amending this section became effective on its approval, May 28, 1959.

Sec. 167-A. Provision for refund of 5/7 of tax paid by users of jet or turbo jet engine aircraft.—Any person, association of persons, firm or corporation who shall buy and use any internal combustion engine fuel as defined in section 159, for the purpose of propelling jet or turbo jet engine aircraft, and who shall have paid any tax on internal combustion engine fuel levied or directed to be paid as provided by sections 158 to 168, either directly by the collection of such tax by the vendor from such consumer, or indirectly by adding the amount of such tax to the price of such fuel and paid by such consumer, shall be reimbursed and repaid to the extent of 5/7 of the amount of such tax paid by him upon presenting to the state tax assessor a statement accompanied by the original invoices showing such purchases. Applications for refunds must be filed with the state tax assessor within 12 months from the date of purchase. (1959, c. 332, § 3.)

Effective date. — The 1959 act adding this section became effective on its approval, May 28, 1959.

Sec. 168. Aeronautical fund.—Every distributor of internal combustion fuels shall keep a record of sales of such fuels as are sold to be used for aeronautical purposes and shall render a report thereof as provided in section 163. To the aeronautical fund, as heretofore established, shall be credited the tax received by the state on internal combustion engine fuels which are sold to be used for aeronautical purposes. Provided, however, that the necessary expenses of the collection of the tax on such fuels, to be used for aeronautical purposes, shall be deducted. All fees from the registration of aircraft and pilots as provided for by law and all fines, penalties and costs as imposed under the provisions of law relating to aircraft and pilots shall accrue to the aeronautical fund. Any unexpended balance from the above apportionments shall not lapse but shall be carried forward to the same fund for the next fiscal year and be available for such uses as indicated in this section. The aeronautics commission is authorized and directed to expend so much of the aeronautical fund as may be necessary for the purposes of carrying out the duties imposed upon it by law and to expend any unexpended balance in such fund toward the development and promotion of aviation, and to assist in construction, repair and the maintenance of, and the removal of snow from, municipal, state and federal airports in this state, and assist in the construction and maintenance of a system of air marking, in such manner and in such amounts as it shall deem equitable. Such assistance may likewise be given for snow removal on a state, federal or municipal owned airport used by a commercial air carrier of passengers and freight operating on a regular schedule, this assistance being extended to such carrier where the state, federal or municipal owner does not obligate itself, and provided that the airport is open to itinerant planes. The amounts in said fund are appropriated for the purposes set forth herein. (R. S. c. 14, § 167. 1947, c. 337. 1949, c. 245. 1951, c. 15. 1959, c. 212.)

Effect of amendment.—The 1959 amendment added the words "toward the development and promotion of aviation, and" after the word "fund" and before the word "to" in the sixth sentence.

Effective date.—The 1959 act amending this section became effective on its approval, April 22, 1959.

Use Fuel Tax.

Sec. 170. Definitions.

"Person" shall mean and include natural persons and partnerships, firms, associations, corporations both public and private, except municipalities.

"User" shall mean any person who uses and consumes fuel within this state in an internal combustion engine for the generation of power to propel vehicles of any kind or character on the public highways of this state, except in vehicles which are prohibited by law from operating on the public highways, and except

in noncommercial vehicles having a fuel tank capacity of 20 gallons or less which are owned by nonresidents of this state and are not required to be registered in this state. (R. S. c. 14, § 170. 1951, c. 385. 1955, c. 368, § 1. 1961, c. 62, § 1.)

Effect of amendments.—The 1955 amendment substituted "except" for "and" before the word "municipalities" at the end of the fifth paragraph.

The 1961 amendment added the exception as to noncommercial vehicles at the end of the last paragraph.

As the rest of the section was not changed by the amendments, only the fifth and last paragraphs are set out.

Sec. 172. Levy of tax and exemptions.—An excise tax imposed on all users of fuel upon the use of such fuel by any person within this state, only when such fuel is used in an internal combustion engine for the generation of power to propel motor vehicles of any kind or character on the public highways or turnpikes operated and maintained by the Maine Turnpike Authority, at the rate of 7¢ per gallon, to be computed in the manner set forth in sections 173 to 187, inclusive; provided, however, that no tax is imposed upon the use of any fuel if the constitution of the United States or of this State precludes such tax. (R. S. c. 14, § 172. 1947, c. 101 § 2; c. 349, § 5. 1949, c. 349, § 12. 1955, c. 436, § 5.)

Effect of amendment.—The 1955 amendment increased the rate of the tax from 6¢ to 7¢ per gallon. The amendatory act was made effective on its approval and became law by virtue of a two-thirds vote of the members of the legislature over the objections of the governor, May 21, 1955. Section 6 of the amendatory act provides: "No tax imposed by the provisions of this act shall be levied prior to June 1, 1955. With respect to internal combustion engine fuel as defined in section 159 of chapter 16 of the revised statutes, this act shall apply only to such fuel which the distributor shall sell, distribute or use on and after June 1, 1955."

Sec. 174. Bond required of licensed users.—Every user, except a user operating only noncommercial vehicles, including station wagons, none of which has a fuel tank capacity in excess of 20 gallons, shall file with the state tax assessor a bond as follows:

I. Minimum amount. In the minimum amount of $200 and a maximum amount of $10,000 on a form to be approved by the state tax assessor; (1955, c. 368, § 2. 1961, c. 62, § 2.)

Effect of amendments.—The 1955 amendment deleted the words "except a municipality" following the word "user" near the beginning of the opening paragraph of this section.

The 1961 amendment inserted the present exception in the opening paragraph and increased the minimum amount from $100 to $200 in subsection I.

As the rest of the section was not changed by the amendments, only the opening paragraph and subsection I are set out.

Sec. 175. Tax reports; computation and payment of tax.

Users operating only noncommercial vehicles, including station wagons, none of which has a fuel tank capacity in excess of 20 gallons, and who use only fuel purchased within the state and delivered directly by a licensed use fuel dealer into the fuel tanks of such vehicles, may be exempted at the discretion of the state tax assessor from filing reports under this section. (R. S. c. 14, § 175. 1945, c. 31, § 5. 1949, c. 11. 1951, c. 289, § 1. 1961, c. 62, § 3.)

Effect of amendment.—The 1961 amendment added the above paragraph at the end of this section.

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 177. Failure to report and pay taxes.—When any user shall fail to file the monthly report with the state tax assessor on or before the time fixed for the filing thereof, or when such user fails to submit data outlined in section 175 in such monthly report, or when such user shall fail to pay to the state tax assessor the amount of excise taxes due this state when the same shall be paid, a penalty of 10% shall be added to the amount of the tax due, and such penalty of 10% shall immediately accrue and thereafter said tax and penalty shall bear

interest at the rate of 1% per month or fraction thereof until the same is paid. (R. S. c. 14, § 177. 1945, c. 31, § 6. 1961, c. 62, § 4.)

Effect of amendment.—The 1961 amendment inserted "or fraction thereof" near the end of this section.

Sec. 182. Use fuel dealer license; reports; tax.

At the time of the filing of said report each use fuel dealer shall pay to the state tax assessor a tax of 7¢ upon each gallon so reported as sold or used, and the state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. If such report is not filed by the last day of the month such dealer shall be liable to a penalty of $1 a day for each day in arrears, due on demand by the state tax assessor and recoverable in a civil action.

Each dealer shall, within 15 days after demand made on him by the state tax assessor, pay a tax of 7¢ per gallon upon each gallon of such fuels upon which the tax has not been paid which, upon an audit, the state tax assessor may find to have been received into the state during the preceding year by the dealer and not properly accounted for in a dealer's report or in accordance with law.

Each dealer paying or becoming liable to pay the tax imposed by this section shall be entitled to charge and collect 7¢ per gallon only as a part of the selling price of the fuels subject to the tax. (1951, c. 289, § 2. 1955, c. 436, § 5-A. 1957, c. 54. 1961, c. 317, § 19.)

Effect of amendments. — The 1955 amendment substituted "7¢" for "6¢" in the third, fourth and fifth paragraphs. Such amendatory act was made effective on its approval and became law by virtue of a two-thirds vote of the members of the legislature over the objections of the governor, May 21, 1955. Section 6 of such amendatory act provides: "No tax imposed by the provisions of this act shall be levied prior to June 1, 1955. With respect to internal combustion engine fuel as defined in section 159 of chapter 16 of the revised statutes, this act shall apply only to such fuel which the distributor shall sell, distribute or use on and after June 1, 1955."

The 1957 amendment decreased the penalty in the third paragraph from $5 to $1.

The 1961 amendment substituted "a civil action" for "an action of debt" in the third paragraph of this section.

As the first and second paragraphs were not changed by the amendments, they are not set out.

Sec. 183-A. Refund of taxes for certain common carriers.—Any person, firm or corporation engaged in furnishing common carrier passenger service under a certificate issued by the public utilities commission shall be reimbursed and repaid to the extent of 3/7 of the amount of such tax paid by him upon that proportion of the combustible gases and liquids used in an internal combustion engine used in locally encouraged vehicles operated by him which his tax-exempt passenger fare revenue derived from such service bears to his total passenger fare revenue. Tax-exempt passenger fare revenue means revenue attributable to fares which were exempt from the federal tax upon transportation of persons imposed by section 4261 of the Federal Internal Revenue Code, by reasons of the provisions of sections 4262 or 4263 of said Internal Revenue Code. Total passenger fare revenue means all revenue attributable to the claimant's passenger operations, whether or not pursuant to the certificate issued by the public utilities commission. The refund provided for in this section shall be made only if the claimant's tax-exempt passenger fare revenue is at least 60% of the claimant's total passenger fare revenue derived during the calendar quarter for which such refund is claimed. "Locally encouraged vehicles" means busses upon which no excise tax is collected under chapter 91-A, section 125, subsection XII.

The claimant shall present his claim to the state tax assessor in such form and with such information as the state tax assessor may prescribe accompanied by original invoices showing such purchases; applications for refunds as provided

must be filed with the state tax assessor within 9 months from the date of purchase. (1959, c. 329, § 3; c. 378, § 4.)

Effect of amendment.—P. L. 1959, ch. 378, effective on its approval, January 29, 1960, substituted "chapter 91-A, section 125, subsection XII" for "chapter 22, section 49" at the end of the first paragraph.

Gasoline Road Tax on Motor Vehicles.

Sec. 193. Collection of tax.—If any motor carrier subject to the provisions of sections 188 to 199, inclusive, and not exempted under the provisions of section 192, fails to make the returns herein required, the state tax assessor shall make an assessment of the tax upon such calculation of the amount of motor fuel used by such motor carrier within this state as he thinks just, with such evidence as he may obtain, and such assessment shall be final. If any motor carrier fails to pay such tax, the state tax assessor may forthwith commence a civil action in the name of the state for recovery of the tax with interest at the rate of 10% per year. In addition to such action or without bringing such action, the state tax assessor may recommend to the public utilities commission that the certificate or permit of such motor carrier be suspended or revoked. (1947, c. 362, § 1. 1949, c. 349, § 13. 1951, c. 266, §§ 9, 12. 1961, c. 317, § 20.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in the second sentence of this section.

Cigarette Tax.

Editor's note.—The tax on cigars and tobacco products, formerly imposed by §§ 200-221, was repealed by P. L. 1953, c. 429, effective January 1, 1955, not codified. P. L. 1953, c. 429, was repealed by P. L. 1955, c. 405, § 48, and in large part re-enacted by §§ 8-27 of the same act, which amended many of the sections of this subdivision.

Sec. 200. Definitions.—Whenever used in sections 200 to 221, inclusive, unless the context shall otherwise require, the following words and phrases shall have the following meanings:

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

"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 dealer" shall mean a dealer licensed under the provisions of said sections;

"Licensed distributor" shall mean a distributor licensed under the provisions of sections 200 to 221, inclusive;

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

"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;

"Tax assessor" or "assessor" shall mean the state tax assessor;

"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. (R. S. c. 14, § 186. 1945, c. 89, § 1. 1947, c. 377, § 1. 1953, c 308, § 10. 1955, c. 405, § 8.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" after the word "cigarettes" wherever it appears in the definitions of "dealer," "distributor" and "unclassified importer." It also deleted a definition of "tobacco products."

Sec. 201. 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 one 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 sections 200 to 221, inclusive. 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. (R. S. c. 14, § 187 1947, c. 377, § 2. 1949, c. 171, § 1; c. 409, § 1. 1953, c. 308, § 10 1955 c. 405, § 9.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" following the word "cigarettes" wherever it appears in this section.

Sec. 202. Validity of license.

Effect of amendment.—This section was re-enacted without change by P. L. 1955, c. 405, § 10.

Sec. 203. Revocation of license.

Effect of amendment.—This section was re-enacted without change by P. L. 1955, c. 405, § 11.

Sec. 204. 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 3 mills for each cigarette and the payment thereof to be evidenced by the affixing of stamps to the packages containing the cigarettes. 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 sections 200 to 221, inclusive. Nothing contained in said sections 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 3 mills per cigarette. Payment of the amount due the state shall be made within 10 days from mailing date of notice thereof. (R. S. c. 14, § 190. 1947, c. 377, § 5. 1949, c. 409, § 3. 1953, c. 308, § 10. 1955, c. 359, § 4. 1961, c. 372, §§ 1, 2.)

Effect of amendments.—The 1955 amendment, which became effective July 1, 1955, increased the rate of the tax on cigarettes from 2 to 2½ mills for each cigarette, and

omitted provisions for the tax on "cigars and tobacco products," previously repealed by P. L. 1953, c. 429, not codified. See note immediately preceding § 200.

Section 6 of the 1955 amendatory act authorizes the state tax assessor to waive, for a period of not over seven days following the effective date of the act, payment of the additional tax by retail dealers with respect to stocks of cigarettes properly stamped at the rate of 2 mills per cigarette sold during such period, provided such stocks were on hand as of the effective date of the act. Section 6 further provides that "cigarettes in the hands of retail dealers subsequent to the period of waiver provided for above, not properly stamped at the rate of 2½ mills per cigarette, shall be subject to confiscation under the provisions of section 211 of chapter 16 of the revised statutes; and such retailer shall be subject to any other penalties by law provided."

The 1961 amendment, effective July 1, 1961, increased the rate of tax from 2½ to 3 mills.

Section 4 of the 1961 act contains provisions similar to those of § 6 of the 1955 act.

Sec. 205. 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 sections 200 to 221, inclusive. To licensed distributors he shall sell such cigarette stamps at a discount of 3% 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 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 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. (R. S. c. 14, § 191 1947, c. 377, § 6. 1951, c. 409. 1953, c. 308, § 10; c. 408. 1955, c. 1, § 1; c. 359, § 5. 1961, c. 372, § 3.)

Effect of amendments. — The first 1955 amendment, which was made retroactive to January 1, 1955, deleted provisions relating to stamps for "cigars and tobacco products" in the first and second sentences. It also increased to 4% the discount on cigarette stamp sales, which had been reduced from 4% to 3½% by P. L. 1953, c. 429, § 4, not codified. The discount was again reduced to 3½% by the second 1955 amendment, which became effective July 1, 1955. See note immediately preceding § 200.

Section 2 of the first 1955 amendatory act authorizes the state tax assessor to redeem unused, uncancelled tobacco tax stamps presented by any licensed distributor or dealer for that purpose on or before June 30, 1955. Section 3 of the same act authorizes the state tax assessor to give credit for or refund at face value tobacco tax stamps affixed to unsold stocks of cigars and tobacco products in the hands of a licensed distributor or dealer as of December 31, 1954, if application for such credit or refund is filed on or before February 15, 1955.

The 1961 amendment, effective July 1, 1961, reduced the discount to 3%.

Sec. 206. Dealers and distributors not to resell stamps; redemption.—No distributor or dealer shall sell or transfer any stamps issued under the provisions of sections 200 to 221, inclusive. The assessor 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. (R. S. c. 14, § 192. 1947, c 377 § 7. 1953, c. 308, § 10. 1955, c. 405 § 12.)

Effect of amendment.—The 1955 amendment deleted the words "or tobacco" after the word "cigarette" and the words "cigars and tobacco products" after the word "cigarettes" in the second sentence.

Sec. 207. 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 sections 200 to 221, inclusive, to each individual package of cigarettes sold or distributed by him, stamps of the proper denominations, as required by section 204. Such stamps may be affixed by a distributor at any time before the cigarettes are transferred out of his possession. (R. S. c. 14, § 193. 1947, c. 377, § 8. 1953, c. 308, § 10. 1955, c. 405, § 13.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" after the word "cigarettes" in the first sentence and the words "cigars or tobacco products" after the word "cigarettes" in the second sentence.

Sec. 208. 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 sections 200 to 221, inclusive, 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 said sections, to each individual package of cigarettes, stamps of the proper denomination as required by section 204. (R. S. c. 14, § 194. 1947, c. 377, § 9. 1953, c. 308, § 10. 1955, c. 405, § 14.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" following the word "cigarettes" in three places in this section.

Sec. 209. 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 sections 200 to 221, inclusive, 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. (R. S. c. 14, § 195. 1947, c. 377, § 10. 1953, c. 308, § 10. 1955, c. 405, § 15.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" following the word "cigarettes" in three places in this section.

Sec. 210. 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. (1949, c. 409, § 4. 1955, c. 405, § 16.)

Effect of amendment.—The 1955 amendment deleted the words "cigars or tobacco products" following the word "cigarettes" in two places in this section.

Sec. 211. Unstamped cigarettes subject to confiscation.—Any cigarettes found at any place in this state without stamps affixed thereto as required by sections 200 to 221, inclusive, 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 204, 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 a 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. (R. S. c. 14, § 196. 1947, c. 377, § 11. 1953, c. 308, § 10. 1955, c. 405, § 17.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" following the word "cigarettes" wherever it appears in this section.

Sec. 212. 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 of 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 libelant 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 state 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. (R. S. c. 14, § 197. 1947, c. 377, § 12. 1955, c. 405, § 18.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" following the word "cigarettes" wherever it appears in this section.

Sec. 213. Fraudulent stamps.

Effect of amendment.—This section was re-enacted without change by P. L. 1955, c. 405, § 19.

Sec. 214. Taxpayers to keep records; assessor may examine.—Each distributor and each dealer shall keep complete and accurate records of all ciga-

rettes 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 assessor 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 sections 200 to 221 inclusive, 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 said sections are being obeyed. (R. S. c. 14, § 199. 1947, c. 377, § 13. 1953, c. 308, § 10. 1955, c. 405 § 20.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" following the word "cigarettes" in three places in this section.

Sec. 215. Oaths and subpœnas.

Effect of amendment.—This section was re-enacted without change by P. L. 1955, c. 405, § 21.

Sec. 216. Hearings by assessor.—Any person aggrieved by any action under the provisions of sections 200 to 221, inclusive, 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 hearings 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 account, papers or other documents for examination relative thereto. (R. S. c. 14, § 201. 1947, c. 377, § 14. 1953, c. 308, § 10. 1955, c. 405, § 22.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" following the word "cigarettes" in the last sentence.

Sec. 217. Appeals from decisions of tax assessor.—Any person aggrieved because of any action or decision of the tax assessor under sections 200 to 221 may appeal therefrom within 20 days to the superior court. When the appeal is taken, the appellant shall serve upon the state tax assessor or his duly authorized representative a copy of the said complaint stating the reasons for the appeal. Pending judgment of the court, the decision of the tax assessor shall remain in full force and effect. (R. S. c. 14, § 202. 1949, c. 73. 1953, c. 308, § 10. 1959, c. 317, § 4.)

Effect of amendments. — This section was re-enacted without change by P. L. 1955, c. 405, § 23.

The 1959 amendment rewrote the second sentence.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 218. Administration by assessor; rulings and regulations.

Effect of amendment.—This section was re-enacted without change by P. L. 1955, c. 405, § 24.

Sec. 219. 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 205, 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 205, which tax shall be due and payable upon demand of the tax assessor or his duly authorized agent. (R. S. c. 14, § 204. 1947, c. 377, § 15 1955, c. 405, § 25.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" following the word "cigarettes" in the first and second sentences.

Sec. 220. Tax credited to general fund.

Effect of amendment.—This section was re-enacted without change by P. L. 1955, c. 405, § 26.

Sec. 221. Tax is levy on consumer.—The liability for, or the incidence of, the tax on cigarettes is 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. (1949, c. 8. 1955, c. 405, § 27.)

Effect of amendment.—The 1955 amendment deleted the words "cigars and tobacco products" following the word "cigarettes" wherever it appears in this section.

Potato Tax.

Sec. 222. Purpose. — The production of potatoes is one of the most important agricultural industries of this state and sections 222 to 233, inclusive, were enacted into law to conserve and promote the prosperity and welfare of this state and of the potato industry of this state by fostering and promoting better methods of production, processing, merchandising and advertising the said potato industry of this state. (R. S. c. 14, § 206. 1957, c. 219, § 1.)

Effect of amendment. — The 1957 amendment inserted the word "processing" in this section.

Sec. 223. Definitions.

"Potatoes" shall mean and include all potatoes of the grades as recommended by the fruit and vegetable division, agricultural marketing service, United States department of agriculture and such other grades as may from time to time be promulgated by the department of agriculture of the state of Maine. The records of the department of agriculture of the state of Maine of the grades recommended by said fruit and vegetable division, agricultural marketing service, United States department of agriculture shall be prima facie evidence of such grades;

"Shipper" shall mean any person, partnership, association, firm or corporation engaged in the shipping of potatoes or transporting his own potatoes, whether as owner, agent or otherwise, to other than a licensed shipper. (R. S. c. 14, § 207. 1955, c. 379, § 1. 1957, c. 219, § 2.)

Effect of amendments. — The 1955 amendment added the words "to other than a licensed shipper" at the end of the last paragraph. Section 5 of the 1955 amendatory act, which provided that the act should remain in effect only until September 1, 1957, was repealed by Public Laws 1957, c. 219, § 5.

The 1957 amendment substituted the words "fruit and vegetable division, agricultural marketing service" for the words "bureau of agricultural economics of the" in two places in the third paragraph of this section.

As only the third and last paragraphs were changed by the amendments, the rest of the section is not set out.

Sec. 224. Tax on potatoes.—A tax is levied and imposed at the rate of 2¢ per barrel on all potatoes raised in this state, except that no tax shall be imposed upon any potatoes which are retained by the grower to be used by him for seed purposes or for home consumption. (R. S. c. 14, § 208. 1955, c. 379, § 2.)

Effect of amendment. — The 1955 amendment increased the rate of the tax from 1¢ to 2¢ per barrel. Section 5 of the 1955 amendatory act, which provided that the act should remain in effect only until September 1, 1957, was repealed by Public Laws 1957, c. 219, § 5.

Sec. 228. Report of shipments; time tax due.—Every shipper shall keep as a part of his permanent records a record of all purchases, sales and shipments of potatoes, which said records shall be open for inspection at all times as hereinafter provided and every shipper shall, on or before the 15th day of each month, render a report to the state tax assessor stating the quantity of potatoes received, sold or shipped by him during the preceding calendar month, on forms to be furnished by said tax assessor, and said report shall contain such further information pertinent thereto as said state tax assessor shall prescribe. On or before the 1st day of the calendar month succeeding the filing of said report, each shipper shall pay to the state tax assessor a tax at the rate of 2¢ per barrel upon all potatoes so reported as purchased, sold or shipped, as determined by the state tax assessor. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (R. S. c. 14, § 212. 1945, c. 30, § 2. 1955, c. 379, § 3.)

Effect of amendment. — The 1955 amendment increased the rate of the tax from 1¢ to 2¢ per barrel. Section 5 of the 1955 amendatory act, which provided that the act should remain in effect only until September 1, 1957, was repealed by Public Laws 1957, c. 219, § 5.

Sec. 231. Appropriation of moneys received.—Moneys received through the provisions of sections 222 to 233, inclusive, by the treasurer of state shall be appropriated and used for the following purposes:

I. For the collection of the tax provided for by section 224 and the enforcement of all the provisions of sections 222 to 233, inclusive.

II. A sum which shall equal at least $50,000 of the money collected shall be used and applied for the purpose of investigating and determining better methods of production, shipment and merchandising of potatoes, and for the manufacture and merchandising of potato by-products by the Maine agricultural

experiment station under the supervision of the Maine potato commission. (1955, c. 379, § 4; c. 471, § 2. 1957, c. 219, § 3.)

III. Advertising. A sum which shall equal at least 25% of the money collected shall be used for the general purpose of merchandising and advertising Maine potatoes for food and for seed purposes under the direction of the Maine potato commission. The commission may use the advice and facilities of the department of economic development and the department of agriculture in carrying out the provisions of this subsection. (1955, c. 471, § 2. 1957, c. 123, § 7. 1961, c. 154, § 1.)

IV. The funds remaining over and above the expenses of carrying out the provisions of sections 222 to 233, inclusive, including the expenditures authorized under the provisions of subsections II and III, may be expended by the potato commission to carry out the purposes outlined in said subsections as it may determine. The potato commission may expend annually a sum of money not in excess of $10,000 for the purpose of enforcing laws relating to the branding of potatoes. [1953, c. 360. 1955, c. 471, § 2]. (R. S. c. 14, § 215. 1953, c. 360. 1955, c. 379, § 4; c. 471, § 2. 1957, c. 123, § 7; c. 219, § 3. 1961, c. 154, § 1.)

Effect of amendments.—The first 1955 amendment substituted "18%" for "25%" near the beginning of subsection II. The second 1955 amendment substituted "potato commission" for "development commission" at the end of subsection II and in the first sentence of subsection III, added the second sentence of subsection III and substituted "potato commission" for "commission" in two places in subsection IV.

The first 1957 amendment substituted "department of economic development" for "department of development of industry and commerce" in subsection III. The second 1957 amendment deleted "18%" which was inserted in subsection II in 1955 and substituted "$50,000" in lieu thereof.

The 1961 amendment added "and the department of agriculture" in subsection III.

Sec. 232. Maine potato commission.—The Maine potato commission, heretofore established as the Maine potato tax committee, shall continue to consist of 5 members to be appointed by the commissioner of agriculture from representatives of the potato industry in this state. Four of these members shall be residents of Aroostook County and one a resident of central Maine, so called. Each member shall be appointed for a term of 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 said commission may work with the department of economic development and the department of agriculture in carrying out sections 222 to 233. The members of the commission shall serve without pay except the chairman, who shall receive a per diem of $15 when in the performance of his duties and all commissioners shall be reimbursed for expenses incurred in the performance of their duties. (R. S. c. 14, § 216. 1955, c. 471, § 3. 1957, c. 123, § 8; c. 219, § 4. 1961, c. 154, § 2.)

Effect of amendments. — The 1955 amendment changed the name of the Maine potato tax committee to the Maine potato commission, and substituted, in the next to the last sentence, provisions for working with the department of development of industry and commerce for provisions for working with the Maine development commission.

The first 1957 amendment substituted "department of economic development" for "department of development of industry and commerce" in the fifth sentence. The second 1957 amendment inserted the provision as to per diem pay of the chairman as an exception in the last sentence.

The 1961 amendment added "and the department of agriculture" in the next to last sentence.

Fertilizer Tax.

Sec. 234. Fee on commercial fertilizer sold.—Any person, firm or corporation who shall manufacture, sell, distribute, transport, offer or expose for sale,

distribution or transportation in this state any mixed fertilizer shall on or before September 1st in each year file with the state tax assessor a statement, in such form as the state tax assessor may prescribe, listing exactly the number of net tons of mixed fertilizer sold by him in the state during the 12 months preceding July 1st of the current year. With the filing of said statement, each such person, firm or corporation shall pay to the state tax assessor a fee of 4¢ a ton of 2,000 pounds for mixed fertilizer so sold. Whenever a statement has been filed and the fee required by this section has been paid, no other person shall be required to pay the fee. The state tax assessor or his agents shall be authorized to examine the books of the person, firm or corporation filing the statement for the purpose of verifying the same. The provisions of this section shall not apply to sales of mixed fertilizer to the federal government. (1949, c. 378. 1955, c. 78. 1959, c. 241, § 9. 1961, c. 395, § 4.)

Effect of amendments. — The 1955 amendment added the last sentence.

The 1959 amendment substituted "4¢" for "1¢" in the second sentence.

The 1961 amendment, effective on its approval, June 17, 1961, eliminated "sworn" preceding "statement" in the first sentence.

Effective date. — P. L. 1959, c. 241, amending this section, provided in section 11 thereof as follows: "The provisions of this act shall become effective January 1, 1960."

Sec. 235. Disposition of fees.—The fees so collected by the state tax assessor shall be deposited with the treasurer of state and appropriated for carrying out the provisions of chapter 32, sections 215-A to 215-J, including the cost of inspection, sampling and analysis of commercial fertilizer. Such funds shall not lapse but shall remain a continuing carrying account. (1949, c. 378. 1959, c. 241, § 10.)

Effect of amendment.—The 1959 amendment substituted "sections 215-A to 215-J" for "sections 184 and 186."

Effective date. — P. L. 1959, c. 241, amending this section, provided in section 11 thereof as follows: "The provisions of this act shall become effective January 1, 1960."

Blueberry Tax.

Sec. 245-A. Character of the assessor's records.—Neither the assessor nor any employee engaged in the administration of sections 238 to 249, inclusive, or charged with the custody of any such records or files shall be required to produce any of them for use in any action or proceedings except in behalf of the assessor, in an action or proceeding under the provisions of sections 238 to 249, inclusive, to which the assessor is a party, or in behalf of any party to any action or proceeding under the provisions of sections 238 to 249, inclusive, when the records or files or the facts shown thereby are directly involved in any such action or proceedings. (1957, c. 403.)

Sweet Corn Tax.

Sec. 258. Action to recover tax.—If said tax is not paid within the times prescribed, it shall be recoverable from the contractor by the state tax assessor in a civil action in the name of the state. (1945, c. 125; c. 378, §§ 12, 29. 1961, c. 317, § 21.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of assumpsit" in this section.

Sardine Tax.

Sec. 261. Definitions.—For the purpose of sections 260 to 269, inclusive:

The term "sardine" shall be held to include any canned, clupeoid fish being the fish commonly called herring, particularly the clupea harengus.

A "case" of sardines shall mean:

I. 100 one-quarter size cans of sardines packed in oil, mustard or tomato sauce, or any other packing medium;

II. 48 three-quarter size cans packed in mustard or tomato sauce, or any other packing medium;

III. 48 cans of 15-ounce ovals packed in oil;

IV. 48 cans of 15-ounce ovals containing 13 or more fish packed in tomato or mustard sauce, or any other packing medium;

V. 48 cans of 15-ounce ovals containing 12 or less fish packed in mustard or tomato sauce, or any other packing medium except oil.

"Packer" shall mean any person, partnership, association, firm, corporation or entity engaged in packing sardines for sale. (1951, c. 2. 1957, c. 151, § 2.)

Effect of amendment. — The 1957 amendment, which became effective on its approval, April 16, 1957, added "or any other packing medium" to subsection II, rewrote subsection III and added subsections IV and V.

Sec. 262. Excise tax on sardines.—The packing of sardines is declared to constitute the introduction of sardines into the channels of trade.

An excise tax of 25¢ per case, as defined in subsections I, II and III of section 261, is levied and imposed upon the privilege of packing sardines; provided, however, that if on April 1st of any year there shall remain unexpended in the hands of the treasurer of state from excise taxes collected under the provisions of sections 260 to 269, inclusive, the sum of $500,000, then such excise tax shall not be levied and imposed upon the privilege of packing sardines during the 12 months following such April 1st.

The tax provided by this section shall be suspended on all cases of sardines described in section 261, subsection V, packed between January 1, 1959 and January 1, 1961. (1951, c. 2. 1953, c. 199, § 1. 1955, c. 126, § 1. 1957, c. 151, § 3. 1959, c. 28.)

Effect of amendments. — The 1955 amendment added the third paragraph. The amendment was made retroactive to January 1, 1955. And by § 4 of the amendatory act the state tax assessor is "authorized and directed to make such refunds as may be necessary to give effect to the provisions" of the amendment.

The 1957 amendment changed former reference to "subsection III" to read "subsection V," and changed the time mentioned from "between January 1, 1955 and January 1, 1957" to "between January 1, 1957 and January 1, 1959" in the last paragraph.

The 1959 amendment changed the time mentioned from "between January 1, 1957 and January 1, 1959" to "between January 1, 1959 and January 1, 1961" in the last paragraph.

Sec. 264. Reports of production and payment of tax.—Every packer shall keep as a part of his permanent records, a record of all sardines packed, which said records shall be open for inspection at all times as hereinafter provided, and every packer shall on or before the 10th day of each month render a report to the state tax assessor, stating the quantity of sardines packed by him during the preceding calendar month, on forms to be furnished by said state tax assessor, and at the same time shall pay to the state tax assessor the tax of 25¢ per case on all sardines so reported as packed, except that the tax on items described in subsection III of section 261 shall be suspended on all such items packed between January 1, 1955 and January 1, 1957. If it appears to the state tax assessor from inspection of records or otherwise that an additional tax is due or overpayment of tax has been made, additional assessments or refunds shall be made by the state tax assessor. Such additional assessments shall be due upon certification to the taxpayer. Provided, nevertheless, any packer may pay to the state tax assessor in advance a sum of money based on an estimate of his tax for a given number of months, and this sum shall be a credit against future monthly reports of that packer. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (1951, c. 2. 1953, c. 199, § 2. 1955, c. 126, § 2.)

Effect of amendment.—The 1955 amendment added the exception clause at the end of the first sentence. The amendment was made retroactive to January 1, 1955.

And by § 4 of the amendatory act the state tax assessor is "authorized and directed to make such refunds as may be necessary to give effect to the provisions" of the amendment.

Sec. 267. Appropriation and use of moneys received.

II. The balance in such amounts as shall be from time to time determined by the Maine sardine council:

A. For the purpose of merchandising and advertising Maine sardines for food, under direction of the Maine sardine council with the advice and cooperation of the commissioner of department of economic development.

B. For conducting research and investigation of methods of propagating and conserving clupeoid fish, particularly the clupea harengus, with a view of improving both the quality and quantity of the same in Maine waters, and for the implementation of all feasible methods of improving, propagating and conserving the same, under the joint direction of the commissioner of sea and shore fisheries and the Maine sardine council.

C. For gathering, studying, classifying and distributing information and data concerning quality, grades, standards, methods of packing and character of the manufactured sardine products, in order to determine and improve their quality and aid in merchandising and advertising them under the direction of the Maine sardine council with the advice and cooperation of the commissioner of economic development. Such information and data and the services of the personnel who collect and classify it may be made available to the commissioner of agriculture for use in promulgating, establishing and modifying official grades for sardines and for use in assigning and determining grades of sardines and in enforcing applicable provisions of the law. (1951, c. 2. 1955, c. 471, § 4. 1957, c. 123, § 9; c. 151, § 1; c. 397, § 56.)

Effect of amendments. — The 1955 amendment substituted "council" for "tax committee" at the end of the opening paragraph of subsection II and at the end of paragraph B of subsection II, and rewrote paragraph A of subsection II.

The first 1957 amendment substituted "commissioner of department of economic development" for "commissioner of development of industry and commerce" in paragraph A of subsection II. The second 1957 amendment, which became effective on its approval April 16, 1957, inserted paragraph C of subsection II, and the third 1957 amendment substituted "commissioner of economic development" for "commissioner of industry and commerce" in such paragraph.

As only subsection II was changed by the amendments, the rest of the section is not set out.

Sec. 268. Maine sardine council.—The Maine sardine council, as heretofore established, shall consist of 7 members to be appointed by the commissioner of sea and shore fisheries. 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 sardine packers, operating within the state, who shall have been actively engaged in packing sardines 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 packing sardines 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 packing sardines.

Regular appointments shall be for a term of 5 years and each member shall serve until his successor is duly appointed and qualified. In the case of a vacancy caused by death, resignation or otherwise, the vacancy shall be filled promptly by the commissioner of sea and shore fisheries for the unexpired period of the term.

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 an executive secretary-advertising and merchandis-

ing manager to administer the advertising, merchandising, research and development program, in concurrence with the commissioner of sea and shore fisheries and with the advice and cooperation of the commissioner of department of economic development, and fix his salary. The executive secretary, with the consent of the council, is authorized, subject to the provisions of the personnel law, to engage sufficient clerical personnel and other employees for the efficient performance of his duties. (1951, c. 2. 1953, c. 214. 1955, c. 126, § 3; c. 471, § 5. 1957, c. 123, § 10; c. 397, § 12.)

Effect of amendments. — Both 1955 amendments substituted "Four" for "Five" at the beginning of the second sentence of this section. The second amendment also changed the name of the Maine sardine tax committee to the Maine sardine council and deleted a reference to the Maine development commission in the next to the last sentence and inserted therein the present provision as to advice and cooperation of the commissioner. The first 1957 amendment substituted "commissioner of department of economic development" for "commissioner of development of industry and commerce" in the next to the last sentence of this section. The second 1957 amendment reenacted the second sentence without change.

Milk Tax.

Editor's note. — Section 3 of the act from which §§ 270-281 were codified made the act effective only until Sept. 1, 1955. Section 3 was repealed by P. L. 1955, c. 303.

Sec. 278. Penalty for false return or violations of provisions; tax may be collected by civil action; jurisdiction.—Any handler of milk, as defined in section 271, who shall make any false or fraudulent report or return required by sections 270 to 281, 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 handler shall fail to pay any tax due under the provisions of said sections, within the time limited herein, the attorney general shall enforce payment of such tax by civil action against such handler for the amount of such tax, either in the superior court or municipal court in and for the county in which such handler has his residence or established place of business or in the superior court for Kennebec county.

Whenever any handler 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 certificate of such handler; and such revocation shall become effective upon notice to the handler. Any handler 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 handler 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 handler aggrieved by such order of the assessor may appeal therefrom within 20 days after notice of such order to the superior court. The appellant shall, when the appeal is taken, give to the state tax assessor or his duly authorized representative written notice of the appeal with a copy of the complaint stating the reasons for the appeal. 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. (1953, c. 393, § 1. 1959, c. 317, § 5.)

Effect of amendment.—The 1959 amendment rewrote the sixth sentence of the last paragraph.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all

actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Maine Dry Bean Tax.

Editor's note.—Public Laws 1957, c. 326, which inserted this subdivision, provided in section 2 thereof that the act should become effective September 1, 1957.

Sec. 282. Purpose.—The production of dry beans is one of the most important agricultural industries of this state and sections 282 to 293, inclusive, were enacted into law to conserve and promote the prosperity and welfare of this state and of the dry bean industry of this state by fostering and promoting better methods of production, merchandising and advertising the said dry bean industry of this state. Only dry beans raised in the state of Maine shall be marketed and labeled as state of Maine beans. (1957, c. 326, § 1.)

Cited in State v. Lasky, 156 Me. 419, 165 A. (2d) 579.

Sec. 283. Definitions.—The terms used in sections 282 to 293, inclusive, shall be construed as follows:

"Bag" shall mean 100 pounds of dry beans;

"Dry beans" shall mean and include all dry edible beans;

"Shipment" shall be deemed to take place when the dry beans are located within the state in the car, boat, truck or other conveyance in which the dry beans are to be transported;

"Shipper" shall mean any person, partnership, association, firm or corporation engaged in the shipping of dry beans or transporting his own dry beans, whether as owner, agent or otherwise, to other than a licensed shipper. (1957, c. 326, § 1.)

Sec. 284. Tax on dry beans.—A tax is levied and imposed at the rate of 4¢ per bag on all dry beans raised in this state, except that no tax shall be imposed upon any dry beans which are retained by the grower to be used by him for seed purposes or for home consumption. (1957, c. 326, § 1.)

Sec. 285. When tax due.—The tax imposed by section 284 shall be due upon any particular lot or quantity of dry beans under the provisions of section 288. (1957, c. 326, § 1.)

Sec. 286. Shippers to file applications with state tax assessor; shippers not to ship until certificate is issued.—Every shipper of dry beans, as defined in section 283, 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 shipper is transacting business within the state, the place or places of business and location of loading and shipping places and agents of the shipper; the names and addresses of the several persons constituting a firm or partnership and, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The state tax assessor will then issue a certificate to the shipper and no shipper shall sell or ship any dry beans, as defined in section 283, until such certificate is furnished as required by this section. (1957, c. 326, § 1.)

Sec. 287. Shipper entitled to deduct tax from selling price.—Each shipper purchasing dry beans and paying, or becoming liable to pay, the tax imposed by section 284 shall charge and collect from the seller a tax at the rate of

2¢ per bag, to be deducted from the purchase price of all dry beans subject to the tax so purchased by such shipper. (1957, c. 326, § 1.)

Sec. 288. Report of shipments; time tax due.—Every shipper shall keep as a part of his permanent records a record of all purchases, sales and shipments of dry beans, which said records shall be open for inspection at all times as provided and every shipper shall, on or before the 15th day of May of each year, render a report to the state tax assessor stating the quantity of dry beans received, sold or shipped by him during the preceding 12 calendar months on forms to be furnished by said tax assessor, and said report shall contain such further information pertinent thereto as said state tax assessor shall prescribe. At the same time as the filing of said report, each shipper shall pay to the state tax assessor a tax at the rate of 4¢ per bag upon all dry beans so reported as purchased, sold or shipped. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. (1957, c. 326, § 1.)

Sec. 289. Authority to inspect.—The state tax assessor or his duly authorized agent shall have authority to enter any place of business of any shipper, or any car, boat, truck or other conveyance in which dry beans are to be transported and to inspect any books or records of any shipper for the purpose of determining what dry beans are taxable under the provisions of sections 282 to 293, inclusive, or for the purpose of determining the truth or falsity of any statement or return made by any shipper and he shall have authority to delegate such power to the commissioner of agriculture, his deputies, agents, servants or employees. (1957, c. 326, § 1.)

Sec. 290. False return or violation of provisions; tax may be collected by civil action; jurisdiction.—Any shipper of dry beans, as defined in section 283, who shall make any false or fraudulent report or return required by sections 282 to 293, inclusive, or who shall evade or violate any of the provisions of said sections, shall be punished by a fine of not more than $100. Whenever any shipper shall fail to pay any tax due under the provisions of said sections, within the time limited herein, the attorney general shall enforce payment of such tax by civil action against such shipper for the amount of such tax, either in the superior court or municipal court in and for the county in which such shipper has his residence or established place of business. (1957, c. 326, § 1.)

Sec. 291. Appropriation of moneys received.—Moneys received through the provisions of sections 282 to 293, inclusive, by the treasurer of state shall be appropriated and used for the following purposes:

I. For the collection of the tax provided for by section 284 and the enforcement of all the provisions of sections 282 to 293, inclusive.

II. The balance shall be expended under the direction of the Maine dry bean commission in advertising, merchandising and in research for the purpose of promoting the dry bean industry. The commission may use the advice and facilities of the department of economic development in carrying out the provisions of this subsection. (1957, c. 326, § 1.)

Sec. 292. Maine dry bean commission.—The Maine dry bean commission shall consist of the commissioner of agriculture and 4 representatives of the dry bean industry in this state, to be appointed by the commissioner of agriculture. Each member shall be appointed for a term of 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 said commission may work with the department of economic development and the department of agriculture in carrying out the provisions of sections 282 to 293, inclusive. The members of the commission

shall receive neither compensation nor reimbursement for their expenses incurred in the performance of their duties. (1957, c. 326, § 1.)

Sec. 293. Tax in addition to other taxes.—All taxes imposed and collected under the provisions of sections 282 to 293, 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. (1957, c. 326, § 1.)

Quahog Tax.

Editor's note.—Section 21 of P. L. 1957, c. 429, repealed P. L. 1957, c. 355, which had enacted eight sections relating to the quahog tax. Section 22 of c. 429, added §§ 294-301 without making any substantive change in the provisions of c. 355.

Effective date.—P. L. 1957, c. 429, became effective upon its approval, October 31, 1957.

Bill amending quahog tax statute not one for revenue.—P. L. 1957, c. 429, § 22 (§§ 294 to 301), insofar as it amends the original quahog tax statute is not a bill to raise revenue within the meaning of Me. Const., Art. IV, Part Third, § 9. State v. Lasky, 156 Me. 419, 165 A. (2d) 579.

Sec. 294. Purpose.—The quahogs in Maine constitute a renewable natural resource of great value to the Casco Bay coastal region and the state, and sections 294 to 301 are enacted into law in order that funds may be available to the research division of the sea and shore fisheries department to cooperate with the coastal communities in paying for the purchase, maintenance and operation of boats and equipment to transplant seed quahogs from heavy concentrations to commercially depleted shellfish areas, and carry on other management and scientific work deemed necessary for the financial benefit of the industry. (1957, c. 355; c. 429, §§ 21, 22.)

Design of section. — The purposes set forth in this section are expressly designed to be of financial benefit to the industry, and hence to the State. State v. Lasky, 156 Me. 419, 165 A. (2d) 579.

Numbers in industry do not affect purpose of tax.— The purpose of a tax to benefit the public through benefit to the industry is not to be denied for the reason that the numbers engaged in the industry may be relatively small. State v. Lasky, 156 Me. 419, 165 A. (2d) 579.

Sec. 295. Definitions.—The terms used in sections 294 to 301 shall be construed as follows:

I. "Quahogs" shall mean a marine mollusk (Venus mercenaria) commonly called hard shelled clams.

II. "Primary producer" shall mean any person who digs or takes quahogs from the flats or waters of the coast of Maine for commercial purposes.

III. "Shellfish dealer" shall mean any person, partnership, association, firm, corporation or entity holding a sea and shore fisheries department wholesale seafood dealer's and processor's license or a resident or nonresident interstate shellfish transportation license engaged in buying quahogs from the primary producers and dealing in quahogs in the wholesale trade.

IV. "Landed value" shall mean the price payable to the primary producer by the shellfish dealer for quahogs dug or taken from the coastal waters. (1957, c. 355; c. 429, §§ 21, 22.)

Sec. 296. Tax on quahogs.—There is levied and imposed a tax at the rate of 5% on the landed value of all quahogs purchased from the primary producers by shellfish dealers. (1957, c. 355; c. 429, §§ 21, 22.)

Sec. 297. Report of purchases; when tax due.—Every shellfish dealer buying quahogs shall keep as a part of his permanent records a record of all purchases, sales and shipments of quahogs and said records shall be open for inspection at all times as hereinafter provided and every shellfish dealer on or before the 10th of each month shall render a report to the state tax assessor stating the quantity of quahogs bought by him, during the preceding calendar month,

on forms to be furnished by the state tax assessor, and at the same time shall pay to the state tax assessor the tax of 5% of the landed value of all quahogs purchased from primary producers for the preceding calendar month. (1957, c. 355; c. 429, §§ 21, 22.)

Sec. 298. Authority to inspect.—The state tax assessor or his duly authorized agent shall have authority to enter any place of business of a shellfish dealer, or any car, boat, truck or other conveyance in which quahogs are to be transported, and duly inspect any books or records of any shellfish dealer for the purpose of determining the truth or falsity of any statement or return made by any shellfish dealer, and he shall have authority to delegate such powers to the commissioner of sea and shore fisheries, his agents or employees. (1957, c. 355; c. 429, §§ 21, 22.)

Sec. 299. Determination of tax by assessor.—If any shellfish dealer shall neglect or refuse to make and file any report as required by section 297, or shall file an incorrect or fraudulent report, the state tax assessor shall determine after an investigation the tax liability of such shellfish 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 shellfish dealer liable therefor, and make demand upon him for payment thereof.

In any action or proceeding for the collection of the quahog 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 shellfish dealer to show the assessment was incorrect. (1957, c. 355; c. 429, §§ 21, 22.)

Sec. 300. False return or violation of provisions.—Any shellfish dealer who shall make any false or fraudulent report or return required by sections 296 and 297, or who shall evade or violate any of the provisions of said sections shall be punished by a fine of not more than $500, and his wholesale seafood dealer's and processor's license and his resident or nonresident interstate shellfish transportation license shall be suspended by the commissioner of sea and shore fisheries until such fine and all payments due the state on the aforesaid quahog tax are paid in full. Whenever any shellfish dealer shall fail to pay any tax due under the provisions of said sections within the time limited herein, the attorney general shall enforce payment of such tax by civil action against the shellfish dealer for the amount of such tax in either the superior court in Kennebec County or in a municipal court in the county in which such shellfish dealer has his residence or established place of business. (1957, c. 335; c. 429, §§ 21, 22.)

Sec. 301. Appropriation and use of moneys received.—Money received under the provisions of sections 294 to 301 by the treasurer of state shall be appropriated and used for the following purposes:

I. For the collection of the tax provided for by section 296 and for the enforcement of all the provisions of sections 294 to 301.

II. The balance in such amounts as shall from time to time be determined by the commissioner of sea and shore fisheries:

A. For the purpose of buying, maintaining and operating boats and equipment to transplant seed quahogs to flats and waters of the state.

B. To carry on scientific and management work deemed necessary for the benefit of the quahog industry. Any unexpended balance from the above apportionment shall not lapse, but shall be carried forward to the same fund for the next fiscal year. (1957, c. 355; c. 429, §§ 21, 22.)