

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE

1954

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1955 SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 1

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**Place in Pocket of Corresponding  
Volume of Main Set**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1955

rived 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 merchandising 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 development of industry and commerce, 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.)

**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 coun-

cil 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 of development of industry and commerce.

### Milk Tax.

**Director'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Section 3 was repealed by P. L. 1955, c. 303.

## Chapter 17.

### Sales and Use Tax Law.

#### Law imposes tax on retailer.

In accord with original. See *State v. Hancock*, 150 Me. 147, 107 A. (2d) 421.

**And does not violate constitutional principles.**—The sales and use tax law imposes a tax upon the retailer rather than the con-

sumer and thus does not violate constitutional principles by imposing upon the retailer the duty of collecting the tax without compensation therefor. *State v. Hancock*, 150 Me. 147, 107 A. (2d) 421.

#### Sec. 2. Definitions.

"Retail sale" or "sale at retail" means any sale of tangible personal property, in the ordinary course of business, for consumption or use, or for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. The term "retail sale" or "sale at retail" includes conditional sales, installment lease sales, and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later. The term "retail sale" or "sale at retail" does not include any sale by an executor or administrator in the settlement of an estate, unless such sale is made through a retailer, or unless such sale is made in the continuation or operation of a business; nor does the term include any other isolated transaction in which any tangible personal property is sold, transferred, offered for sale or delivered by the owner thereof, such sale, transfer, offer for sale, or delivery not being made in the ordinary course of repeated and successive transactions of a like character by such owner, such transactions being elsewhere sometimes referred to as "casual sales"; provided, however, that "casual sale" shall not include any transaction in which tangible personal property is sold, transferred

or offered for sale by a representative for the owner's account when such representative is a registered retailer, in which event such registered retailer shall have the same duties respecting such sale as if he had sold on his own account. "Retail sale" and "sale at retail" do not include the sale of tangible personal property which becomes an ingredient or component part of, or which is consumed or destroyed or loses its identity in the manufacture of, tangible personal property for later sale but shall include fuel and electricity. "Retail sale" or "sale at retail" do not include the sale of containers, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels and other packing, packaging and shipping materials when sold to persons for use in packing, packaging or shipping tangible personal property sold by them or upon which they have performed the service of cleaning, pressing, dyeing, washing, repairing or reconditioning in their regular course of business and which are transferred to the possession of the purchaser of such tangible personal property.

(1955, c. 144.)

**Effect of amendment.**—The 1955 amendment deleted the words "by the purchaser" formerly appearing after the words "later sale" in the second sentence from the end

of the tenth paragraph. As the rest of the section was not changed by the amendment, only the tenth paragraph is set out.

**Sec. 3. Sales tax.**

Cited in *Fortin v. Johnson*, 150 Me. 294, 110 A. (2d) 605.

**Sec. 5. Adding tax to sale price.**—Every retailer shall add the sales tax imposed by this chapter, or the average equivalent of said tax, to his sale price, except as hereinafter provided, and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid and shall be recoverable at law in the same manner as the purchase price. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedules:

<b>Amount of Sale Price</b>	<b>Amount of Tax</b>
\$0.01 to \$0.18, inclusive	No tax
.19 to .74, inclusive	1¢
.75 to 1.24, inclusive	2¢

Add 1¢ tax plus the above rate for each 50¢ or fraction thereof exceeding \$1.24.

When several articles are purchased together and at the same time, the tax shall be computed on the total amount of the several items.

Breakage under this section shall be retained by the retailer as compensation for the collection (1951, c. 250, § 1, 1955, c. 330.)

**Effect of amendment.**—The 1955 amendment substituted "\$0.18" for "\$0.24" in the first line of the schedule and ".19" for

".25" in the second line of the schedule. It also substituted "shall" for "may" in the next to the last paragraph.

**Sec. 8. Voluntary registration.**

Cited in *Fortin v. Johnson*, 150 Me. 294, 110 A. (2d) 605.

**Sec. 10. Exemptions.**

**X. Cigarettes.** Sales of cigarettes, subject to other taxes imposed by chapter 16. (1955, c. 405, § 28.)

**XX. Funeral services.** Sales of funeral services. [1955, c. 477]. (1951, c. 250, § 1, 1953, cc. 54, 66; c. 109, §§ 1, 2; c. 146, § 8; c. 274, § 1; c. 375; c. 385; § 3-A; cc. 401, 407; c. 418, § 2, 1955, c. 405, § 28; c. 477.)

**Effect of amendments.**—The first 1955 amendment deleted the words "cigars, tobacco and" before the word "cigarettes" in subsection X. The second 1955 amend-

ment added subsection XX. As the rest of the section was not changed by the amendments, only subsections X and XX are set out.

**Ice cream, etc., in cones and open containers.**—Dairy Queen products in cones and open disposable containers are “ordinarily sold for immediate consumption on or near the premises of the retailer” and are not “packaged” or “wrapped” within the meaning of subsection III. Fortin v. Johnson, 150 Me. 294, 110 A. (2d) 605.

As to taxability of ice cream, etc., sold in cones or open containers under subsection III as it stood before the 1953 amendment, see Fortin v. Johnson, 150 Me. 294, 110 A. (2d) 605.

**Disposable straws, spoons or containers** do not have the permanence associated with “trays, glasses, dishes or other table ware” within the meaning of the exclusion from exemption provisions of subsection

**Sec. 10-A. Tax against isolated motor vehicle transactions except sale for resale.**—The tax imposed by the provisions of this chapter shall be levied upon all isolated transactions involving the sale of motor vehicles excepting those sold for resale. (1955, c. 359, § 3.)

**Effective date.**—This section became effective July 1, 1955.

### **Sec. 18. Overpayment; refunds.**

Under this section there is no provision for a petition by the taxpayer to the state tax assessor, or for an appeal from an ad-

verse decision upon a claim or refund of taxes paid. Fortin v. Johnson, 150 Me. 294, 110 A. (2d) 605.

**Food products sold for consumption upon the premises of a drive-in theatre** are plainly “food products ordinarily sold for immediate consumption on or near” the premises within the meaning of subsection III. Cumberland Amusement Corp. v. Johnson, 150 Me. 304, 110 A. (2d) 610.

Ice cream in small covered cups, chocolate coated ice cream bars, hot dogs in individual rolls, napkins, or small cardboard open top trays, popcorn in boxes, coffee in individual cups sold at the drive-in for consumption upon the theatre premises are taxable under subsection III as amended by P. L., 1953, c. 146, § 8. Cumberland Amusement Corp. v. Johnson, 150 Me. 304, 110 A. (2d) 610.

### **Sec. 32. Petition for reconsideration of assessment.**

Cited in Fortin v. Johnson, 150 Me. 294, 110 A. (2d) 605.

### **Sec. 33. Appeal.**

**Reasons for appeal must be filed before reporting of case to law court.**—The “reasons for appeal” required by this section must be filed prior to the reporting of a case to the law court since such “reasons” are essential to a determination of the legal questions involved. Cumberland Amusement Corp. v. Johnson, 150 Me. 304, 110 A. (2d) 610.

**Whether jurisdiction depends upon the timely filing of “reasons for appeal” and “affidavit” under this section is not decided.** Cumberland Amusement Corp. v.

Johnson, 150 Me. 304, 110 A. (2d) 610.

**Appeal from refusal of state tax assessor to rebate tax payments.**—The superior court has no jurisdiction to entertain an appeal from a refusal of the state tax assessor to rebate tax payments made, and such jurisdiction does not arise from statutory provisions allowing appeals from decisions denying “reconsideration of assessments” under this section and § 32 of this chapter. Fortin v. Johnson, 150 Me. 294, 110 A. (2d) 605.

## **Chapter 18.**

### **Treasurer of State.**

#### **Sec. 1. Treasurer of state; office; bond; salary; deputy.**

The treasurer of state shall receive an annual salary of \$6,000; he shall receive no other fee, emolument or perquisite.

(1955, c. 473, § 3.)

**Effect of amendment.**—The 1955 amendment increased the annual salary of the treasurer of state from \$5,000 to \$6,000.

As only the second paragraph of this section was changed by the amendment, the rest of the section is not set out.