

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1957 CUMULATIVE 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  
1957

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.)

## 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.

**Lease of coin-operated machines.**—A Maine customer who leases coin-operated

machines from lessor, a Massachusetts corporation, under contracts executed in Massachusetts is not a purchaser at retail sale and hence is not liable for a sales tax. Lessee in Maine of machine is a user but not a purchaser thereof and hence is not taxable. *Trimount Coin Machine Co. v. Johnson*, 152 Me. 109, 124 A. (2d) 753.

**Sec. 3. Sales tax.**—A tax is imposed at the rate of 3% on the value of all tangible personal property, sold at retail in this state on and after July 1, 1957, measured by the sale price, except as in this chapter provided. Retailers shall pay such tax at the time and in the manner hereinafter provided, and it shall be in addition to all other taxes.

(1957, c. 402, § 1.)

**Effect of amendment.**—The 1957 amendment, which became effective on its approval May 29, 1957, substituted "3%" for "2%" and inserted "on and after July 1, 1957" in the first sentence of the first paragraph. As the second and third paragraphs were not changed by the amendment, they are not set out.

**Editor's note.**—The 1957 amendatory act provided in section 5 of such act as follows: "Sales made after June 30, 1957, pursuant to contracts entered into prior thereto, shall be subject to the tax imposed by this act."

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

**Sec. 4. Use tax.**—A tax is imposed on the storage, use or other consumption in this state of tangible personal property, purchased at retail sale on and after July 1, 1957, at the rate of 3% of the sale price. Every person so storing, using or otherwise consuming is liable for the tax until he has paid the same or has taken a receipt from his seller, thereto duly authorized by the assessor, showing that the seller has collected the sales or use tax, in which case the seller shall be liable for it. Retailers registered under the provisions of section 6 or 8 shall collect such tax and make remittance to the assessor. The amount of such tax payable by the purchaser shall be that provided in the case of sales taxes by section 5. Whenever any tangible personal property whose sale or use is subject to tax under this chapter is required to be registered for use within this state by any other chapter than this, no registration shall be granted unless the applicant for registration has paid the sales tax or the use tax thereon. (1951, c. 250, § 1. P. & S. L. 1951, c. 213, § 12. 1953, c. 146, § 6; c. 308, § 13. 1957, c. 402, § 2.)

**Effect of amendment.**—The 1957 amendment, which became effective on its approval May 29, 1957, inserted "on and after July 1, 1957," and substituted "3%" for "2%" in the first sentence.

**Editor's note.**—The 1957 amendatory act provided in section 5 of such act as follows: "Sales made after June 30, 1957, pursuant to contracts entered into prior thereto, shall be subject to the tax imposed by this act."

**The use tax is directed at the purchaser.** Trimount Coin Machine Co. v. Johnson, 152 Me. 109, 124 A. (2d) 753.

**The person taxable must be both a user and the purchaser** at retail sale. Trimount Coin Machine Co. v. Johnson, 152 Me. 109, 124 A. (2d) 753.

Under this section the person "so storing, using or otherwise consuming" is liable unless under stated conditions he has taken a receipt from his seller. The word "storage" relates only to "tangible

personal property purchased at retail sale" and "use" to such property "when purchased by the user at retail sale." Trimount Coin Machine Co. v. Johnson, 152 Me. 109, 124 A. (2d) 753.

**Lease of coin-operated machines.**—A Massachusetts corporation which leases, under bona fide leases, coin-operated machines for operation in Maine under contracts executed in Massachusetts and which does not exercise in Maine any right or power incident to ownership of the machines is not using the machines in Maine within the meaning of the statute and is not liable for the use tax imposed by this section. The person taxable must be both a user and the purchaser at retail sale. The use and possession of the machines in Maine is in corporation's lessee or customer by virtue of the lease. Trimount Coin Machine Co. v. Johnson, 152 Me. 109, 124 A. (2d) 753.

**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 otherwise 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:

Amount of Sale Price	Amount of Tax
\$0.01 to \$0.14, inclusive	0¢
.15 to .39, inclusive	1¢
.40 to .74, inclusive	2¢
.75 to .99, inclusive	3¢

When the sale price exceeds 99¢, the tax to be added to the price shall be 3¢ for each whole dollar, plus the amount indicated above for each fractional part of a dollar.

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. 1957, c. 402, § 3.)

**Effect of amendments.** — The 1955 amendment made changes in the amounts of sale prices in the tax schedule contained in the first paragraph and substituted “shall” for “may” in the next to the last paragraph. The 1957 amendment, which became effective on its approval May 29, 1957, inserted the words “otherwise” in the first sentence and revised the tax schedule in the first paragraph, deleted the former second paragraph which read “Add 1¢ tax plus the above rate for each 50¢ or fraction thereof exceeding \$1.24” and inserted the present second paragraph in lieu thereof.

**Editor’s note.** — The 1957 amendatory act provided in section 5 of such act as follows: “Sales made after June 30, 1957, pursuant to contracts entered into prior thereto, shall be subject to the tax imposed by this act.”

**Sec. 8. Voluntary registration.**

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

**Sec. 10. Exemptions.**

**IV. Ships’ stores.** Sale of cabin, deck, engine supplies and bunkering oil to ships engaged in transporting cargo or passengers for hire in interstate or foreign commerce, not to include fuel. (1953, c. 375. 1957, c. 358.)

**VII. Seed, feed, fertilizer and bait.** Sales of seed, feed, hormones, fertilizer, pesticides, insecticides, fungicides, weed killers, defoliants, litter, and medicines used in agricultural production and sales of bait to commercial fishermen. (1957, c. 402, § 4.)

**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.)

**XXI. Boats sold to nonresidents.** Sales to nonresidents of yachts and other pleasure boats and commercial vessels and boats either delivered outside the state or actually registered for numbering, enrolled or documented under federal or foreign law in the appropriate customhouses or registry offices for location thereof or home ports therefor outside the state and delivered in the state to be sailed or transported outside the state immediately upon delivery by the seller. (1957, c. 199.)

**XXII. Volunteer fire departments.** Sales to incorporated volunteer fire departments. [1957, c. 354]. (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. 1957, cc. 199, 354, 358; c. 402, § 4.)

**Effect of amendments.**—The first 1955 amendment deleted the words “cigars, tobacco and” before the word “cigarettes” in subsection X. The second 1955 amendment added subsection XX. This section was amended four times in

1957. Chapter 199, which became effective on its approval, April 26, 1957, added subsection XXI. Chapter 354 added subsection XXII. Chapter 358 inserted "and bunkering oil" in the enumeration in subsection IV and deleted such words from the exception at the end of such subsection. Chapter 402, effective May 29, 1957, inserted "hormones" and "pesticides, insecticides, fungicides, weed killers, defoliant, litter and medicines" in subsection VII. Only the subsections changed or added by the amendments 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.

**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. 12. Sales or use taxes paid in other jurisdictions.**

Cited in Trimount Coin Machine Co. v. Johnson, 152 Me. 109, 124 A. (2d) 753.

### **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-

**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 III of this section. 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.

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

**Sec. 20. Deficiency assessment.**—After a report is filed under the provisions of this chapter, the assessor shall cause the same to be examined, and may make such further audits or investigations as he may deem necessary and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under this chapter, he shall assess the taxes and interest due the state, give notice of such assessment to the person liable, and make demand upon him for payment but no such assessment can be made after 2 years. (1951, c. 250, § 1. 1957, c. 80.)

**Effect of amendment.** — The 1957 amendment deleted the word "additional", which appeared twice in the former section.

**Sec. 28. Notices, how given.**—Any notice required to be given by the assessor pursuant to this chapter to any person may be served personally, or by sending the same by registered or certified mail to the person for whom it is intended, addressed to such person at the address given in the last report filed by him pursuant to the provisions of this chapter, or if no report has been filed, then to the address of his last known abode; or in the case of other than an individual

to the last known business address. (1951, c. 250, § 1. 1953, c. 146, § 13. 1957, c. 79.)

**Effect of amendment.** — The 1957 amendment made the service applicable to certified mail.

**Sec. 31. Dissolution of corporations prohibited until tax is paid.**—No corporation organized under any law of this state shall be dissolved by the action of the stockholders or by the decree of any court until all taxes and interest and penalties imposed upon said corporation in accordance with the provisions of this chapter have been fully paid or the assessor finds that there are no funds from which payment can be made. No certificate of dissolution shall be issued by the secretary of state and no decree of dissolution shall be signed by any court, as the case may be, without a certificate of the assessor evidencing the payment by the corporation to be dissolved of all taxes, interest and penalties imposed in accordance with the provisions of this chapter, or evidencing a finding that there are no funds from which payment can be made. (1951, c. 250, § 1. 1953, c. 72, § 10. 1957, c. 77.)

**Effect of amendment.** — The 1957 amendment added the language “or the assessor finds \* \* \*” at the end of the first sentence and added the language “or evidencing a finding that there are no funds \* \* \*” at the end of the last sentence.

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

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

**Sec. 33. Appeal.**

**Provision for appeals is construed strictly.**—Assessment appeals under the sales and use tax law are of statutory origin and must be construed strictly according to the statute. This appeal process is defined by statute and must be considered as giving no more authority than is expressed. *Morrill v. Johnson*, 152 Me. 150, 125 A. (2d) 663.

**Jurisdiction is precisely and definitely granted to the superior court.** The only method provided for the hearing of appeal is “before the court in term time or any justice thereof in vacation.” *Morrill v. Johnson*, 152 Me. 150, 125 A. (2d) 663.

**And this section does not permit delegation of authority or a reference.**—The legislature has seen fit to particularly grant jurisdiction in this type of appeal to the superior court without right of delegation of authority for any other method of determination. There is no interpretation of the specific directions as to hearing that permits of reference. *Morrill v. Johnson*, 152 Me. 150, 125 A. (2d) 663.

**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 keep his office at the seat of government and give the bond