

# MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

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1959 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  
1959

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, § 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, § 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, § 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, § 22.)

## 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.**

“Apartment house” means any building or part thereof, where separate accommodations for more than 2 families living independently of each other are supplied to transient or permanent guests or tenants. (1959, c. 350, § 1.)

“Hotel” means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests and tenants, in which 4 or more sleeping rooms are furnished for the accommodation of such guests. (1959, c. 350, § 2.)

“Retailer” means every person engaged in the business of making sales at retail or renting any living quarters in any hotel, rooming house, tourist or trailer camp and every person required to register by section 6 or registered under section 8. (1959, c. 350, § 3.)

“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, and any rental of living quarters in any hotel, rooming house, tourist or trailer camp. 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. 1959, c. 350, § 4.)

“Rooming house” means every house, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters, sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings, and where 4 or more rooms are furnished for the accommodation of such guests. (1959, c. 350, § 5.)

“Tourist camp” means a place where 4 or more tents or tent houses, or camp cottages or other structures are located and offered by a person to the public or any segment thereof for human habitation. (1959, c. 350, § 6.)

“Trailer camp” means a place where space is offered with or without service facilities, by any person to the public for the parking and accommodation of 4 or more automobile trailers which are used for lodging, such space being hereby de-

defined as "living quarters" and the rental price thereof shall include all service charges paid to the lessor. (1959, c. 350, § 6.)

**Effect of amendments.** — 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 present twelfth paragraph.

This section was amended six times by P. L. 1959, c. 350. Section 1 of P. L. 1959, c. 350 inserted a new paragraph after the second paragraph in the original. Section 2 inserted a new paragraph after the fourth paragraph. Section 3 added "or renting any living quarters in any hotel, rooming house, tourist or trailer camp" and deleted "the provisions of" preceding "section 8" in the eleventh paragraph. Section 4 added the words "and any rental of living quarters in any hotel, rooming house, tourist or trailer camp," at the end of the first sentence of the twelfth paragraph. Section 5 added a new paragraph after the twelfth paragraph. Section 6 added two new paragraphs before the last paragraph. Only the paragraphs affected by the amendments are set out.

**Editor's note.** — P. L. 1959, c. 350, amending this section, provided in section 11 thereof as follows:

"Sec. 11. Effective date. Rentals payable on and after September 1, 1959, pursuant to contracts entered into prior thereto,

shall be subject to the tax imposed by this act.

"Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved." Approved, June 13, 1959.

**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.

**State held without authority to levy tax upon completed yawl where title to materials passed to buyer as they were appropriated to job.** — Where a contract for the construction of a yawl provides for the sale of materials supplied thereunder and title to the materials by the clear intentment of the contract passes to the buyer as they are appropriated to the job the state cannot levy a sales and use tax upon the completed yawl under this section. *Hinckley v. Johnson*, 153 Me. 517, 138 A. (2d) 463.

**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, measured by the sale price, and upon the total rental charged for living quarters, sleeping or housekeeping accommodations in hotels, rooming houses, tourist or trailer camps, 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. 1959, c. 350, § 7.)

**Effect of amendments.** — The 1957 amendment, which became effective on its approval May 29, 1957, substituted "3%" for "2%" and "purchased at retail sale on and after July 1, 1957" for "sold at retail" in the first sentence of the first paragraph.

The 1959 amendment re-enacted the first sentence of the first paragraph as originally enacted but with the increased rate and added the provision as to rentals in that sentence. As the second and third paragraphs were not changed by the amendments, 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."

P. L. 1959, c. 350, amending this section, provided in section 11 thereof as follows:

"Sec. 11. Effective date. Rentals payable on and after September 1, 1959, pursuant to contracts entered into prior thereto, shall be subject to the tax imposed by this act.

"Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved." Approved, June 13, 1959.

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. (1951, c. 250, § 1. P. & S. L. 1951, c. 213, § 12. 1953, c. 146, § 6; c. 308, § 13. 1957, c. 402, § 2. 1959, c. 69, § 1.)

**Effect of amendments.** — 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.

The 1959 amendment repealed the last sentence of this section which formerly read: "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."

**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. 4-A. No registration unless tax paid.**—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 chapter other than this, the applicant for registration, whether or not the owner, shall himself pay the sales tax or use tax or shall prove that said tax is not owing, as a prerequisite to the granting of such registration. (1959, c. 69, § 2.)

**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:

<b>Amount of Sale Price</b>	<b>Amount of Tax</b>
\$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. 6. Registration of sellers.

**II.** Every seller of tangible personal property not maintaining such a place who makes retail sales within this state or who solicits orders by means of salesmen within the state for retail sales for use, storage or other consumption within the state. (1959, c. 68, § 1.)

**IV.** Every agent, representative, salesman, entrepreneur, solicitor, distributor or independent selling agent, when such person receives compensation by reason of sales of tangible personal property made outside the state by his principal for use, storage or other consumption in the state, and every salesman within the state of any seller subject to subsection II, if said principal is not the holder of a valid registration certificate. (1959, c. 68, § 2.)

**V.** Every person managing or operating a hotel, rooming house, tourist or trailer camp or collecting or receiving rents therefrom on behalf of the owner or operator. (1959, c. 350, § 8.)

**Effect of amendments.** — This section was amended twice by the 1959 legislature. P. L. 1959, c. 68, § 1, rewrote subsection II. P. L. 1959, c. 68, § 2, added the words "and every salesman within the state of any seller subject to subsection II" after the word "state" and before the word "if" near the end of subsection IV. P. L. 1959, c. 350, § 8, added subsection V. Since the rest of the section was not affected by the amendments, only subsections II, IV and V are set out.

**Editor's note.** — P. L. 1959, c. 350, adding subsection V, provided in section 11 thereof as follows:

"Sec. 11. Effective date. Rentals payable on and after September 1, 1959, pursuant to contracts entered into prior thereto, shall be subject to the tax imposed by the act.

"Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved." Approved, June 13, 1959.

**Sec. 7. Bonds.**—When, in the judgment of the tax assessor, it is necessary or advisable for the collection of sales or use taxes or both, he may require from a taxpayer a bond written by a surety company qualified to do business in this state and in such amount and upon such condition as the tax assessor may determine. In lieu of such bond he may accept, for delivery to the custody of the treasurer of state, a deposit of money or securities in such amount and of such kind as he may approve. Such deposit shall be accepted by the treasurer of state who shall safely keep the same subject to the instructions of the assessor. (1953, c. 72, § 3. 1959, c. 68, § 3.)

**Effect of amendment.**—The 1959 amendment substituted "require" for "accept"

and added "tax" preceding "assessor" twice in the first sentence of this section.

### 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, etc., 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.)

**VIII. Motor vehicle fuel.** Sales of gasoline and motor fuels upon which a tax is now imposed by the state, or any other state or province, but the tax payable upon such fuels not used by vehicles on the highway shall be deducted from any refund of the gasoline tax sought by the purchaser. (1959, c. 358.)

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

**XVI-A. Rental at exempt camps.** Rental charged for living quarters, sleeping or housekeeping accommodations at camps entitled to exemption from property tax under the provisions of chapter 91-A, section 10, subsection II. (1959, c. 350, § 9.)

**XVI-B. Rental at state institutions.** Rental charged for living or sleeping quarters in an institution licensed by the state for the hospitalization or nursing care of human beings. (1959, c. 350, § 9.)

**XVI-C. Rental at schools.** Rental charged for living quarters, sleeping or housekeeping accommodations to any student necessitated by attendance at a school as defined in subsection XVI. (1959, c. 350, § 9.)

**XVI-D. Apartment house rentals.** Rental charged to any person for living quarters in an apartment house. (1959, c. 350, § 9.)

**XVI-E. Rental at hotels, etc.** Rental charged to any person after he has resided continuously for 3 months or 90 days at any one hotel, rooming house, tourist or trailer camp. (1959, c. 350, § 9.)

**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. 1959, c. 350, § 9; c. 358.)

**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 sub-

section 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, defoliants, litter and medicines" in subsection VII.

This section was amended twice by the 1959 legislature. P. L. 1959, c. 350, § 9, added subsections XVI-A to XVI-F. P. L. 1959, c. 358, added the words "or any other state or province" after the word



"state" and before the word "but" in subdivision VIII. Only the subdivisions changed or added by the amendments are set out.

**Editor's note.** — P. L. 1959, c. 350, amending this section, provided in section 11 thereof as follows:

"Sec. 11. Effective date. Rentals payable on and after September 1, 1959, pursuant to contracts entered into prior thereto, shall be subject to the tax imposed by this act.

"Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved." Approved, June 13, 1959.

**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 III of this section. Fortin v. Johnson, 150 Me. 294, 110 A. (2d) 605.

**Food products sold for consumption up-**

**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, and excepting an isolated transaction involving the sale of motor vehicles to a corporation when the seller is the owner of a majority of the common stock of such corporation. (1955, c. 359, § 3. 1959, c. 356.)

**Effect of amendment.**—The 1959 amendment added all of the language beginning

on 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.

**Antibiotics and hormone preparations.**—Prior to the 1957 amendment, antibiotics and hormone preparations were not feeds within the meaning of this section exempting "feed" in agricultural production, since they function as catalysts to assist assimilation rather than as foods. Lipman Poultry Co. v. Johnson, 153 Me. 347, 138 A. (2d) 631.

**"Sawdust" purchased for use as litter is not "fertilizer"** within the meaning of the exemption, even though when mixed with excretion, and subsequently removed, it may be used as fertilizer. Lipman Poultry Co. v. Johnson, 153 Me. 347, 138 A. (2d) 631, decided prior to the enactment of P. L. 1957, c. 402, § 4, amending subsection VII.

Cited in Morrill v. Johnson, 153 Me. 460, 140 A. (2d) 760.

with the words "and excepting" after the word "resale."

## **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. 15. Payment of tax; interest.**—The taxes imposed by this chapter shall be due and payable at the time of the sale; or, in the case of tax on rental for living quarters, sleeping or housekeeping accommodations, at the time the rental is payable. Upon such terms and conditions as the assessor may prescribe, he may permit a postponement of payment to a date not later than the date when the sales so taxed are required to be reported. Any person who shall fail to pay any tax imposed by this chapter on or before the day when the same shall be required to be paid shall pay interest on said tax at the rate of  $\frac{1}{2}$  of 1% each month or fraction thereof that the same remains unpaid, to be calculated from the date the tax was required to be paid. All such interest shall be payable to, and recoverable by,

the assessor in the same manner as if it were a tax imposed by this chapter. If the failure to pay such tax when required to be paid is explained to the satisfaction of the assessor, he may abate or waive the payment of the whole or any part of such interest and, for cause may abate the whole or any part of such tax.

The assessor shall pay over all receipts collected to the treasurer of state daily and such receipts shall be credited to the general fund. (1951, c. 250, § 1. 1953, c. 146, § 10. 1959, c. 350, § 10.)

**Effect of amendment.**—The 1959 amendment added all the language after the semicolon in the first sentence.

**Editor's note.** — P. L. 1959, c. 350, amending this section, provided in section 11 thereof as follows:

"Sec. 11. Effective date. Rentals payable on and after September 1, 1959, pursuant to contracts entered into prior thereto,

shall be subject to the tax imposed by this act.

"Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved." Approved, June 13, 1959.

**Cited in** *Hinckley v. Johnson*, 153 Me. 517, 138 A. (2d) 463.

**Sec. 18. Overpayment; refunds; appeal.**—Upon written application by the taxpayer, if the tax assessor determines that any tax, interest or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the tax assessor shall certify to the state controller the amount collected in excess of what was legally due, from whom it was collected or by whom paid, and the same shall be credited by the tax assessor on any taxes then due from the retailer under this chapter, and the balance shall be refunded to the retailer or user, or his successors, administrators, executors or assigns, but no such credit or refund shall be allowed after 2 years from the date of overpayment unless written petition therefor, setting forth the grounds upon which refund is claimed, shall have been filed with the tax assessor within that period. The tax assessor shall also have the right to cancel or abate any tax which has been illegally levied. Nothing shall authorize the taxpayer, or anyone in his behalf, to apply for a refund of any amount assessed when the assessment has become final as provided in section 32.

Any taxpayer dissatisfied with the decision of the tax assessor, upon a written request for refund filed under this section, may request reconsideration and appeal therefrom to the superior court in the same manner and under the same conditions as in the case of assessments made under this chapter. The decision of the tax assessor upon such written request for refund shall become final as to law and fact in the same manner and under the same conditions as in the case of assessments made under this chapter. (1951, c. 250, § 1. 1953, c. 72, § 6. 1959, c. 88.)

**Effect of amendment.**—The 1959 amendment added "tax" preceding "assessor" wherever it appears in the first paragraph, added "written" before "application" near the beginning of the section, added the clause beginning "unless written petition" at the end of the first sentence and substituted "Nothing" for "But nothing herein" and "provided in section 32" for "herein-

after provided" in the last sentence of the first paragraph. It also added the second paragraph.

**Under this section there is no provision for a petition by the taxpayer to the state tax assessor, or for an appeal from an adverse decision upon a claim or refund of taxes paid.** *Fortin v. Johnson*, 150 Me. 294, 110 A. (2d) 605.

**Sec. 19. Arbitrary assessment.**—If any person shall fail to make a report as required, the tax assessor may make an estimate of the taxable liability of such person from any information he may obtain, and according to such estimate so made by him, assess the taxes, interest and penalties due the state from such person, give notice of such assessment to the person and make demand upon him for payment, but no such assessment can be made after 6 years. (1951, c. 250, § 1. 1953, c. 72, § 7. 1959, c. 68, § 4.)

**Effect of amendment.**—The 1959 amendment deleted "herein" preceding "required" and added "tax" preceding "as-

essor" near the beginning of the section. It also added the 6-year limitation at the end of the section.

**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.

**Cited in** Morrill v. Johnson, 153 Me. 460, 140 A. (2d) 760.

**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.**—Any taxpayer aggrieved by the decision upon such petition may, within 30 days after notice thereof from the tax assessor, appeal therefrom to the superior court in any county where he has a regular place of business for making retail sales, or, if he has no such place of business within the state, to the superior court in Kennebec County. The appellant shall, when such appeal is taken, file an affidavit stating his reasons of appeal and serve a copy thereof on the tax assessor, and in the hearing of the appeal shall be confined to the reasons of appeal set forth in such affidavit. Jurisdiction is granted to the superior court to hear and determine such appeals and to enter such order and decrees as the nature of the case may require. The decision upon all questions of fact shall be final. An appeal may be taken to the law court as in other actions. Decisions shall be certi-

fied forthwith by the clerk of courts to the tax assessor. (1951, c. 250, § 1. 1959, c. 68, § 5; c. 317, § 6.)

**Effect of amendments.**—This section was amended twice by the 1959 legislature. The first 1959 amendment added the words "forthwith by the clerk of courts" in the last sentence. The second 1959 amendment rewrote the 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."

**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; 153 Me. 460, 140 A. (2d) 760.

**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; 153 Me. 460, 140 A. (2d) 760.

**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; 153 Me. 460, 140 A. (2d) 760.

**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.

**Applied in** *Morrill v. Johnson*, 153 Me. 460, 140 A. (2d) 760.

**Cited in** *Lipman Poultry Co. v. Johnson*, 153 Me. 347, 138 A. (2d) 631.

**Sec. 33-A. Request for warrant.**—If any amount required to be paid to the state under this chapter is not paid when due, and has become final as to law and fact under section 32 or 33, the assessor may, within 3 years after the amount has become final, notify the person who according to the records of the assessor is liable, specifying the amount required to be paid, interest and penalty due, and demanding payment within 12 days after the sending of such notice. Such notice shall be given as required by section 28 and shall warn the person that if he does not make the payment as demanded the assessor will certify the amount due to the attorney general for collection by warrant as provided.

If the person does not make the payment as demanded within said 12-day period, or such extension thereof as the assessor may allow, the assessor shall certify the amount required to be paid, interest and penalty, to the attorney general for collection. The attorney general may, in term time or vacation, file in the office of the clerk of the superior court of Kennebec County, or any county, a certificate addressed to the clerk specifying the amount required to be paid, interest and penalty due, the name and address of the person liable as it appears on the records of the assessor, the facts whereby said amount has become final as to law and fact,

the notice given, and requesting that a warrant be issued against the person in the amount required to be paid, together with interest and penalty as set forth in the certificate, and with costs.

If the assessor thinks there are just grounds to fear that such person may abscond within the 12-day period, he shall not be required to give notice to the person and may, without further notice, certify the amount due to the attorney general for collection. (1959, c. 190, § 1.)

**Sec. 33-B. Warrant to be issued.**—The clerk of the superior court, immediately upon the filing of the certificate, shall issue a warrant in favor of the state of Maine against the person in the amount to be paid together with interest and penalty as set forth in the certificate, and with costs.

The clerk of the superior court shall file the certificate in a looseleaf book entitled, "Special Warrants for State Sales or Use Tax." These records are not to become a part of the extended record of said court. (1959, c. 190, § 1.)

**Sec. 33-C. Warrant to be recorded; lien.**—An abstract of the warrant or a copy may be filed for record with the register of deeds of any county. From the time of filing, the amount required to be paid, together with interest, penalty and costs, constitutes a lien upon all the real property in the county owned by the person liable or acquired by him afterwards and before the lien expires. The lien has the force, effect and priority of a judgment lien and shall continue for 5 years from the date of recording unless sooner released or otherwise discharged. The lien may, within said 5-year period or within 5 years from the date of the last extension of the lien in the manner provided in this section, be extended by filing for record in the office of the register of deeds an abstract or copy of the warrant and from the time of such filing the lien shall be extended for 5 years unless sooner released or otherwise discharged. (1959, c. 190, § 1.)

**Sec. 33-D. Form and effect of warrant.** — The warrant shall have the force and effect of an execution issued upon a judgment in an action of debt for taxes and may be in substantially the following form:

"....., ss.—To the Sheriffs of our respective counties  
(Name of county)  
or either of their Deputies,

"Whereas, the Attorney General has certified that, pursuant to the terms of section 32 or 33, or both, of chapter 17 of the Revised Statutes the amount of certain sales or use taxes, assessed against ..... of ..... with interest and penalty, has become final as to law and fact, to wit:

Sales or use tax	\$
Penalty	
Interest	.....
Total	\$
and \$	costs of this proceeding, .....

and the same is unpaid; .....

We command you, therefore, that of the money, goods and chattels of said debtor, in your precinct, or the value thereof in money, you cause to be paid and satisfied unto the State of Maine said total and costs, and ..... cents more for this warrant, together with your own fees.

And for want of money, goods or chattels of said debtor, to be by him shown unto you, or found in your precinct, to the acceptance of the Attorney General of the State of Maine, to satisfy the sums aforesaid, we command you to take the body of said debtor, and commit him unto any of our jails in said counties, and there detain in your custody, until he shall pay the full sums aforesaid, with your fees, or be discharged by said State of Maine, or otherwise by order of law.

“Hereof fail not, and make due return of this warrant, with your doings thereon, unto my office within 3 months from the date hereof.

.....  
Clerk of Courts, county of .....  
Date .....

Warrants shall be returnable within 3 months. New warrants may be issued on any such certificate within 2 years from the return day of the last preceding warrant for sums remaining unsatisfied.

Warrants shall be served by the sheriff of any county or by any of his deputies in the county where the person may be found. (1959, c. 190, § 1.)

**Sec. 33-E. Arrest and commitment.** — When an officer by virtue of said warrant, for want of property, arrests any person and commits him to jail, he shall give an attested copy of his warrant to the jailer and certify, under his hand, the sum that such person is to pay as his tax, interest and penalty and the costs of obtaining the warrant, and the costs of arresting and committing, and that for want of goods and chattels whereon to levy he has been arrested; and such copy and certificate are a sufficient warrant to require the jailer to receive and keep such person in custody until he pays his tax, said other charges and \$1 for the copy of the warrant; but such person shall have the same rights and privileges as a debtor arrested or committed on execution as provided in chapter 120.

No married woman or officer of a debtor corporation shall be arrested under this warrant. (1959, c. 190, § 1.)

**Sec. 34. Injunctions.**—The state tax assessor may, by filing a complaint, apply for the revocation of registration and injunction from doing business of any person required to register by this chapter or any ruling, rule or regulation, who has omitted to register within 15 days after the tax assessor shall have made demand as provided by section 28; or has omitted to file with the tax assessor any overdue report within 15 days after the tax assessor shall have made demand therefor as provided by section 28, or shall have knowingly filed a false report; or has omitted to pay any tax required of him by this chapter when the same shall be shown to be due on a report filed by the taxpayer, or admitted to be due by the taxpayer, or shall have been determined to be due and such determination shall have become final under this chapter. The existence of other civil or criminal remedies shall be no defense to this proceeding.

The complaint shall be deemed adequate as to form if it sets forth the name and the address of the defendant as stated in his last return filed with the tax assessor, or, if no such return was filed, the address, if any, known to the tax assessor; the breach of the law or ruling or rule or regulation committed by the defendant; the tax assessor’s prayer for relief. The paragraphs of the complaint shall be numbered. The complaint need not be verified.

The complaint may be presented to any justice of the superior court in any county where the defendant has a regular place of business, or, if he have no regular place, then in Kennebec County. Such justice shall forthwith fix a time and place for hearing and cause notice thereof to be given the defendant. The defendant shall serve upon the state tax assessor a copy of his answer to the complaint at least 3 days before the day of hearing. The answer shall be paragraphed and numbered to conform with the numbering of the paragraphs in the complaint so far as may be. Any allegation of fact in the complaint which is not denied shall be taken as true.

Jurisdiction is granted to the justices of the superior court to hear and determine such matters, and to enter and change such orders and decrees from time to time as the nature of the case may require and, if necessary, to appoint a receiver. From any final decree of such justice, an appeal lies to the law court. Said appeal

shall be heard by the law court in the same manner as in other actions. (1953, c. 72, § 11. 1959, c. 317, § 7.)

**Effect of amendment.**—The 1959 amendment rewrote 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 ac-

tions 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."

## 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 required by the constitution to the state of Maine, with 2 or more surety companies authorized to transact business therein, as sureties, in the penal sum of not less than \$500,000. Each surety company shall give bond for only a fractional part of the total penal sum and shall be held responsible for its proportional share of any loss.

The treasurer of state shall receive an annual salary of \$7,500. He shall receive no other fee, emolument or perquisite.

(1955, c. 473, § 3. 1957, c. 349, § 1; c. 418, § 3. 1959, c. 361, § 3.)

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

The first 1957 amendment increased the minimum penal sum of the bond from \$150,000 to \$500,000 in the first sentence of the section, deleted the words "provided that" which formerly appeared at the beginning of the second sentence of the first paragraph, and carried an appropriation for the fiscal year ending in 1959. The second 1957 amendment, effective July 1, 1957, increased the salary of the treasurer of state from \$6,000 to \$6,750 in the second paragraph and car-

ried appropriations for the fiscal years ending in 1958 and 1959.

The 1959 amendment increased the salary of the treasurer from \$6,750 to \$7,500 in the second paragraph and carried appropriations for the fiscal years ending June 30, 1960 and 1961.

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

**Effective date.** — P. L. 1959, c. 361, amending this section, provided in section 14 thereof as follows: "The provisions of this act shall become effective for the week ending August 22, 1959."

**Sec. 2. Bond** —The condition of the treasurer's bond shall be for the faithful discharge of all the duties of his office, and that during his continuance in office he will not engage in trade or commerce, or act as broker, agent or factor for any merchant or trader; and that he, or his executors, administrators or sureties, or their executors or administrators, shall render a just and true account of all his agents' and servants' doings and transactions in the office, to the legislature, or to such committee as it appoints, on the 1st day of each regular session of the legislature, previous to the choice of a new treasurer, and at any other time when required by the legislature or the governor and council; and that he will settle and adjust said account and faithfully deliver to his successor in office or to such person as the legislature appoints, all moneys, books, property and appurtenances of said office, in his or any of his agents' possession, and pay over all balances found due on such adjustment. Such bond, when approved as the constitution pre-