REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 1

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
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applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (1963, c. 276.)

Sec. 2. Administrator defined.—As used in the compact, with reference to this state, the term "administrator" shall mean the state tax assessor. (1963, c. 276.)

Sec. 3. Limitation.—The provisions of chapter 16 shall, to the extent that they are inconsistent with the compact, be inapplicable to the taxation of buses as that term is defined in the compact. (1963, c. 276.)

Chapter 17.

Sales and Use Tax Law.

Construction. — Where a tax statute is susceptible of more than one interpretation, the court will incline to the interpretation most favorable to the citizen. Hanbro, Inc. v. Johnson, 158 Me. 180, 181 A. (2d) 249.

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 consumer 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.

"Hotel" means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants.

"Living quarters" means sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space.

"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.

"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. It shall be considered that tangible personal property is "consumed or destroyed" or "loses its identity" in such manufacture, if it has a normal physical life expectancy of less than one year as a usable item in the use to which it is applied. "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.

"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 are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.

"Sale price" means the total amount of the sale or lease or rental price, as the case may be, of a retail sale, including any services that are a part of such sale, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of any kind or nature, and also any amount for which credit is allowed by the seller to the purchaser, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses whatsoever; provided, however, that discounts allowed and taken on sales shall not be included, and "sale price" shall not include allowances in cash or by credit made upon the return of merchandise pursuant to warranty, or the price of property returned by customers when the full price thereof is refunded either in cash or by credit, nor shall "sale price" include the price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated. "Sale price" shall also not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer, excepting any manufacturers' or importers' excise tax; and shall not include the cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser provided such charges are separately stated and provided such transportation occurs by means of common carrier, contract carrier or the United States mails.

"Tourist camp" means a place where tents or tent houses, or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation.

"Trailer camp" means a place where space is offered with or without service facilities to the public for tenting or for the parking and accommodation of automobile trailers which are used for, living quarters and the rental price shall include all service charges paid to the lessor.

(1955, c. 144. 1959, c. 350, §§ 1, 2, 3, 4, 5, 6. 1961, c. 57; c. 227, §§ 1, 2, 3, 4, 5, 6. 1963, c. 374.)

Effect of amendments. — The 1955 amendment deleted the words "by the purchaser" formerly appearing after the words "later sale" in the third sentence from the end of the definition of "retail sale".

The 1959 amendment, effective on its approval, June 13, 1959, added a definition of "apartment house" (subsequently repealed in 1961), added the definition of "hotel", changed the definition of "retailer", added "and any rental of living quarters in any hotel, rooming house, tourist or trailer camp" at the end of the first sentence in the definition of "retail sale" and added the definitions of "rooming house", "tourist camp" and "trailer camp".

Chapter 57, P. L. 1961, inserted the next to last sentence in the definition of "retail sale". Chapter 227, P. L. 1961, effective on its approval, April 19, 1961, eliminated a paragraph defining "apartment house", which had been added in 1959, changed the definition of "hotel", added the definition of

"living quarters" and changed the definitions of "rooming house", "tourist camp" and "trailer camp".

The 1963 amendment changed the definition "sale price" by deleting "transportation charges separately stated, if the transportation occurs after the purchase of the property is made" which followed "shall not include" at the end of the last sentence and added everything following such phrase in the last sentence.

Only the paragraphs affected by the amendments are set out.

Meaning of "tourist camp."—See Camp Walden v. Johnson, 156 Me. 160, 163 A. (2d) 356.

It does not include "boys'" or "girls'" camp.—The legislature in defining the term "tourist camp" did not intend to change the commonly accepted meaning of the term and did not intend to extend its meaning to include the authorization of a tax against the owner of a camp commonly and generally known as a "boys'" or "girls'" camp, where an entire lump sum is charged and where the living quarters are only incidental to a bona fide, organized, and disciplined program of instruction and recreation. Camp Walden v. Johnson, 156 Me. 160, 163 A. (2d) 356.

The words "gain, benefit, or advantage, either direct or indirect," as used in this section, have a broader meaning than that of the word "profit." One may engage in a business activity with an object of "gain, benefit, or advantage," even though not necessarily for profit. Bonnar-Vawter, Inc. v. Johnson, 157 Me. 380, 173 A. (2d) 141.

Meaning of "consumption" or "destruction."—Consumption or destruction, as the terms are employed in paragraph defining "retail sale" or "sale at retail," connotes a loss of matter for practical purposes rather than annihilation. Oxford Paper Co. v. Johnson, 155 Me. 380, 156 A. (2d) 235.

The legislative intent in the use of the words "consumed and destroyed" was to give relief from the payment of a use tax in those cases only where the personal property is physically consumed or destroyed in the manufacturing process to such an extent that it is rendered unfit for further practical use for its intended purpose. Bonnar-Vawter, Inc. v. Johnson, 157 Me. 380, 173 A. (2d) 141.

The words "ingredient or component part," etc.

The words "consumed or destroyed" are each applicable not only to that which is being acted upon, the subject matter of manufacture, but also to those things which act upon the subject matter, viz., that which is being produced by manufacture. They are applicable to all of those expendibles by which the process of manufacture is carried on. Bonnar-Vawter, Inc. v. Johnson, 157 Me. 380, 173 A. (2d) 141.

When nonresident lessor deemed to "use" property in state. — A nonresident lessor would be deemed to "use" the property in Maine within the meaning of this section only if he exercised some right or power over the property within this state incident to his ownership. The mere existence of certain rights or powers in the owner-lessor reserved by the lease would not suffice to subject him to taxation if he failed to or refrained from exercising any such right or power in Maine. South Shoe Machine Co., Inc. v. Johnson, 159 Me. 74, 188 A. (2d) 353.

Hence, a lessor, having leased machinery for use by lessees within this state, being an out of state corporation not qualified to do business in Maine and not having transacted any business in Maine, and having done nothing in Maine with respect to the machinery while located in Maine, cannot be said to have exercised in this state any right or power over this tangible personal property incident to its ownership thereof within the statutory definition of "use" and was thus not subject to a use tax on the machinery. South Shoe Machine Co., Inc. v. Johnson, 159 Me. 74, 188 A. (2d) 353.

Rentals from property bought and physically located in another state.—The receipt of rentals under a lease executed in another state of property bought and physically located in that state did not constitute the exercise of a right or power in this state over the tangible property itself within the definition of the word "use." Hanbro, Inc. v. Johnson, 158 Me. 180, 181 A. (2d) 249.

Transfer of materials to parent corporation constituted "sale."—In a transaction between a parent and subsidiary corporation, where the materials used in the manufacturing of the products transferred from the subsidiary to the parent were bought by and consigned to the subsidiary by the supplier and there was no evidence that the general title to the products during the fabricating and manufacturing process was not in the subsidiary, the property interest of the subsidiary in the products was sufficient enough so that the transfer to the parent constituted a "sale" within the meaning of this section. Bonnar-Vawter, Inc. v. Johnson, 157 Me. 380, 173 A. (2d) 141.

And charges made by subsidiary were for "gain, benefit, or advantage."—The charges made by a subsidiary corporation

for the cost of labor, materials, overhead, depreciation, and taxes to the parent corporation for printing plates manufactured by the subsidiary in another state and delivered to the parent in this state, were for gain, benefit, or advantage within the meaning of the word "business" as defined in this section. Bonnar-Vawter, Inc. v. Johnson, 157 Me. 380, 173 A. (2d) 141.

As court refused to disregard the corporate entities.—In a sale between a subsidiary and parent corporation, the court refused to disregard the corporate entities of the two corporations and concluded that the products were purchased at retail sale in the ordinary course of business of the seller. Bonnar-Vawter, Inc. v. Johnson, 157 Me. 380, 173 A. (2d) 141.

Printing plates not consumables.—Printing plates which after use were stored awaiting further orders were not consumables. Bonnar-Vawter, Inc. v. Johnson, 157 Me. 380, 173 A. (2d) 141.

Books and records of vendor are proper source of tax data.—Sales and Use Tax Regulation 8, which under certain circumstances relieves the vendor from collecting taxes from the vendee and obligates the vendee to pay them directly to the assessor, in no way changes the apparent intent of the legislature in defining "sale price" that the proper and most reliable source of data upon which to base the tax is the books and records of the vendor, where would be found information as to whether property sold was "separately charged or stated." Scott Paper Co. v. Johnson, 156 Me. 19, 159 A. (2d) 319.

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 intendment 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.

Quoted in Hunnewell Trucking, Inc. v. Johnson, 157 Me. 338, 172 A. (2d) 732.

Sec. 3. Sales tax.—A tax is imposed at the rate of 4% on the value of all tangible personal property, sold at retail in this state on and after July 1, 1963 and upon the rental charged for living quarters in hotels, rooming houses, tourist or trailer camps, 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. 1959, c. 350, § 7. 1961, c. 227, § 7. 1963, c. 360, § 1.)

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.

The 1961 amendment effective on its approval, April 19, 1961, eliminated "total" preceding "rental", eliminated "sleeping or housekeeping accomodations" following "quarters" and changed the location of the words "measured by the sale price" in the first sentence.

The 1963 amendment, effective on its approval June 22, 1963, changed the rate of the tax from 3% to 4% and added "on and after July 1, 1963," in the first sentence.

As the second and third paragraphs were not affected 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."

P. L. 1959, c. 350, effective on its approval June 13, 1959, amending this section, provided in section 11 as follows: "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."

Section 12 of c. 227, P. L. 1961, as amended by P. L. 1961, c. 395, § 55, provides that "Rentals payable on and after June 1, 1960, pursuant to contracts entered into prior thereto, shall be subject to the tax imposed by this act."

P. L. 1963, c. 360, effective on its approval June 22, 1963, amending this section, provided in § 4 as follows: "Sales and use tax liability accruing after June 30, 1963, shall be computed on the basis of the rates imposed by this act. Retail sales and purchases made after June 30, 1963, including retail sales and purchases made pursuant to contracts entered into prior thereto, shall be subject to the taxes imposed by this act."

State is without authority to tax sales beyond its territorial limits. Hanbro, Inc. v. Johnson, 158 Me. 180, 181 A. (2d) 249.

Meaning of "tourist camp." — See Camp Walden v. Johnson, 156 Me. 160, 163 A. (2d) 356.

Section to be considered in conjunction with § 29.—The portion of this section providing that no tax shall be imposed upon property sold at retail for ten cents or less, provided the taxpayer keeps records satisfactory to the state tax assessor, must be considered in conjunction with § 29, which requires retailers to keep records of their sales, the kind and form of which shall be adequate to enable the assessor to determine the tax liability. Bouchard v. Johnson, 157 Me. 41, 170 A. (2d) 372.

Liability for tax on items of fourteen cents or less.—Although a taxpayer is not authorized to add the tax to sale prices of fourteen cents or less, nevertheless he is liable to pay a tax on such items; however, if he brings his case within the provisions of this section relating to sales of personal property at retail for ten cents or less, no tax may be imposed on the sale of articles within that category. Bouchard v. Johnson, 157 Me. 41, 170 A. (2d) 372.

Item composed of one or more items of ten cents.—If the taxpayer claims that an item entered on his records at over ten cents is composed of one or more items of ten cents or less, he must be able to establish the breakdown by his records. Bouchard v. Johnson, 157 Me. 41, 170 A. (2d) 372.

Sufficiency of taxpayer's records.—The assessor cannot exercise an arbitrary judgment in relation to the sufficiency of a taxpayer's records, and if the records are kept in such a manner that the agent who makes the examination can determine from an inspection thereof whether or not the taxpayer is primarily engaged in making sales for ten cents or less, and to determine therefrom any tax due, then the records are necessarily "satisfactory to the state tax assessor." If the records do not meet this requirement, then they are not sufficient within the meaning of this section. Bouchard v. Johnson, 157 Me. 41, 170 A. (2d) 372.

Burden on taxpayer.—The burden is upon the taxpayer to clearly show that he was primarily engaged in the retail sales of articles for ten cents or less and that he kept records satisfactory to the state tax assessor. Bouchard v. Johnson, 157 Me. 41, 170 A. (2d) 372.

Quoted in Scott Paper Co. v. Johnson, 156 Me. 19, 159 A. (2d) 319.

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, 1963, at the rate of 4% 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. 1963, c. 360, § 2.)

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."

The 1963 amendment, effective on its approval, June 22, 1963, substituted "1963" for "1957" and "4%" for "3%" 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."

P. L. 1963, c. 360, effective on its approval June 22, 1963, amending this section, provided in § 4 as follows: "Sales and use tax liability accruing after June 30, 1963, shall be computed on the basis of the rates imposed by this act. Retail sales and purchases made after June 30, 1963, including retail sales and purchases made pursuant to contracts entered into prior thereto, shall be subject to the taxes imposed by this act."

State is without authority to tax sales beyond its territorial limits. Hanbro, Inc. v. Johnson, 158 Me. 180, 181 A. (2d) 249.

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.

When nonresident lessor deemed to "use" property in state.—See same catchline in note to § 2 of this chapter.

Goods coming to rest in state after importation were taxable.—It was constitutional to lay a tax under this section on spare motor parts bought without payment of a sales tax by an interstate trucking firm in another state and brought into this state for storage to be used exclusively in the maintenance of the firm's trucks. By coming to rest in this state after importation at the taxpayer's convenience, the goods became part of the common mass of property within this state. Hunnewell Trucking, Inc. v. Johnson, 157 Me. 338, 172 A. (2d) 732.

But not intangible personal property purchased and used outside of state.—The purchase of intangible personal property outside of the state by a citizen of this state, and the subsequent use or sale thereof in the other state, is not a taxable transaction. Hanbro, Inc. v. Johnson, 158 Me. 180, 181 A. (2d) 249.

Purchase of printing plates was purchase of tangible personal property and not services, and was taxable under the provisions of this section. Bonnar-Vawter, Inc. v. Johnson, 157 Me. 380, 173 A. (2d) 141.

There is no provision in the sales and use tax law that would render the use of printing plates in this state nontaxable on the ground that the transaction constituted a sale and purchase of services and not of tangible personal property. Bonnar-Vawter, Inc. v. Johnson, 157 Me. 380, 173 A. (2d) 141.

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.

Applied in Oxford Paper Co. v. Johnson, 155 Me. 380, 156 A. (2d) 235; Scott Paper Co. v. Johnson, 156 Me. 19, 159 A. (2d) 319.

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. 4-B. Tax on interim rental of property purchased for resale.—Every person making a purchase for resale or use in this state and other than at casual sale of any article of tangible personal property as to which no sales tax has been paid pursuant to this chapter and renting it to another in this state shall be liable for a use tax thereon as provided in section 4 based on the purchase price thereof unless such renting is while holding it for resale and unless within

30 days after first so renting it he certifies in writing to the tax assessor on a form prescribed and furnished by the tax assessor that such article was purchased by him for resale. A tax is imposed at the same rate as that provided in the case of sales taxes by section 3 upon all rentals received by such person for use of the article covered by such certification; and if such person thereafter makes any use of, or disposes of, such article other than by renting it to others or by making a sale thereof which is subject to a sales tax or by holding it for such sale, he shall be liable for a use tax thereon as provided in section 4 based on the purchase price paid therefor by him less the aggregate amount of tax paid pursuant to this section on the rentals thereof. The tax on rentals imposed by this section shall be subject to the provisions of section 5 and all other pertinent provisions of this chapter and for the purposes thereof shall be treated the same as the sales tax imposed by section 3 with the rentor deemed to be the retailer, the rentals deemed to be the sale price, and the rentee deemed to be the purchaser and consumer. Any certification under this section shall cover one article only with its attachments and accompanying accessories, if any. The term "renting" as used in this section shall include renting, letting, leasing and chartering and the term "rentals" as used in this section shall include any receipts derived from the use of any such article covered by any such certification. (1961, c. 58.)

Cited in South Shoe Machine Co., Inc. v. Johnson, 159 Me. 74, 188 A. (2d) 353.

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 $0.10, inclusive	0¢
.11 to .25, inclusive	1¢
.26 to .50, inclusive	2¢
.51 to .75, inclusive	3¢
.76 to .99, inclusive	4¢

When the sale price exceeds 99¢, the tax to be added to the price shall be 4¢ 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. 1963, c. 360, § 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.

The 1963 amendment, effective on its approval, June 22, 1963, revised the amounts of the sale price and increased the tax to be added from 3¢ to 4¢ when the sales price exceeds 99¢.

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. 1963, c. 360, effective on its approval June 22, 1963, amending this section, provided in § 4 as follows: "Sales and use tax liability accruing after June 30, 1963, shall be computed on the basis of the rates imposed by this act. Retail sales and purchases made after June 30, 1963, including retail sales and purchases made pursuant to contracts entered into prior thereto, shall be subject to the taxes imposed by this act."

Liability for tax on items of fourteen cents or less.—Although a taxpayer is not authorized to add the tax to sale prices of fourteen cents or less, nevertheless he is liable to pay a tax on such items. Bouchard v. Johnson, 157 Me. 41, 170 A. (2d) 372.

Quoted in Scott Paper Co. v. Johnson, 156 Me. 19, 1959 A. (2d) 319.

Sec. 5-A. Illegal collection of sales tax prohibited.—It shall be unlawful for any retailer to charge or collect as the sales tax due on the sale price of any property or rental an amount in excess of that provided by section 5. Any person violating this section shall be guilty of a misdemeanor. (1961, c. 275.)

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 conpensation 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.—Every seller of tangible personal property, not required by section 6 to register, may register upon such terms as the assessor may prescribe. Upon registration, he shall have the rights and duties of a person required to be registered and shall be subject to the same penalties.

The person registered hereunder may at any time surrender his registration certificate and request that the same be canceled. Upon receipt of such certificate and request, the assessor shall grant the same if it appears to the assessor that the registrant has satisfied all liability to the state hereunder and that he is not required by law to register. Upon surrender of his certificate, the registered person shall cease to collect sales or use taxes upon sales taking place on and after the date of such surrender. (1951, c. 250, § 1. 1953, c. 72, § 4. 1961, c. 63, § 1.)

Effect of amendment.—The 1961 amendment repealed the former second paragraph of this section, containing provisions similar to those now found in § 8-A.

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

Sec. 8-A. Revocation of registration; reconsideration and appeal. —The tax assessor may revoke any registration certificate when the registrant has failed for 15 days after notice to file bond or deposit required under section 7, or may revoke for cause a registration certificate issued under section 8. In either case, such revocation shall not be effective until 15 days after notice to the registrant. Within said 15-day period the person registered may petition in writing for reconsideration. If a written petition for reconsideration is not then filed, the revocation becomes effective at the expiration of the period. If a petition is filed within the 15-day period, the tax assessor shall reconsider the order, and if the petitioner has so requested in his petition, shall grant the petitioner an oral hearing and shall give the petitioner 10 days' notice of the time and place thereof. For cause shown, the tax assessor may extend the time for filing such petition. Any registrant aggrieved by the decision upon such petition may appeal therefrom as provided in section 33. (1961, c. 63, § 2. 1963, c. 41.)

Effect of amendment.—The 1963 amendment rewrote the second sentence, deleted "order of" preceding "revocation" in the fourth sentence and substituted "effective" for "final" in such sentence.

Sec. 9. Presumption concerning sales.

Section 2 does not preclude introduction of competent evidence.—The legislature, in placing the burden of proof on the taxpayer to prove nontaxability, did not intend that its definition of "sale price" in § 2 should be interpreted in such a manner as to preclude him from satisfying the burden by the introduction of competent evidence. Scott Paper Co. v. Johnson, 156 Me. 19, 159 A. (2d) 319.

And refusal to accept such evidence is prejudicial. — Where substantive rights of the vendee are concerned, and in view of the fact that this section imposes upon vendee the burden of proving the transactions were not taxable, and where vendee was in possession of competent evidence to satisfy that burden, refusal to accept such evidence is extremely prejudicial. Scott Paper Co. v. Johnson, 156 Me. 19, 159 A. (2d) 319.

Applied in Oxford Paper Co. v. Johnson, 155 Me. 380, 156 A. (2d) 235; Bouchard v. Johnson, 157 Me. 41, 170 A. (2d) 372.

Sec. 10. Exemptions.

III. Food products for human consumption.

The sale of food products ordinarily sold for immediate consumption on or near the location of the retailer is a taxable sale even though such products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the premises. Meals, food and drink served to patients and inmates of hospitals licensed by the state for the care of human beings and other institutions licensed by the state for the hospitalization or nursing care of human beings, or institutions, agencies, hospitals, boarding homes and boarding-houses licensed by the department of health and welfare under chapter 25, sections 5, 22, 254 and 255, shall be deemed "food products." (1953, c. 54; c. 146, § 8. 1961, c. 87. 1963, c. 394.)

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. Hospitals, research centers, churches and schools. Sales to incorporated hospitals, institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research or for the purpose of operating educational television or radio stations, schools and regularly organized churches or houses of religious worship, excepting sales, storage or use in activities which are mainly commercial enterprises. "Schools" mean incorporated non-stock educational institutions, including institutions empowered to confer educational, literary or academic degrees, which have a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year, which keep and furnish to students and others records required and accepted for entrance to schools of secondary collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual. (1953, c. 109, § 2; c. 407. 1961, c. 380, § 1.)

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. Repealed by Public Laws 1961, c. 227, § 8.

XVI-E. Continuous residence in hotel, etc. Rental charged to any person who resides continuously for 28 days at any one hotel, rooming house, tourist or trailer camp. Tax paid by such person to the retailer under section 5 during the initial 28-day period shall be refunded by the retailer. Such tax reported and paid to the state by the retailer may be taken as a credit by the retailer on the report filed by him covering the month in which refund was made to such tenant. (1959, c. 350, § 9. 1961, c. 227, § 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.)

XXIII. Aircraft purchased by a nonresident. Aircraft purchased by a nonresident and intended to be driven or transported outside the state immediately upon delivery by the seller. [1961, c. 400.] (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. 1961, c. 87; c. 227, §§ 8, 9; c. 380, § 1; c. 400. 1963, c. 394.)

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, insectides, 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-E. P. L. 1959, c. 358, added the words "or any other state or province" after the word "state" and before the word "but" in subsection VIII.

Chapter 87, P. L. 1961, substituted "even though" for "unless" in the first sentence in the third paragraph of subsection III. Chapter 227, P. L. 1961, effective on its approval, April 19, 1961, eliminated subsection XVI-D, relating to apartment house rentals, and rewrote subsection XVI-E. Chapter 380, P. L. 1961, effective on its approval, June 17, 1961, inserted "or for the purpose of operating educational television or radio stations" in the first sentence of subsection XVI. Chapter 400, P. L. 1961, added subsection XXIII.

The 1963 amendment deleted "provided, however," at the beginning of the last sentence of subsection III and added "or institutions, agencies, hospitals, boarding homes and boardinghouses licensed by the department of health and welfare under chapter 25, sections 5, 22, 254 and 255" in such sentence.

Only the subsections or parts of subsections 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.

Section 12 of c. 227, P. L. 1961, as amended by P. L. 1961, c. 395, § 55, provides that "Rentals payable on and after June 1, 1960, pursuant to contracts entered into prior thereto, shall be subject to the tax imposed by this act."

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 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.

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.

Quoted in Hunnewell Trucking, Inc. v. Johnson, 157 Me. 338, 172 A. (2d) 732.

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

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 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. 12-A. Refund of sales tax on goods removed from state.—When a business which operates from fixed locations within and without this state purchases supplies and equipment in this state, places them in inventory in this state, and subsequently withdraws them from inventory for use at a location of the business in another state without having made use other than storage within this state, it may request a refund of Maine sales tax paid at the time of purchase, provided it maintains inventory records by which the acquisition and disposition of such supplies and equipment purchased can be traced. No refund shall be made where the state to which the supplies and equipment are removed levies a sales or use tax. Such refunds must be requested in accordance with section 18. (1961, c. 61.)

Sec. 14. Collection of tax; report to assessor.

Tax assessor must establish formula. — The tax assessor in the proper administration of his office must of necessity establish a formula or standard which, when applied to a given situation, would determine the inaccuracy of the percentage of exempt sales. Sampson-Sawyer Co. v. Johnson, 156 Me. 544, 167 A. (2d) 1.

Function of informative bulletins. — Informative bulletins issued by the tax assessor are, in some respects, guides to the retailer informing him as to the assessor's interpretation and construction of this section and the manner in which he intends to enforce it. Sampson-Sawyer Co. v. Johnson, 156 Me. 544, 167 A. (2d) 1.

Informative bulletins issued by the tax assessor do not have the force of law but are interpretative of the application of the sales and use tax law insofar as the retailer's legal responsibility is concerned under the permanent classified permit as provided by Sales and Use Tax Regulation 13. Sampson-Sawyer Co. v. Johnson, 156 Me. 544, 167 A. (2d) 1.

Rules promulgated in Regulation 13. — The rules promulgated in Sales and Use Tax Regulation 13, relating to permanent classified permits, do not exceed legislative intent, nor are they repugnant to or inconsistent with the provisions of this section. Sampson-Sawyer Co. v. Johnson, 156 Me. 544, 167 A. (2d) 1.

Stated in Kenneth Hudson, Inc. v. Johnson, 159 Me. 169, 189 A. (2d) 780.

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, 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 ½ 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. 1961, c. 227, § 10.)

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

The 1961 amendment effective on its approval, April 19, 1961, eliminated "sleeping or housekeeping accommodations" following "quarters" 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. 16. Tax a debt; proceedings to recover; preference.—The taxes, interest and penalties imposed by this chapter, from the time the same shall be due, shall be a personal debt of the retailer or user to the state of Maine, recoverable in any court of competent jurisdiction in a civil action in the name of the state of Maine, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment obtained shall be paid to the tax assessor. (1951, c. 250, § 1. 1953, c. 72, § 5-A. 1961, c. 317, § 22.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action at law" in the first sentence of this section, deleted "hereunder" formerly following "obtained" in the second sentence and inserted "tax" preceding "assessor" at the end of such sentence.

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

When taxpayer to be advised of basis for assessment.—Due process and this section do not require the state tax assessor, at the time of making an assessment, to give the taxpayer notice of the basis for that assessment. It is sufficient if the taxpayer is fully advised of such basis at the time the appeal period begins to run. Kenneth Hudson, Inc. v. Johnson, 159 Me. 169, 189 A. (2d) 780.

This section and § 20 contain same notice requirements.—The same requirements in regard to sufficiency of notice are present under either this section or § 20 of this chapter. Kenneth Hudson, Inc. v. Johnson, 159 Me. 169, 189 A. (2d) 780.

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.

This section and § 19 contain same notice requirements.—The same requirements in regard to sufficiency of notice are present under either this section or § 19 of this chapter. Kenneth Hudson, Inc. v. Johnson, 159 Me. 169, 189 A. (2d) 780.

Applied in Scott Paper Co. v. Johnson, 156 Me. 19, 159 A. (2d) 319; Sampson-Sawyer Co. v. Johnson, 156 Me. 544, 167 A. (2d) 1; Bouchard v. Johnson, 157 Me. 41, 170 A. (2d) 372.

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

Sec. 21. Jeopardy assessment.—If the assessor finds that a person liable for a tax designs quickly to depart from this state or to remove his property therefrom, or to conceal himself or his property, or to discontinue business, or to do any other act tending to prejudice or to render wholly or partially ineffective proceedings to collect such tax, unless such proceedings be brought without delay, the assessor shall cause notice of such finding to be given such person, together with a demand for an immediate report and immediate payment of such tax. If report and payment are not made upon demand, the assessor may make an estimate of the taxable liability of such person, from any information he may obtain, and according to such estimate, assess the taxes and interest due the state from such person. The assessor shall give notice of said assessment and demand payment thereof, and said assessment shall be presumed to be correct, the burden of showing otherwise being on the taxpayer. Thereupon, such tax shall become immediately due and payable. The tax assessor may, at the same time, without delay, bring a civil action for the collection of the tax. (1951, c. 250, § 1. 1953, c. 72, § 8. 1961, c. 417, § 23.)

Effect of amendment.—The 1963 amendment added "tax" before "assessor" and substituted "a civil action" for "suit" in the last sentence.

Sec. 23. Administration.

Applied in Sampson-Sawyer Co. v. Johnson, 156 Me. 544, 167 A. (2d) 1.

Quoted in Bouchard v. Johnson, 157 Me. 41, 170 A. (2d) 372.

Sec. 25. Power to examine records and premises.

Quoted in Scott Paper Co. v. Johnson, 156 Me. 19, 159 A. (2d) 319.

Sec. 27. Power to summon witnesses.

The superior court upon application of the state tax assessor may compel the attendance of witnesses and the giving of testimony before the state tax assessor in the same manner, to the same extent and subject to the same penalties as if before said court. (1951, c. 250, § 1. 1953, c. 146, § 12. 1961, c. 417, § 24.)

Effect of amendment.—The 1961 amendment deleted "any justice of" at the beginning of the last paragraph. As the rest of the section was not affected by the amendment, it is not set out.

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. 29. Records of retailers.—Every retailer shall keep records of his sales, and of his rentals charged for living quarters in hotels, rooming houses, tourist or trailer camps, the kind and form of which shall be adequate to enable the tax assessor to determine the tax liability. All such records shall be safely preserved for a period of 3 years in such manner as to insure their security and accessibility for inspection by the assessor or by any of his employees engaged in the administration of this chapter. The assessor may consent to the destruction of any such records at any time within said period. (1951, c. 250, § 1. 1961, c. 227, § 11.)

Cross reference.—As to adequacy of records, see notes to § 3.

Effect of amendment.—The 1961 amendment, effective on its approval, April 19, 1961, rewrote the first sentence.

Quoted in Scott Paper Co. v. Johnson, 156 Me. 19, 159 A. (2d) 319.

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

Applied in Scott Paper Co. Johnson, 156 Me. 19, 159 A. (2d) 319.

Stated in Kenneth Hudson, Inc. v. Johnson, 159 Me. 169, 189 A. (2d) 780.

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 certified 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.

Superior court not limited to questions of law.—On appeal from a tax assessment, the powers of a superior court are not limited to the examination of questions of law, and the appellant is afforded an opportunity to present evidence and arguments which he considers important. Kenneth Hudson, Inc. v. Johnson, 159 Me. 169, 189 A. (2d) 780.

It is necessary that taxpayer be advised of basis of assessment before beginning of appeal period, in order that he may have the necessary information to properly set forth the issues in the case on appeal. Kenneth Hudson, Inc. v. Johnson, 159 Me. 169, 189 A. (2d) 780.

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; Camp Walden v. Johnson, 156 Me. 160, 163 A. (2d) 356; Sampson-Sawyer Co. v. Johnson, 156 Me. 544, 167 A. (2d) 1; Hunnewell Trucking, Inc. v. Johnson, 157 Me. 338, 172 A. (2d) 732.

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 tax assessor may allow, the tax assessor shall certify the amount required to be paid, interest and penalty, to the attorney general for collection. The attorney general may 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 tax 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. 1961, c. 417, § 25.)

Effect of amendment.—The 1961 amendment added "tax" before "assessor" wherever "assessor" appears in the second paragraph and deleted "in term time or vacation" after "attorney general may" in the second sentence of the second paragraph.

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 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. The court 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 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 the superior court, 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. 1961, c. 417, § 26.)

Effect of amendments.—The 1959 amendment rewrote this section.

The 1961 amendment deleted "any justice of" preceding "the superior court" in the first sentence of the third paragraph, substituted "The court" for "Such justice" at the beginning of the second sentence of the third paragraph, deleted "the justices of" preceding "the superior court" in the first sentence of the fourth paragraph and substituted "the superior court" for "such justice" in the second sentence of the fourth 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."

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 $8,500. He shall receive no other fee, emolument or perquisite.

(1955, c. 473, § 3. 1957, c. 349, § 1; c. 418, § 3. 1959, c. 361, § 3. 1963, c. 396, § 1.)