

MAINE STATE LEGISLATURE

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CHAPTER 703
CIGARETTE TAX

Sec.

- 4361. Definitions.
- 4362. Licenses.
- 4363. —Expiration; reissuance.
- 4364. —Revocation.
- 4365. Rate of tax.
- 4366. Stamps provided by Tax Assessor.
- 4367. Resale of stamps prohibited; redemption.
- 4368. Stamps affixed by distributors.
- 4369. Stamps affixed by dealers.
- 4370. Sale of unstamped cigarettes prohibited.
- 4371. Possession of unstamped cigarettes; prima facie evidence.
- 4372. Unstamped cigarettes to be confiscated.
- 4373. Forfeiture proceedings.
- 4374. Fraudulent stamps.
- 4375. Records; examination by Tax Assessor.
- 4376. Oaths and subpoenas.
- 4377. Hearings by Tax Assessor.
- 4378. Appeals.
- 4379. Administration; rulings and regulations.
- 4380. Use of metering machines.
- 4381. Tax credited to General Fund.
- 4382. Tax is levy on consumer.

§ 4361. Definitions

Whenever used in this chapter, unless the context shall otherwise require, the following words and phrases shall have the following meanings:

1. Dealer. “Dealer” shall mean any person other than a distributor, who is engaged in this State in the business of selling cigarettes.

2. Distributor. “Distributor” shall mean any person engaged in this State in the business of producing or manufacturing cigarettes or importing into the State cigarettes at least 75% of which are purchased directly from the manufacturers thereof.

3. Licensed dealer. “Licensed dealer” shall mean a dealer licensed under this chapter.

4. Licensed distributor. “Licensed distributor” shall mean a distributor licensed under this chapter.

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

6. **Sale or sell.** "Sale" or "sell" shall include or apply to gifts, exchanges and barter.

7. **Sub-jobber.** "Sub-jobber" shall mean a wholesale dealer who does not qualify as a distributor.

8. **Tax Assessor.** "Tax Assessor" shall mean the State Tax Assessor.

9. **Unclassified importer.** "Unclassified importer" shall mean any person, firm, corporation or association within the State, other than a licensed distributor, sub-jobber or dealer who shall import, receive or acquire from without the State, cigarettes for use or consumption within the State.

R.S.1954, c. 16, § 200; 1955, c. 405, § 8.

§ 4362. Licenses

Each person engaging in the business of selling cigarettes in this State, including any distributor or dealer, shall secure a license from the Tax Assessor before engaging in such business. A separate application and license shall be required for each wholesale outlet and for each retail outlet when a person shall own or control more than one place of business dealing in cigarettes. Each vending machine shall be considered a retail outlet. Such license shall be issued on forms prescribed by the Tax Assessor, and shall contain the name and address of the applicant, the address of the place of business and such other information as the Tax Assessor may require for the proper administration of this chapter. Each application for a wholesale outlet license shall be accompanied by a fee of \$25 and each such application for a retail outlet license shall be accompanied by a fee of \$1. Each application for a sub-jobber's license, to be known as a "wholesale dealer's license," shall be accompanied by a fee of \$10. Each license so issued shall be prominently displayed on the premises covered by the license and in the case of vending machines there shall be attached to the same a disc or marker to be furnished by the Tax Assessor showing it to have been licensed. Each unclassified importer shall, before importing, receiving or acquiring cigarettes from without the State, secure a license from the Tax Assessor. There shall be no charge for a license issued to an unclassified importer. Any person who shall sell, offer for sale or

possess with intent to sell any cigarettes, without a license as provided in this section, shall be punished by a fine of not more than \$25 for the first offense and not less than \$25, nor more than \$200, for each subsequent offense. Any unclassified importer who shall import, receive or acquire from without the State cigarettes for use or consumption within the State without a license as provided in this section shall be punished by a fine of not more than \$25 for the first offense and not less than \$25, nor more than \$200, for each subsequent offense.

R.S.1954, c. 16, § 201; 1955, c. 405, § 9.

§ 4363. —Expiration; reissuance

Each distributor's license issued under section 4362 shall expire on the 31st day of July next succeeding the date of issuance unless sooner revoked by the Tax Assessor as provided in section 4364, or unless the business with respect to which such license was issued shall be transferred, in either of which cases the holder of the license shall immediately return it to the Tax Assessor. In the event that the holder of a license shall remove his business to another location within the State, the license with respect to the former place of business shall be reissued for the new location without the payment of an additional fee for the unexpired term. The holder of each distributor's license on application to the Tax Assessor, accompanied by the fee prescribed in section 4362, may annually before the expiration date of the license then held by him renew his license for a further period of one year.

Each wholesale dealer's license issued shall be for the period ending the 31st day of July next succeeding the date of issuance. Such license may be revoked for cause at any time pursuant to section 4364 and, if the business of said licensee shall be transferred, the license of such person shall thereupon become void. All revoked and void licenses shall be returned forthwith to the Tax Assessor.

Each retail dealer's license issued shall be good indefinitely, unless revoked as provided for in section 4364, or unless there is a change in ownership of the business for which the license was issued. Each disc or marker required to be affixed to each vending machine, as provided for in section 4362, shall be considered a retail dealer's license. In the event that the holder of a retail dealer's license or a wholesale dealer's license shall remove his business to another location within the State, the license with respect to the former place of business shall be reissued for the new location without the payment of an additional fee. In the

event of mutilation, loss or destruction of such retail dealer's license, wholesale dealer's license or vending machine disc or marker, a duplicate copy, marked as such, will be issued by the Tax Assessor upon application accompanied by a fee of \$1.

Each unclassified importer's license shall expire on the 31st day of July next succeeding the date of issuance unless sooner revoked by the Tax Assessor. The holder of each unclassified importer's license, on application to the Tax Assessor, may annually before the expiration date of his license renew the license for a further period of one year.

R.S.1954, c. 16, § 202; 1955, c. 405, § 10.

§ 4364. —Revocation

The Tax Assessor may revoke or suspend the license of any dealer, unclassified importer or distributor for failure to comply with any provisions of this chapter, or if the person licensed has ceased to act in the capacity for which the license was issued. Any person aggrieved by such revocation or suspension may apply to the Tax Assessor for a hearing as provided in section 4377, and may further appeal to the courts as provided in section 4378.

R.S.1954, c. 16, § 203; 1955, c. 405, § 11.

§ 4365. Rate of tax

A tax is imposed on all cigarettes held in this State by any person for sale, said tax to be at the rate of 3 mills for each cigarette and the payment thereof to be evidenced by the affixing of stamps to the packages containing the cigarettes. Any cigarette on which a tax has been paid, such payment being evidenced by the affixing of such stamp, shall not be subject to a further tax under this chapter. Nothing contained in this chapter shall be construed to impose a tax on any transaction, the taxation of which by this State is prohibited by the Constitution of the United States.

Each unclassified importer shall, within 24 hours after receipt of any unstamped cigarettes in this State, notify the Tax Assessor of the number of cigarettes received, and the name and address of consignor. The Tax Assessor thereupon shall notify the unclassified importer of the amount of the tax due thereon, which shall be at the rate of 3 mills per cigarette. Payment of the amount due the State shall be made within 10 days from mailing date of notice thereof.

R.S.1954, c. 16, § 204; 1955, c. 359, § 4; 1961, c. 372, §§ 1, 2.

§ 4366. Stamps provided by Tax Assessor

The Tax Assessor shall secure stamps, of such design and denomination as he shall prescribe, suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by this chapter. To licensed distributors he shall sell such cigarette stamps at a discount of 3% of their face value. To licensed dealers he shall sell all stamps at face value. The face value of the stamps when affixed shall be considered as part of the cost of the merchandise. The Tax Assessor may, in his discretion, permit a licensed distributor or licensed dealer to pay for such stamps within 30 days after the date of purchase, provided a bond satisfactory to the Tax Assessor in an amount not less than the sale price of such stamps shall have been filed with the Tax Assessor conditioned upon payment for such stamps. He shall keep accurate records of all stamps sold to each distributor and dealer and shall pay over all receipts from the sale of stamps to the Treasurer of State daily.

R.S.1954, c. 16, § 205; 1955, c. 1, § 1; c. 359, § 5; 1961, c. 372, § 3.

§ 4367. Resale of stamps prohibited; redemption

No distributor or dealer shall sell or transfer any stamps issued under this chapter. The Tax Assessor shall redeem any unused, uncanceled stamps presented by any licensed distributor or dealer, at a price equal to the amount paid therefor by such dealer or distributor and the said Tax Assessor may, upon proof satisfactory to him and in accordance with regulations promulgated by him, redeem, at a price equal to the amount paid therefor, Maine cigarette tax stamps affixed to packages of cigarettes which have become unfit for use and consumption, or unsalable, and the Treasurer of State shall provide, out of money collected hereunder, the funds necessary for such redemption.

R.S.1954, c. 16, § 206; 1955, c. 405, § 12.

§ 4368. Stamps affixed by distributors

Each distributor shall affix, or cause to be affixed, in such manner as the Tax Assessor may specify in regulations issued pursuant to this chapter, to each individual package of cigarettes sold or distributed by him, stamps of the proper denominations, as required by section 4365. Such stamps may be affixed by a distributor at any time before the cigarettes are transferred out of his possession.

R.S.1954, c. 16, § 207; 1955, c. 405, § 13.

§ 4369. Stamps affixed by dealers

Each dealer shall, within 72 hours after coming into possession of any cigarettes not bearing proper stamps evidencing payment of the tax imposed by this chapter, and before selling such cigarettes, affix or cause to be affixed, in such manner as the Tax Assessor may specify in regulations issued pursuant to this chapter, to each individual package of cigarettes, stamps of the proper denomination as required by section 4365.

R.S.1954, c. 16, § 208; 1955, c. 405, § 14.

§ 4370. Sale of unstamped cigarettes prohibited

No distributor shall sell, and no other person shall sell, offer for sale, display for sale or possess with intent to sell, any cigarettes which do not bear stamps evidencing the payment of the tax imposed by this chapter, provided a licensed dealer may keep on hand unstamped cigarettes for a period not exceeding 72 hours. Any unstamped cigarettes in the possession of a dealer shall be presumed to have been held by him for more than 72 hours unless proof be shown to the contrary. Any person who shall violate any provision of this section shall be punished by a fine of not more than \$100 for the first offense and, for each subsequent offense, shall be punished by a fine of not less than \$200 nor more than \$1,000, or by imprisonment for not more than 6 months, or by both.

R.S.1954, c. 16, § 209; 1955, c. 405, § 15.

§ 4371. Possession of unstamped cigarettes; prima facie evidence

The possession by any person, other than a licensed distributor or licensed dealer of cigarettes which do not bear stamps, shall be prima facie evidence that the cigarettes have been imported and that they are intended for use or consumption within the State.

R.S.1954, c. 16, § 210; 1955, c. 405, § 16.

§ 4372. Unstamped cigarettes to be confiscated

Any cigarettes found at any place in this State without stamps affixed thereto as required by this chapter, unless such cigarettes shall be in the possession of a licensed distributor, or unless they shall be in course of transit from without this State and consigned to a licensed distributor or licensed dealer, or un-

less they shall have been received by a licensed dealer within 72 hours, or unless they shall have been imported, received or acquired within 24 hours by a licensed unclassified importer who has notified the Tax Assessor as provided in section 4365, are declared to be contraband goods and are subject to forfeiture to the State. Sheriffs, deputy sheriffs, police officers and duly authorized agents of the said Tax Assessor shall have the power to seize the same with or without process. In case such cigarettes are seized without a warrant, they shall be kept in some safe place for a reasonable time until a warrant can be procured. When such cigarettes are seized as provided, the officer or agent seizing them shall immediately file with the judge before whom such warrant is returnable, a libel against such cigarettes setting forth the seizure and describing the cigarettes, their containers and the place of seizure in sufficient manner to reasonably identify them, and that they were kept or intended for unlawful sale or use in violation of law and pray for a decree of forfeiture thereof. Such judge shall fix a time for the hearing of such libel and shall issue his monition and notice of the same to all persons interested, citing them to appear at the time and place appointed to show cause why such cigarettes and their containers should not be declared forfeited, by causing true and attested copies of said libel and monition to be posted in 2 public and conspicuous places in the town or place where such cigarettes were seized, 10 days at least before said libel is returnable. In lieu of forfeiture proceedings, title to such seized, unstamped cigarettes may be transferred to the State of Maine by the owner thereof. If title to and ownership in such cigarettes is transferred to the State, a receipt for the cigarettes shall be given to the former owner by the State Tax Assessor or his authorized agent.

R.S.1954, c. 16, § 211; 1955, c. 405, § 17.

§ 4373. Forfeiture proceedings

If no claimant appears, such judge shall, on proof of notice, declare the same to be forfeited to the State. If any person appears and claims such cigarettes, or any part thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with the judge such claim in writing, stating specifically the right so claimed, the foundation thereof, the items so claimed, the time and place of the seizure and the name of the officer or duly authorized agent of the said Tax Assessor by whom the same were seized, and in it declare that they were not so kept or deposited for unlawful sale and use as alleged in said libel and

monition, and state his business and place of residence and shall sign and make oath to the same before said judge. If any person so makes claim, he shall be admitted as a party to the process; and the judge shall proceed to determine the truth of the allegations in said claim and libel, and may hear any pertinent evidence offered by the libelant or claimant. If the judge is, upon hearing, satisfied that said cigarettes were not so kept or deposited for unlawful sale or use, and that the claimant is entitled to the custody of any part thereof, he shall give him an order in writing, directed to the officer or duly authorized agent of the said Tax Assessor having the same in custody, commanding him to deliver to said claimant the cigarettes to which he is so found to be entitled, within 48 hours after demand. If the judge finds the claimant entitled to no part of said cigarettes, he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such judge, and issue execution thereon, and shall declare said cigarettes forfeited to the State. The claimants may appeal and shall recognize with sureties as on appeals in civil actions from a judge. All cigarettes declared forfeited to the State, or title to which has been transferred to the State in lieu of forfeiture proceedings, shall be sold by the Treasurer of State at the approximate wholesale price thereof, and the funds derived from such sales shall be paid into the State Treasury.

R.S.1954, c. 16, § 212; 1955, c. 405, § 18; 1961, c. 417, § 20.

§ 4374. Fraudulent stamps

Any person who shall fraudulently make or utter or shall forge or counterfeit any stamp prescribed by the Tax Assessor under this chapter or who shall cause or procure the same to be done, or who shall willfully utter, publish, pass or render as true, any false, altered, forged or counterfeited stamp, or who shall knowingly possess any such false, altered, forged or counterfeited stamp, or who shall use more than once any stamp provided for and required by this chapter, for the purpose of evading the tax imposed by this chapter, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than 2 years, or by a fine of not less than \$500 nor more than \$1,000, or by both.

R.S.1954, c. 16, § 213; 1955, c. 405, § 19.

§ 4375. Records; examination by Tax Assessor

Each distributor and each dealer shall keep complete and accurate records of all cigarettes manufactured, produced, pur-

chased and sold. Such records shall be of such kind and in such form as the Tax Assessor may prescribe and shall be safely preserved for 2 years in such manner as to insure permanency and accessibility for inspection by the Tax Assessor and his authorized agents. The Tax Assessor and his authorized agents may examine the books, papers and records of any distributor or dealer in this State for the purpose of determining whether the tax imposed by this chapter has been fully paid, and may investigate and examine the stock of cigarettes in or upon any premises where such cigarettes are possessed, stored or sold for the purpose of determining whether this chapter is being obeyed.

R.S.1954, c. 16, § 214; 1955, c. 405, § 20.

§ 4376. Oaths and subpoenas

The Tax Assessor and any agent of the Tax Assessor duly authorized to conduct any inquiry, investigation or hearing shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the Tax Assessor, the Tax Assessor or his agent authorized to conduct such hearing and having authority by law to issue such process may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. If any person shall disobey such process or, having appeared in obedience thereto, shall refuse to answer any pertinent question put to him by the Tax Assessor or his authorized agent or to produce any books and papers pursuant thereto, the Tax Assessor or such agent may apply to the Superior Court of the county wherein the taxpayer resides or wherein the business has been conducted, setting forth such disobedience to process or refusal to answer, and said court shall cite such person to appear before said court to answer such question or to produce such books and papers, and, upon his refusal to do so, may commit him to jail until he shall testify, but not for a longer period than 60 days. Notwithstanding the serving of the term of such commitment by any person, the Tax Assessor may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the Tax Assessor or under his authority and witnesses attending hearing conducted by him shall receive fees and compensation at the same rates as officers and witnesses in the courts of this State, to be paid on vouchers of the Tax Assessor on warrant of the State Controller from the proper appropriation for the administration of this chapter.

R.S.1954, c. 16, § 215; 1955, c. 405, § 21; 1961, c. 417, § 21.

§ 4377. Hearings by Tax Assessor

Any person aggrieved by any action under this chapter of the Tax Assessor or his authorized agent for which hearing is not elsewhere provided may apply to the Tax Assessor, in writing, within 10 days after the notice of such action is delivered or mailed to him, for a hearing, setting forth the reasons why such hearing should be granted and the manner of relief sought. The Tax Assessor shall promptly consider each such application and may grant or deny the hearing requested. If the hearing be denied, the applicant shall be notified thereof forthwith. If it be granted, the Tax Assessor shall notify the applicant of the time and place fixed for such hearing. After such hearing, the Tax Assessor may make such order in the premises as may appear to him just and lawful and shall furnish a copy of such order to the applicant. The Tax Assessor may, by notice in writing, at any time, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of information concerning any manufacture, importation or sale of cigarettes which have escaped taxation to appear before him or his duly authorized agent with any specific books of account, papers or other documents for examination relative thereto.

R.S.1954, c. 16, § 216; 1955, c. 405, § 22.

§ 4378. Appeals

Any person aggrieved because of any action or decision of the Tax Assessor under this chapter may appeal therefrom within 20 days to the Superior Court. When the appeal is taken, the appellant shall serve upon the State Tax Assessor or his duly authorized representative a copy of the said complaint stating the reasons for the appeal. Pending judgment of the court, the decision of the Tax Assessor shall remain in full force and effect.

R.S.1954, c. 16, § 217; 1955, c. 405, § 23; 1959, c. 317, § 4.

§ 4379. Administration; rulings and regulations

The administration of this chapter is vested in the State Tax Assessor. All forms necessary and proper for the enforcement of this chapter shall be prescribed and furnished by the Tax Assessor. The Tax Assessor shall appoint such agents, clerks, stenographers and other assistants as he may deem necessary for effecting the purpose of this chapter, subject to the Personnel Law. The Tax Assessor may prescribe regulations and rulings,

not inconsistent with law, to carry into effect this chapter, which regulations and rulings, when reasonably designed to carry out the intent and purpose of this chapter, shall be prima facie evidence of its proper interpretation. The Tax Assessor shall, at least annually, and oftener in his discretion, publish for distribution all regulations prescribed and such rulings as appear to him to be of general interest.

R.S.1954, c. 16, § 218; 1955, c. 405, § 24.

§ 4380. Use of metering machines

The Tax Assessor, if he shall determine that it is practicable to stamp by impression packages of cigarettes by means of a metering machine, may, in lieu of selling stamps under section 4366, authorize any licensed distributor or licensed dealer to use any metering machine approved by him, such machine to be sealed by the Tax Assessor before being used in accordance with regulations prescribed by him. Any licensed distributor or licensed dealer authorized by the Tax Assessor to affix stamps to packages by means of a metering machine shall file with the Tax Assessor a bond issued by a surety company licensed to do business in this State, in such amount as the Tax Assessor may fix, conditioned upon the payment of the tax upon cigarettes so stamped. The bond shall be in full force and effect for a period of one year and a day after the expiration of the bond, unless a certificate be issued by the Tax Assessor to the effect that all taxes due to the State have been paid. In the discretion of the Tax Assessor, cash may be accepted in lieu of a surety bond, such cash to be paid over by the Tax Assessor to the Treasurer of State, who may deposit or hold the same subject to further order of the Tax Assessor. The Tax Assessor shall cause each metering machine approved by him to be read and inspected at least once a month and shall determine as of the time of each inspection the amount of tax due from the distributor or dealer using such machine after allowing for the discount, if any, provided for in section 4366, which tax shall be due and payable upon demand of the Tax Assessor or his duly authorized agent.

R.S.1954, c. 16, § 219; 1955, c. 405, § 25.

§ 4381. Tax credited to General Fund

The revenue derived from the tax imposed by this chapter shall be credited to the General Fund of the State.

R.S.1954, c. 16, § 220; 1955, c. 405, § 26.

§ 4382. Tax is levy on consumer

The liability for, or the incidence of, the tax on cigarettes is declared to be a levy on the consumer. The distributors shall add the amount of the tax on cigarettes presently levied to the price of the cigarettes and the distributor may state the amount of the taxes separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills and statements which advertise or indicate the price of such cigarettes. This section shall in no way affect the method of collection of such taxes on cigarettes as now provided by existing law.

R.S.1954, c. 16, § 221; 1955, c. 405, § 27.