

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

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Legislature*

OF THE

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the State of Maine makes it economically advantageous for one to withhold payment of the sales taxes as they become due each and every month, then it seems to me that we are defeating our own purpose in writing the laws and enforcing these laws through the Bureau of Taxation.

The good Senator from Cumberland, Senator Jackson, made reference to the fact that this is a discriminatory law in that there is a \$50 limit to the fine or the penalty that can be imposed. Well, I agree with him. I think that there can be a way in which this is on a scale, a percentage of the amount that is owed, and if it is not paid when it is due that there should be a penalty which is based upon a percentage of the particular amount owed. In that way you will make sure that those who are withholding payment to the State when it is due will be assessed a legitimate and a just penalty for so doing. And I would point out to the members of this body that the good Senator from Cumberland, Senator Jackson, has prepared an amendment for just that purpose, in case the motion to indefinitely postpone should fail.

I would strongly oppose the motion to indefinitely postpone this bill. I don't think that we can simply pass over this and say that the individuals in the Bureau of Taxation are lounging around and not doing their job. I don't know how many businesses there are operating in the State of Maine precisely, and I don't know how many individuals there are in the employ of the Bureau of Taxation, and I don't know how many of those individuals who do happen to be in the employ of the Bureau of Taxation are actually inspectors in the field who go from door to door in the number of businesses that are in the State of Maine to inspect them, but I am doggone sure that they have not been able and are not able to check every single business in the State of Maine. Perhaps that is just one more reason to have an increase in the penalties, so that when there is a violation it makes it that much more disadvantageous for the individual than at the present time.

I may be missing something in this bill; as I mentioned, I was not at the hearing and not being a member of the committee, and if so, I would be very willing to listen to the arguments against it. But it does seem to me that if the Bureau of Taxation feels that an increase in the penalties is necessary and desirable to reduce the amount of accounts receivable that they have over there, that it is incumbent upon us, as the only body that can help them out, to provide the tools that they feel are necessary to do the job.

The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President and Members of the Senate: I think once more this points to the cost of state government. I think the Bureau of Taxation would be very happy to check every business once a month on this matter, but if we don't do something to help them and give them the tools with which to work, it is going to require more state employees and more people over in that department to do this work. I think that is the point of the whole matter: do we want to give them money enough to hire additional help so they can check everyone's sales tax once a month or keep very close to it? I certainly oppose the motion of the good Senator from York, Senator Marcotte.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate: I rise for two reasons: First of all, I would not want the Majority Leader, the good Senator from Kennebec, Senator Speers, to feel alone. I know how that feels in this body from time to time.

Secondly, I would like to provide a little bit more explanation as to what is being attempted here and what the purpose of it is. If I am incorrect in my explanation, I would be glad to be corrected by the good Senator from Cumberland, Senator Jackson, or any other member of the body. As I understand it, never having been personally engaged in this activity, never having run a store or anything of that kind, retail outlets in this state collect the tax for the state and have the money for the month. At the end of the period of that time they have to file a report, and that is what section one of this bill goes to, it goes to the filing of that report. It increases the penalty for failure to file that report on time. It increases the penalty to five percent of the tax liability or to \$50. Now, the reason we put a ceiling on that and made the ceiling \$50 was because we didn't want the penalty to be too high.

In any case, obviously that is discriminatory, in one sense, because after you get over the liability that would be reached at five percent on \$50 there is a ceiling. The desire here was to do exactly what I think Senator Jackson and the Senator from York, Senator Marcotte, would want, and that is to put some ceiling on this for this act of failing to report.

The second section of this bill goes to penalty for failing to pay the money that is due the state on time. I think that is the most important part of this bill, and that is the part that I think the Senate should take into the greatest consideration when it votes on this motion. The present penalty is one-half percent per month or six percent a year. If the money that the stores collect, in essence, for the state is kept by the stores, they pay a rate of one-half percent per month. Now, this is supposed to be a penalty, this is in the law as a penalty. And yet anyone here who has had any commercial transaction knows that one-half percent a month is anything but a penalty. One-half percent a month is a more favorable interest rate than any business in this state could have at the present time. So quite the contrary from being a penalty, it is such an advantageous interest rate that it provides no encouragement whatsoever for the businesses to give the state its money on time. What this really does, it brings us up to date with the high cost of money today. Probably when this law was originally passed six percent was a good hefty interest rate. Today twelve percent is not so high above the average prevailing interest rate that it really could be considered a great penalty.

There is one other provision of our laws that should be pointed out so that you can keep it in mind when you vote on this. If finally the business doesn't report and if it doesn't pay its tax over a period of time, after a considerable period of time passes, the Tax Department can go in and do an audit. At that point they have another penalty that they can bring to bear, which is ten percent of the total amount of money that is due. That penalty is presently in the law. I think it is best for the business, and it is certainly best for the cost to the state to collect its money that that remedy doesn't have to be used. I think it is best to have a law in the first instance that will bring about compliance with the law.

It is not, you know, with a great deal of pleasure that you rise to talk about penalties that are going to be placed on Maine's businesses, and I think it should be pointed out that most Maine businesses pay their taxes on time and it won't affect them. This applies only to the businesses that aren't complying with the law at the present time, and I would urge the Senate not to go along with the motion of the Senator from York, Senator Marcotte, to indefinitely postpone.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President and Members of the Senate: The good Senator brought out the point that the Bureau has the right, under section 3, 36 MRSA, subsection 2112, to utilize a ten percent penalty charge. I would assume that if a fellow was in arrears on his sales tax payments that this could be instituted any time in any manner it wanted to be.

Number two, the bill itself, that first section of L.D. 1867, one dollar or five percent, not to exceed \$50, it could be very conceivable for a businessman, take a small one or a large one, whatever it could be, it could be very conceivable that this man could forget to file the 15th day of the month, and he could miss one day, this penalty at five percent not to exceed \$50, I would assume it would be kind of harsh on a businessman if he did forget one day or two days, not intentionally, and it could happen.

Another thing is that we talked about the fact that it is discriminatory with that \$50 limit. If somebody intentionally fails to pay their sales tax, I would assume that it would be better if we took the \$50 limit off and left it wide open, because I don't think that \$50 maximum ceiling is going to be any deterrent to anybody who owes the State of Maine a tax liability of maybe 10 or 20 thousand dollars. He can make that back very quickly just by reinvesting it in a week's time or maybe a day's time.

Again, I would urge my colleagues in this body to support the good Senator from York, Senator Marcotte, on his motion to indefinitely postpone this bill.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Marcotte.

Mr. MARCOTTE: Mr. President and Members of the Senate: It certainly is not my intention to obstruct the Bureau of Taxation in its performance of duty. I don't want to do this. But I do very strenuously oppose this bill, because I think it is directed particularly at the small businessman. This is why I have moved to indefinitely postpone. It seems we are always taking our whacks at the little guy. Why not take the ceiling off if you want them to do the job? I would hope this body would follow us in this motion to indefinitely postpone.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I would request that when the vote is taken that it be taken by the "Yeas" and "Nays."

The PRESIDENT: A roll call has been requested. The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President and Members of the Senate: I fail to see the discrimination in this. If you don't pay your real estate tax, whether you have a large business or small business, you have a lien with all the attendant costs. If you don't pay your income tax you are in real trouble. And I can't see why this isn't the

same thing. We are trying to give the department tools with which to work, and hopefully to cut down on the number of employees necessary to enforce this law to the last detail. I certainly hope that you will oppose the motion to indefinitely postpone.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: I couldn't agree with the good Senator from Washington, Senator Wyman, more, nor disagree with the Senator from York, Senator Marcotte, more. This is not a bill which is aimed at the small businessman. This is a bill which is aimed at any businessman in the state, whether small or large, who does not pay the tax on time when it is due to the State of Maine. It is as simple as that. If the taxes are paid on time when they are due to the State of Maine, this bill would have no effect whatever on anyone.

As to the comments of the good Senator from Cumberland, Senator Jackson, that there is a real problem that arises should the individual forget for a few days to file a report, well, that won't happen very often, and it probably doesn't happen very often right at the present time. For an individual in the retail business this is a monthly activity that is undertaken every single month of the time that he is in business, and it is as much a second nature to him as opening the store in the morning. He knows that this has to be done every 15th of every single month.

I would oppose the motion to indefinitely postpone this bill.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President and Members of the Senate: Earlier in the session we had a bill where a fellow filed late for his gasoline shrinkage rebate. He filed late because he was vacationing in Florida, so the testimony gave it. We in that committee gave that fellow the opportunity to collect his rebate, and this is done every six months, but that is beside the point. I think what I am trying to get at is that if we allow something like this, and I would assume that his filing late would have been probably something similar to a penalty, because you can't get the rebate if you file late — how, here with this bill with the five percent or \$50 ceiling, on the other side you are penalizing the other fellow if he forgets and files one day late or two days late. This is why I oppose this thing.

I agree with the good Senator from Cumberland, Senator Merrill, that on the interest rate you can't go to a bank and borrow money at one-half percent. But when a fellow has a tax liability of \$10,000 or \$15,000, he would be better off not to pay that tax liability until they force him to, with their ten percent penalty charge, because he can make that \$50 back very easily plus the one percent.

I just feel myself that this is not the answer to that department's problem. I just think they need to enforce our laws a little bit heavier and take time, and maybe get with the beer and wine and the liquor distributors when these people apply for licenses and check to see if their sales taxes have been paid. They have to renew these licenses once every year. I think this is probably the answer, get the departments to work together so that they can find out what is going on and where it is going on. If somebody is late on their sales tax or has a liability is three or four

months old, until he pays that sales tax he doesn't get his license. I would just leave it there, and I hope everybody supports indefinite postponement.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: I listened to the arguments here with a great deal of interest. I am quite familiar with the businesses who pay sales taxes and the problems attendant upon them, and I feel there is one impression that has been given here this morning that should be removed, and that is that people make a practice of filing their sales tax late. The average Maine businessman or taxpayer certainly does not; he does not want to establish a reputation for not following the law. So I don't think this is the issue, that we are going to encourage people to violate the law by having a low interest penalty.

I don't understand how it is so difficult to see the discrimination involved here because it is rank discrimination. The discrimination is against the little fellow and in favor of the big fellow. If you can only pay a maximum of \$50, that means if your business is of such a volume that your sales tax return is \$50 or more, and you are late filing it, the little chap is being discriminated against because he is being charged a percentage of his tax due. The big chap is getting away scot-free because regardless of the amount, if his liability is over \$50, he gets a free ride. I don't think that this is difficult to understand. This is the basic problem with the bill, it is against the little guy. The grocer, the seasonal operator.

There is plenty of chance for misunderstanding in the filing of sales tax returns, and genuine misunderstanding, not intentional. For instance, we have a great deal of seasonal businesses here in the state, and quite properly the sales tax section of the Tax Bureau permits the payment of taxes on a seasonal basis, quite properly. If there were to be an honest disagreement on whether a seasonal tax is due, due to a change in the operation of the business or something like that, and it were impossible for the owner of the business to get a ruling from the Tax Department, he could be in violation and have to pay a fine under this. This is just a possible example of the confusion that can arise. So I do feel that we have this possible confusion, we have discrimination in favor of the big chap, we have discrimination against the little fellow, and I really believe that here we have just one more impediment to the smooth functioning of a small business. And I frankly also don't think there is a problem involved here in collecting; I think Maine people do pay their taxes. I don't believe we need this legislation, and I hope you support the motion.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President and Members of the Senate: I intend to vote against the motion for indefinite postponement, with the hope that I will later have an opportunity to vote for the amendment that the good Senator from Cumberland, Senator Jackson, has already prepared, which seemed to be to be a good compromise and a good middle course.

The PRESIDENT: Is the Senate ready for the question? The pending motion before the Senate is the motion by the Senator from York, Senator Marcotte, that

L. D. 1867 be indefinitely postponed. A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed desire of more than one-fifth of those Senators present and voting. Will all those Senators in favor of a roll call please rise in their places until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending motion before the Senate is the motion of the Senator from York, Senator Marcotte, that L. D. 1867 be indefinitely postponed. A "Yes" vote will be in favor of indefinite postponement; a "No" vote will be opposed.

The Secretary will call the roll.

ROLLCALL

YEAS: Senators Berry, R.; Carboneau, Conley, Corson, Cummings, Cyr, Danton, Graffam, Greeley, Hichens, Jackson, Katz, Marcotte, McNally, Pray, Roberts.

NAYS: Senators Berry, E.; Cianchette, Clifford, Collins, Curtis, Gahagan, Graham, Huber, Johnston, Merrill, Reeves, Speers, Trotzky, Wyman.

ABSENT: Senators O'Leary, Thomas.

A roll call was had. 16 Senators having voted in the affirmative, and 14 Senators having voted in the negative, with two Senators being absent, the Bill was Indefinitely Postponed in non-concurrence.

Sent down for concurrence.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President, having voted on the prevailing side, I move for reconsideration and would urge everyone to vote no.

The PRESIDENT: The Senator from Cumberland, Senator Jackson, now moves the Senate reconsider its action whereby this Bill was indefinitely postponed. Will all those Senators in favor of reconsideration please say "Yes"; those opposed will say "No".

A viva voce vote being taken, the motion did not prevail.

The President laid before the Senate the matter tabled earlier in today's session by Mr. Speers of Kennebec:

Bill, "An Act to Authorize the Executive Council to Approve or Disapprove Certain Claims Against the State." (H. P. 366) (L. D. 460)

Pending — Passage to be Engrossed.

On motion by Mr. Curtis of Penobscot, retabled and Tomorrow Assigned, pending Passage to be Engrossed.

The President laid before the Senate the matter tabled earlier in today session by Mr. Conley of Cumberland:

Resolution, Proposing an Amendment to the Constitution to Provide for Annual Sessions of the Legislature and to Change the Date of Convening of the Legislature. (H. P. 1510) (L. D. 1827)

Pending — the motion by Mr. Speers of Kennebec to Indefinitely Postpone Senate Amendment "B".

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President, I would urge the Senate to vote yes on the motion to indefinitely postpone Senate Amendment "B". I have an amendment to propose which gets over the technical problems of Senate Amendment "B" and gets to the issue which I think should be debated as to the limits on annual sessions. Thank you.

The PRESIDENT: Is it now the pleasure