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Legislative Document

No. 1482

H.P. 1084

House of Representatives, April 4, 2019

An Act To Clarify Provisions of the Blueberry Tax

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative ALLEY of Beals.
Cosponsored by Senator MOORE of Washington and
Representatives: COLLINGS of Portland, DUNPHY of Old Town, GATTINE of Westbrook,
JORGENSEN of Portland, MARTIN of Eagle Lake, PEOPLES of Westbrook, WARREN of
Hallowell.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 36 MRSA §4303, first ¶**, as amended by PL 2013, c. 331, Pt. C, §23, is
3 further amended to read:

4 There is levied and imposed a tax at the rate of 1 1/2¢ per pound on all wild
5 blueberries processed in ~~this~~ the State and on all unprocessed wild blueberries shipped to
6 a destination outside ~~this~~ the State and a tax at the rate of 3/4¢ per pound on all wild
7 blueberries shipped from outside the State to a processor in the State. The tax is
8 computed on the gross weight of the wild blueberries as delivered prior to any processing
9 or shipping. The processor that first receives unprocessed wild blueberries in the State, or
10 the shipper that transports unprocessed wild blueberries to a destination outside the State,
11 is responsible for reporting and paying the tax.

12 **Sec. 2. 36 MRSA §4307**, as amended by PL 2013, c. 331, Pt. C, §28, is further
13 amended to read:

14 **§4307. Records and reports; payment of tax**

15 Every processor or shipper responsible for reporting and paying the tax imposed by
16 section 4303 shall, on or before November 1st of each year, report to the State Tax
17 Assessor the quantity of unprocessed wild blueberries that are processed in ~~this~~ the State
18 ~~or~~, shipped to a destination outside the State or shipped from a destination outside the
19 State during the current season, on forms furnished by the State Tax Assessor. The report
20 must contain the information pertinent to collection of tax under this chapter as the State
21 Tax Assessor prescribes. With the report, each processor or shipper shall forward
22 payment of the full ~~1-1/2¢ per pound~~ tax under section 4303 upon all wild blueberries
23 reported.

24 **1. Processors.** A processor shall report the amount of tax due for each lot of
25 unprocessed wild blueberries subject to the tax received, including for each lot:

26 A. The date received;

27 B. The gross weight of wild blueberries received;

28 C. The origin of the wild blueberries, including the name of the grower and the
29 specific field where the wild blueberries were harvested identified by a unique
30 identifying number under section 4316, subsection 2-A or, if the origin is outside the
31 State, the state or province of origin of the wild blueberries; and

32 D. The certification number of the shipper.

33 **2. Shippers.** A shipper shall report the amount of tax due for each lot of wild
34 blueberries subject to the tax shipped to a destination outside the State, including for each
35 lot:

36 A. The date shipped;

37 B. The gross weight of the wild blueberries shipped;

1 C. The origin of the wild blueberries, including the name of the grower and the
2 specific field where the wild blueberries were harvested identified by a unique
3 identifying number under section 4316, subsection 2-A or, if the origin is outside the
4 State, the state or province of origin of the wild blueberries; and

5 D. The name and location of the processor receiving the shipment.

6 **3. Report to commission.** The State Tax Assessor annually shall forward a report
7 with the data collected under this section to the Wild Blueberry Commission of Maine.

8 **Sec. 3. 36 MRSA §4308, first ¶**, as amended by PL 1997, c. 511, §17 and PL
9 2011, c. 657, Pt. W, §6, is further amended to read:

10 The State Tax Assessor ~~or~~, the assessor's duly authorized agents, the Commissioner
11 of Agriculture, Conservation and Forestry and the commissioner's deputies, agents or
12 employees have authority to enter any place of business of any processor or shipper or
13 any car, boat, truck or other conveyance in which wild blueberries are to be or are being
14 transported, including on a public way, and to inspect any books or records of any
15 processor or shipper, or any premises where wild blueberries are stored, handled,
16 transported or merchandised, for the purpose of determining what wild blueberries are
17 taxable under this chapter or for the purpose of determining the truth or falsity of any
18 statement or return made by any processor or shipper, and the State Tax Assessor may
19 delegate that power to the. The Commissioner of Agriculture, Conservation and Forestry;
20 or the commissioner's deputies, agents or employees shall conduct periodic random
21 inspections of processors and shippers under this section and section 4316, subsection 4,
22 so that every processor or shipper certified under section 4305 is inspected at least once
23 within a 3-year period.

24 **Sec. 4. 36 MRSA §4311-A, sub-§1**, as amended by PL 1997, c. 511, §18, is
25 further amended to read:

26 **1. Collection and enforcement.** ~~The commission~~ Wild Blueberry Commission of
27 Maine shall pay a sum to the State Tax Assessor and the Department of Agriculture,
28 Conservation and Forestry representing the cost incurred by the State in collection of the
29 taxes imposed by this chapter and the enforcement of this chapter;

30 **Sec. 5. 36 MRSA §4311-A, sub-§3-A** is enacted to read:

31 **3-A. Survey and report.** The Wild Blueberry Commission of Maine shall maintain
32 a survey containing detailed data of all wild blueberry acreage, assets, growers, sellers,
33 processors and shippers that includes comprehensive annual reporting of acreage, yields,
34 prices and other relevant information concerning the wild blueberry industry in the State
35 that may be useful to the commission, industry participants, the Legislature and other
36 interested parties. The commission shall publish an annual report summarizing the
37 information in the survey, excluding any confidential or personally identifying data;

38 **Sec. 6. 36 MRSA §4312-C, sub-§13** is enacted to read:

39 **13. Report.** On or before April 1st of each year, the commission shall submit to the
40 Commissioner of Agriculture, Conservation and Forestry and the joint standing

1 committee of the Legislature having jurisdiction over agriculture matters an itemized
2 report of all revenues received and expenditures made by the commission in the previous
3 year, including administrative and staff expenditures. The commissioner shall make a
4 report required under this subsection available on a publicly accessible website, excluding
5 any personally identifying information required to be kept confidential under section
6 4316, subsection 4.

7 **Sec. 7. 36 MRSA §4315, sub-§4, ¶A,** as amended by PL 2007, c. 694, §9, is
8 repealed.

9 **Sec. 8. 36 MRSA §4316,** as amended by PL 2007, c. 694, §10 and PL 2011, c.
10 657, Pt. W, §5, is further amended to read:

11 **§4316. Record keeping of shippers and processors**

12 **1. Record keeping required.** A shipper or processor who transports or receives
13 wild blueberries shall keep a permanent record of each lot ~~or load~~ of wild blueberries.
14 The record must include the name of the driver of the vehicle used to deliver the wild
15 blueberries, the date of delivery, the delivery point, a copy of the transportation permit,
16 the driver's license number ~~and~~, the total pounds of wild blueberries delivered, the origin
17 of the delivery and, if the origin is a location in the State, the name and address of the
18 grower or seller and the grower's or seller's certificate number if the grower or seller is
19 certified under section 4305.

20 **2. Inspection of permit required.** It is unlawful for a shipper or processor to
21 receive or accept delivery of wild blueberries without first inspecting the transportation
22 permit of the driver of the vehicle used to deliver the wild blueberries and creating a
23 permanent record in accordance with subsection 1.

24 **2-A. Tracking.** A lot of wild blueberries harvested from a field may not be mixed or
25 commingled with wild blueberries harvested from another field. Each field from which
26 wild blueberries are harvested must have a unique identifying number, and a shipper or
27 processor must record for each lot of wild blueberries shipped, received, transported or
28 processed the unique identifying number of that lot.

29 **3. Violation; civil.** The failure to keep the permanent records of wild blueberries
30 transported or received as required in this section, failure to inspect the transportation
31 permit of a driver of a vehicle used to deliver wild blueberries or any other violation of
32 this section is a civil violation punishable by a fine of not more than \$5,000 for a
33 first-time violation and punishable by a fine of ~~not more than~~ \$10,000 when the person is
34 found to have committed a prior civil violation of this section within the prior 5 years.

35 **3-A. Violation; criminal.** A shipper or processor who violates this section when the
36 shipper or processor is found to have committed 2 prior civil violations of this section
37 commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions
38 when determining a sentence.

39 **3-B. Strict liability crime.** Violation of this section is a strict liability crime as
40 defined in Title 17-A, section 34, subsection 4-A.

1 8. It changes the penalty for a 2nd violation of the record-keeping requirements
2 within a 5-year period from up to \$10,000 to \$10,000.

3 9. It allows the Department of Agriculture, Conservation and Forestry to audit a
4 shipper or processor at its own discretion.