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MAINE REVENUE SERVICES

REPORT ON

MOTOR VEHICLE TAX ENFORCEMENT

**A REPORT PREPARED FOR THE
JOINT STANDING COMMITTEE ON TAXATION**

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Acting Executive Director
January, 2008

TABLE OF CONTENTS

I. Introduction

II. Motor Vehicles

III. Watercraft and Recreational Vehicles

IV. Role of Maine Revenue Services

V. Attachments

A. Resolve, Chapter 113

B. York District Court Decision: State of Maine v. Loughlin

C. MRSA Title 29-A §514

I. Introduction

The 123rd Legislature charged the Bureau of Revenue Services (Maine Revenue Services or “MRS”) with convening a study group to explore opportunities for more effective enforcement of motor vehicle and watercraft excise taxes (Attachment A). The study was created in response to the introduction of LD 1707, “An Act to Require Municipalities to Enforce the Collection of the State Excise Tax on Motor Vehicles, Watercraft and Certain Recreational Vehicles Owned by Maine Residents Registered Outside the State”.

In forming the Study Group, Maine Revenue Services obtained from the Maine Municipal Association (MMA) a list of names of people who had either already expressed an interest in the issue, or who MMA believed might be interested in participating in the study. After an initial meeting with law enforcement officials in Kittery, Maine Revenue Services sent a notice to all parties of a meeting at the Goodall Library in Sanford for the purpose of bringing together parties interested in participating in the Study Group. This meeting was not well attended and subsequent attempts to attract participants into the study were unsuccessful. Lacking a fully-engaged group of willing participants to conduct a formal study, Maine Revenue Services proceeded with a less formal approach and contacted municipal officials from a number of border municipalities requesting their insight and perspective.

While a formal study group was not convened, MRS did apprise MMA and the Secretary of State’s Office of the difficulty in bringing interested parties together into a formal study group and apprised them as to the survey process MRS was pursuing. MMA, the Secretary of State’s office and Inland Fisheries and Wildlife were then contacted at the conclusion of the survey for their input.

II. Motor Vehicles

The study began with a meeting in Kittery with Police Chief Ed Strong, a recognized leader in motor vehicle registration and excise tax enforcement efforts, and Sergeant Charles Denault, a Kittery patrol officer assigned to the task of vehicle registration and excise tax enforcement. Chief Strong and Sergeant Denault stressed that there was a substantial number of people in their area attempting to circumvent the laws relating to motor vehicle registration and excise tax and that a substantial amount of effort was dedicated to local enforcement activities in Kittery. Although pursuing violations through the judicial system

have been successful in Kittery (See Attachment B), the Kittery Police Department employs what is essentially a forced compliance strategy that minimizes court appearances. Kittery's limited size, geography, unique traffic patterns, and local enforcement practices all contribute to the Town's success in addressing this issue. Violators are routinely reported to Maine Revenue Services for follow-up investigation.

The following week, a meeting in Sanford was attended by only three municipal employees (one representative each from the Clerk's Office in Sanford, Elliot, and Fryeburg) who had come to hear the discussion rather than participate in the study. All three agreed that there was a problem in border towns with vehicles registered in New Hampshire, but stated that enforcement was difficult, time consuming and a low priority with both local law enforcement and the Sheriff's office, as resources were stretched thin and deemed to be better utilized elsewhere.

Maine Revenue Services then proceeded with the task of contacting municipal officials along Maine's border with New Hampshire in an attempt to quantify the extent of motor vehicle registration and excise tax evasion and to discover the various enforcement efforts which are employed. While not all municipal officials agreed there was a problem with the improper registering of vehicles, the general consensus acknowledged the existence of a problem. The problem appears to be more serious in municipalities that have a major route connecting them with New Hampshire. The amount of effort expended by each municipality to address the issue varied significantly, but can be broadly broken into two categories: towns with a local police force, and those without one.

Municipalities without a local police force are left with few options of enforcement. A number of officials in towns without a police department stated that they often report suspected inappropriate registrations to the County Sheriff's office or the State Police. This course of action has not always been successful, although most agreed that the State Police were the more effective of the two. As an example of the frustration that these municipalities experience, a few of them reported that they have on occasion, when they know that a town resident has registered a personal vehicle in New Hampshire in an attempt to evade Maine excise tax, gone so far as to deny that resident benefits reserved for Maine residents such as homestead and veterans exemptions and resident hunting or fishing licenses. While Maine Revenue Services does not condone this particular approach to the problem, we can certainly understand why it might occur.

Even among those municipalities that have a local police force, the degree to which each municipality pursues the enforcement of registration varies significantly. It was reported that at least two municipalities do not expend much in the way of local resources toward motor vehicle registration and excise tax enforcement. A somewhat more progressive approach to registration enforcement is employed in the Towns of Eliot and Berwick. According to Officer Raymond of the Eliot Police and Corporal Locke of the Berwick Police, addressing the problem is an inconvenience and violations are often handled either in conjunction with other infractions or in response to formal complaints. Voter registration and school registration records are audited and cross-referenced with motor vehicle registration. Berwick and Eliot have effectively used “reminder cards” placed on suspect vehicles to promote compliance. Both officers agreed that preparing a case is a difficult, detailed and time-consuming process and that the sizable fines associated with these violations have made the District Attorney reluctant to move forward with prosecution. Both towns reported that they have experienced some voluntary compliance as a result of the more extensive enforcement activity occurring in neighboring Kittery.

In Kittery, North Berwick and Fryeburg the local police have taken a much more aggressive approach towards addressing the problem of illegal registrations. All three municipalities have pursued tax evasion charges against individuals believed to have violated the law in this regard (the controlling statute provides that improperly registering a vehicle in another state and failing to register it in Maine is a traffic infraction punishable by a fine of not less than \$500 nor more than \$1,000; see Title 29-A §514 in Attachment C). Kittery continues to “get the word out” regarding its successful prosecution in the case of State of Maine v. Loughlin as a way to encourage its resident motorists to voluntarily comply with Maine registration law (see Attachment B). In Fryeburg, Police Corporal Richard Murray has been very active in registration enforcement and has been to court on the issue of registration evasion several times. When asked what could be done to improve Maine’s laws with respect to enforcement, Cpl. Murray indicated that the current laws on the books are sufficient and no changes are necessary. Murray went on to express his frustration with the manner in which the cases are prosecuted by the district attorney; in his opinion, charges and/or fines are too often dropped.

Garry Hinkley, Director of Motor Vehicle Services with the Bureau of Motor Vehicles, was consulted by Maine Revenue Services both in the beginning and at the conclusion of this study. He noted that just as some Maine residents register their vehicles in other states to avoid Maine registration laws and excise tax, some residents of other states chose to register their vehicles in Maine in order

to avoid certain requirements in their home states such as higher insurance rates for certain vehicles. Mr. Hinckley noted that just as Maine must enforce its own registration laws, so must other states enforce their registration laws when vehicles appear to be improperly registered.

III. Watercraft and Recreational Vehicles

The municipal officials and law enforcement officers with whom we spoke concerning watercraft and recreational vehicle excise tax categorized the problem of evasion of excise taxes as being minimal or non-existent. Watercraft excise tax is required to be paid before watercraft may be registered. Diligent work by Game Wardens with the Department of Inland Fisheries and Wildlife was cited as the main reason for the high compliance rate, but credit was also given to the efforts of harbor masters, marinas, and local officials. William Swan, Director, Division of Licensing and Registration at Inland Fisheries and Wildlife was contacted concerning the efforts of his department. Mr. Swan indicated it is the practice of the Department to issue a summons for the operation of unregistered watercraft and ATVs as opposed to issuing a warning. He indicated most people understand that if they are caught operating an unregistered watercraft, they will be summonsed. Mr. Swan also indicated that the average watercraft excise tax is only about \$25 and therefore does not represent a financial disincentive to registering watercraft.

IV. The Role of Maine Revenue Services

The Compliance Division of Maine Revenue Services was also consulted. The Compliance Division has for some time maintained an active role in this effort, but out of respect for local control has not attempted to take a primary role. Several years ago the Division established a "Tax Tip Hot Line" (207-624-9600) to facilitate the process of reporting tax violations of all types. While most of the leads that it has received regarding evasion of excise tax and motor vehicle registration have been unproductive, one function of the Compliance Division is to continue to provide support to municipalities and taxpayers by investigating all complaints generated by them.

V. Conclusion

Unfortunately, our review shows that automobile excise tax evasion in the State of Maine does appear to be an ongoing problem, particularly in areas of the state that share a border with New Hampshire. As noted above, the current statute appears to provide an adequate tool for enforcement with respect to those individuals

who choose not to follow the law voluntarily and register their vehicles in Maine and pay the associated excise tax. However, this tool is clearly not being used as broadly or effectively as it could be. While there is no doubt that police and prosecutorial resources are limited, further education in this area – of police departments, public safety officials – would likely have a positive impact on enforcement, prosecution and ultimately overall compliance with the law.

ATTACHMENT A

CHAPTER 113 H.P. 1190 - L.D. 1707

Resolve, Directing the Bureau of Revenue Services To Convene a Study Group on Excise Tax Enforcement

Sec. 1. Study group. Resolved: That the Department of Administrative and Financial Services, Bureau of Revenue Services shall convene a study group to explore opportunities for more effective enforcement of motor vehicle and watercraft excise taxes. When choosing members of the study group, the bureau must invite participation from the Department of the Secretary of State, Bureau of Motor Vehicles, the Department of Inland Fisheries and Wildlife, representatives of municipal government and groups representing motor vehicle and watercraft dealers; and be it further

Sec. 2. Study and recommendations. Resolved: That the study group under section 1 shall review the extent of evasion of the motor vehicle and watercraft excise taxes, especially in border areas of the State, and identify strategies to decrease the extent of evasion. The study group shall report its findings and any recommendations to the Joint Standing Committee on Taxation by January 15, 2008. The committee may submit legislation to the Second Regular Session of the 123rd Legislature relating to the report.

ATTACHMENT B

STATE OF MAINE
YORK, SS.

TENTH DISTRICT COURT
YORK

DOCKET NO. VB-ill. 001134894

STATE OF MAINE
Plaintiff

v.

EDMOND E. LOUGHLIN
Defendant

DECISION

On April 28, 2001 Defendant Edmond E. Loughlin was summonsed by a Kittery Police Officer for the civil infraction of "Evasion of Registration Fees and Excise Taxes," 29-A M.R.S.A. § 514. The trial of this action was conducted on July 3, 2001. Assistant District Attorney John Connelly appeared on behalf of the State and Defendant Loughlin appeared pro se. The Court has carefully considered the evidence presented and hereby sets forth its decision.

I.

Loughlin has resided at 2 Captain's Way, Kittery Point, Maine since 1999. On or about April 1, 2001 Loughlin sought a "Fort Foster Permit" from the Kittery Town Clerk. The Town Clerk denied Loughlin's request, however, because Loughlin was unable to produce a Maine vehicle registration. Loughlin instead presented the registration for his 2001 Saab which reflects that the vehicle is registered in New Hampshire under the name of Izzy's Premium Frozen Yogurt (hereinafter, "Izzy's"). Loughlin is the sole proprietor of Izzy's, a frozen yogurt business based in Portsmouth, New Hampshire. Loughlin leased his Saab from Saab Leasing Company, Inc. through a New Hampshire auto dealer. As a leased vehicle, the Saab remains titled in Saab Leasing Co., Inc.'s name, but is registered in New Hampshire in the name of Izzy's as the lessee.

Loughlin's request for a Fort Foster Permit brought him and his New Hampshire registered vehicle to the attention of the Chief of the Kittery Police Department. A Kittery Police officer thereafter interviewed Loughlin and learned that Loughlin uses the car for both personal and business purposes. The Saab was observed by the Kittery Police officer at Loughlin's residence in Kittery Point on numerous occasions. Loughlin refused the police officer's request that he register the vehicle in Maine, resulting in the issuance of the summons which is the subject of this action.

II.

Title 29-A, section 514 states in pertinent part:

A person required to register a vehicle in this State who instead registers the vehicle in another state or province or who fails to register a vehicle in this State is guilty of evasion of registration fees and excise taxes. Violation of this section is a traffic infraction punishable by a fine of no less than \$500 nor more than \$1,000.

The requirement that residents of Maine register their vehicles is established by 29-A M.R.S.A. § 351: "The owner of a vehicle that is operated or remains on a public way is responsible for registering the vehicle." Although the vehicle is titled in the name of the lessor, Saab Leasing Co., Inc., the lessor is not the exclusive "owner" of the vehicle for purposes of Maine's registration requirements because an "owner" includes an individual "having exclusive right to the use of the vehicle for a period of 30 or more days." Here, Loughlin, in the name of his business Izzy's, has the exclusive use of the Saab for a period of 30 or more days.

A "resident" as used in section 351 is defined in Title 29-A, section 62, as follows:

"Resident" means a person who has declared or established residency in this State or has been domiciled in this State for a period of at least 30 days, except for persons in compliance with section 109, subsection 1. Except for a person in compliance with section 109, subsection 1, a person is deemed to be a resident:

A. For all vehicles owned by that person that are garaged or maintained in this State: or

B. If engaged in the business of renting you-drive or you-haul vehicles for an apportioned share of all vehicles based on the ratio of the mileage of vehicles operated in this State to the total mileage of vehicles operated both within and without the State.

Loughlin is a "resident" for purposes of section 62 because he had established residency in Maine for a period of at least 30 days prior to April 8, 2001. He nonetheless believes that he is not required to register his car in Maine because it is leased by his business, Izzy's, and is registered in New Hampshire, the location of its principal use during business hours. Loughlin's position is premised upon the assumption that Izzy's has a legal identity separate from him. As of April 8, 2001 Izzy's was organized as a sole proprietorship wholly owned by Loughlin. Loughlin testified that in June 2001 he reorganized Izzy's as a limited liability company in New

Hampshire, but there was no testimony offered as to whether the lease agreement for the Saab was transferred from Izzy's as a sole proprietorship to Izzy's as a limited liability company.

A sole proprietorship is "A form of business in which one person owns all assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business." Black's Law Dictionary (Fifth ed.). A sole proprietorship does not have a legal or commercial identity separate from the proprietor, other than the name under which it conducts business. It is not, therefore, a "person" for purposes of Maine's motor vehicle statutes: "'Person' means an individual, corporation, firm, partnership, joint venture, association, fiduciary, trust, estate or any other legal or commercial entity." 29-A M.R.S.A. § 101(54).

For the foregoing reasons the Court concludes that Loughlin violated 29-A M.R.S.A. § 514 because he is a Maine resident obligated to register his Saab, leased in the name of his sole proprietorship Izzy's, in Maine, but who instead registered the vehicle in another state. This conclusion is buttressed by the fact that even if Izzy's is viewed as having a separate legal or commercial identity from Loughlin, it is still required to register the Saab in Maine because the vehicle is "garaged or maintained in this State;" 29-A M.R.S.A. § 62(A). A vehicle is principally garaged in "the physical location where [it] is primarily or chiefly kept or where it is kept most of the time." *Chalef v. Ryerson*, 648 A.2d 1139 (N.J. Super. 1994). In this case, the physical location where the Saab is primarily or chiefly kept is Loughlin's residence in Kittery Point, Maine.

As previously noted, the range of fines for a violation of 29-A M.R.S.A. § 514 is no less than \$500 and no more than \$1,000. In arriving at a fine amount in this case there are several mitigating facts worthy of consideration. Loughlin has no prior violations of section 514 or Maine's motor vehicle laws. He testified that he consulted with both his accountant and attorney prior to registering the Saab in New Hampshire and acted in accordance with their advice. Finally, soon after being contacted by the Kittery Police, Loughlin contacted the office of the Maine Secretary of State in order to seek information from that agency about where he is required to register his car. Loughlin's clean record and his affirmative efforts to comply with the law counsel in favor of the minimum fine of \$500, plus surcharges.

Date: July 17, 2001

ATTACHMENT C

Title 29-A

§514. Evasion of registration fees and excise taxes

A person required to register a vehicle in this State who instead registers the vehicle in another state or province or who fails to register a vehicle in this State is guilty of evasion of registration fees and excise taxes. Violation of this section is a traffic infraction punishable by a fine of not less than \$500 nor more than \$1,000.

The Secretary of State shall notify the State Tax Assessor upon receipt of the court abstract so that the State Tax Assessor may determine whether further investigation is necessary.

For purposes of this section, a person is presumed to be a resident of the State if that person has:

1. Enrolled child in public school. Enrolled a minor child of whom that person has sole or primary custody in a public school within the State; or

2. Declared or indicated primary residence in State. Declared, indicated or stated that that person's primary residence is in the State on any form, document or application used by public and private entities or persons.

An oral statement by a person stating a Maine address as that person's primary residence is prima facie evidence of primary residence under this section.