

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

**PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS**

FOR THE TWO YEARS

JULY 1, 1928 - JUNE 30, 1930

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1929-1930

resident should be so considered as to confer on non-residents an exemption which is not contained in the section which sets out the tax and limits the exemptions.

In short, a non-resident individual who applies for a license for the operation of his personal motor vehicle upon the public ways of the state should be advised that if he lives in a non-reciprocal state he must pay an excise tax and obtain a license in Maine. An applicant from a reciprocal state should be advised to obtain his license from his own state.

You also inquire whether Spanish War veterans exempt from property tax are also exempt from excise tax on their automobiles. My answer is "No." This existing property tax exemption is not incorporated into the excise tax law which is based on the general theory of a tax for the use of the highway computed on the basis of property ownership. It is not a tax on the property owned, but is a substitute for that tax. The only exemptions from the excise tax are those which are mentioned in the excise tax law itself.

Very truly yours,

CLEMENT F. ROBINSON

Attorney General.

GASOLINE TAX—INTERSTATE SHIPMENTS

February 8, 1929

Hon. Elbert D. Hayford,
State Auditor,
Augusta, Maine
Dear Sir:

You inquire whether a shipment of gasoline from outside of the state by a foreign company consigned to itself within the state and diverted to one of its customers, a distributor, under our law, becomes taxable to the foreign corporation at the time of the diversion or is taxable to the customer.

This inquiry you base on the ruling of this department under date of March 31, 1927, to the effect that a shipment by a foreign company directly to its branch in this state is not taxable to the foreign company because it is in interstate commerce until received by the branch here although a shipment is taxable from the time when it is shipped from one branch of the foreign company within this state to another branch or other consignee.

Your question is a question of detail under the previous ruling and the answer depends on the mixed question of law and fact when the interstate commerce shipment ends.

It would be my opinion that probably in the circumstances which you state, the interstate shipment is ended and the intrastate shipment is begun at the moment when a diversion commences so that the gasoline would be taxable to the foreign company at that time. Small

circumstances one way or the other might make a difference. For instance, if a new bill of lading was issued, it would be quite plain that the intrastate shipment had begun. If merely a notation is made on the original bill of lading, this is not so clear. Again, if the original shipment has come to rest and stayed at the branch for any appreciable length of time, this would make it plainer that a new shipment had begun, but if it only came to rest briefly, it would look more as if the interstate shipment had continued until a final destination was reached.

Again, if employees at the first branch or plant inspected, examined or tested the shipment, it would tend to show that the original shipment had come to an end.

Probably no absolutely firm rule can be laid down because circumstances in the cases differ.

The proposed law now pending for amending and definitely defining a distributor will help to solve this problem if passed.

Yours very truly,

CLEMENT F. ROBINSON

Attorney General

HIGHWAYS—STREET RAILROAD TRACKS

December 13, 1929

State Highway Commission,
Augusta, Maine
Gentlemen:

In answer to your inquiry as to the necessity of providing a location for a street railroad outside of a public way which the railroad now occupies in order that the improved highway may be widened, I would call your attention to Chapter 58 of the Revised Statutes and especially sections 7, 8 and 21; section 7 being with reference to the petition for approval of location and proceedings thereon; section 8 being with reference to the application of the municipal officers of towns and cities for approval of the proposed route and location, and section 21 being with reference to the changing of the location of tracks in the street or highway. You will notice that in section 21 it is provided that under certain circumstances the municipal officers may change the location of the railroad within the limits of the street.

There does not appear to be any indication in the statute that the railroad company can be compelled by the municipal officers or any other state authority, except possibly the Legislature, to move its tracks outside the limits of the highway where it has been authorized to construct them.

A way laid out and constructed by the proper authorities is a public easement and the Legislature has the right to grant a right of way from such easement to a street railway who can share that easement with the general traveling public. I assume that the railroad to which