

MAINE STATE LEGISLATURE

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March 12, 1929

To Hon. Allen C. T. Wilson, Executive Council
Re: Sales Tax

I am keeping together all sales tax data . . . and should be glad to let you or anyone interested look it over at any time.

In brief, the situation can be summarized² thus:

One way of tackling the problem has been by imposing a flat license tax on chain stores. Many of the southern states have an elaborate license tax on business and professions, so that this way of getting at chain stores appealed to them. Of these states the license tax on chain stores in North Carolina and Maryland has been held unconstitutional. South Carolina and Georgia have never been put into effect (sic) and bills of the same nature introduced within the last two years in Pennsylvania, West Virginia, Rhode Island, Virginia and Kentucky did not pass.

A bill has been pending before the legislature in Minnesota requiring a license for conducting a retail mercantile business in separate units. A flat license fee is to be imposed and in addition a gross sales tax graded on the amount of income. Proceeds divided half and half between the town and state. Probably this tax is unconstitutional because it selects chain stores. In other words, it would probably have to apply to all retail stores. To carry on one's mercantile business in branches is not a privilege on which the state can charge a fee.

If, however, one tried to draw a line as to what mercantile business shall be taxed on sales, and what one not, one merely gets into an awful complication. Are hardware stores to be included? One also gets into a lot of bookkeeping to enforce proper results.

Another complication which arises is with reference to mail order sales, that is, interstate sales. There are some stores, particularly in Portland, which do a large mail order business; the problem of taxing sales without interfering with interstate commerce is a difficult one. In West Virginia, a privilege tax is imposed upon every person engaged in the business of selling ~~intangible~~ tangible property. This is a tax of 2/10ths of 1% on the gross income of the business of a retailer. One-half of this amount in the case of a wholesaler. This is one of a series of privilege taxes based on gross income in West Virginia, contractors, theatres, and other business are taxed at varying rates. The state tax commissioner enforces the tax and considerable revenue results.

Pennsylvania has a similar tax which especially exempts sales made directly from a factory. Connecticut has a license tax of 25¢ in each \$1000. gross income wholesale merchants, and \$1. for each \$1000 gross income on retail merchants and manufactories. This tax applies to unincorporated manufactories and merchants along with a corporation tax on net incomes which is a part of the Connecticut system.

The March issue of the Commercial Law League Journal has an interesting article wherein the constitutionality of chain store taxes is discussed under the Federal Constitution. The author believes that if a legislature should decide that chain stores are economically unwise, they might pass legislation toward their suppression as a menace to the economic life of the community. This is an interesting theory, but I am afraid it would not hold water.

I also have a letter from a tax authority in New York taking exactly the opposite point of view. He says that if chain stores render a public service they are in the long run an economic benefit. This reminds me of the old stock argument of the free traders against protective tariffs.

I doubt whether the act submitted by the Representative from Piscataquis County now in our legislature would stand the fire of objectors on constitutional grounds. It seems to me that the problem is difficult and complicated, but is a problem that ought to be worked out. I find that tax experts have been discussing it in Tax Conventions considerably in recent years and something is bound to develop along these lines.

Clement F. Robinson
Attorney General