

MAINE STATE LEGISLATURE

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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

OPINIONS FILED BY
ATTORNEY GENERAL'S DEPARTMENT

STOCKS IN TRADE

October 18, 1929

Frank H. Sterling, Chairman,
Board of State Assessors,
Augusta, Maine.

Dear Mr. Sterling:

You inquire whether in my opinion stocks in trade of automobile dealers are exempt from taxation as property because of the new motor vehicle excise tax law, P. L. 1929, Chapter 305. I do not believe they are.

Before the excise tax was passed all automobiles including those forming a part of a dealer's stock were subject to property tax. Any dealer wishing to operate one of his stock cars on the highway must apply for and obtain dealer's plates; any private person wishing to operate an automobile on the highway must also obtain plates.

The new law says in general that before one obtains plates he must have paid the tax, dealers need not.

On the face of it the tax is on the privilege of using the cars measured by the yard stick of the value of the car. We cannot anticipate that a court will hold it anything else. The individual who wishes to obtain plates which entitle him to operate his car must have paid the tax. He then by the provisions of Section 77, is exempt from further taxation on his car for that year by his home town. Whether or not this exemption was necessary in order to make the tax legal we do not need to discuss. It was fair and there it is.

As it stands with the individual, therefore, he is only exempt from the property tax if he applies for plates and pays the excise tax. An individual who does not apply for plates and pay the excise tax does not come within the exemption of Section 77 and is liable for the tax. Theoretically perhaps, the assessors can assess for taxation the automobile of every individual and then abate the taxes on those cars whose owners during the year pay the excise tax. But as a practical expedient I suppose that the assessors will save circumlocution by omitting from the tax list individual cars which are registered or about to be registered.

Dealers, by Section 76, do not need to pay the excise tax when taking out dealers' plates. The theory appears to be, and reasonably, that these dealers' cars are not operated on the highway to a sufficient extent to require a heavy excise payment and, moreover, most of these cars are subsequently during the year to carry the burden of such an excise tax paid by the individual owner who is about to operate them. Neither Section 76 nor Section 77, however, exempt the dealer or anybody else from tax on the cars as property in the event that the excise

tax is not paid. It seems to me it can not have been the intention of the statute that the large total of property represented by the stock in trade of dealers was to be removed from the tax list.

The Tax Commissioner of Massachusetts informs me that an interpretation similar to the above is given in Massachusetts to the similar excise tax which was in effect in that state before ours was adopted; and a similar interpretation is given under similar laws in Minnesota. (See Minnesota Assessors' Manual) and Oklahoma (Taylor v. Brown, 51 Oke. App. 5, June 1929).

This interpretation does not amount to double taxation because in the case of dealers' cars which are carried in stock for sale only one property tax is paid during the year, viz., the tax on the dealer with respect to his average stock. The cars which the dealer sells pay an excise tax if the new purchaser operates them but this is a tax paid by the purchaser for the privilege of operating the car and by the purport of the excise tax act is not a property tax; and in any event is a tax not paid by the dealer. Double taxation only occurs where the same person pays the same kind of a tax twice over on the same property.

Very truly yours,

(Signed) CLEMENT F. ROBINSON

Attorney General

EXCISE TAX—NON-RESIDENT LICENSES

January 8, 1930

Frank H. Sterling, Chairman,
Board of State Assessors,
Augusta, Maine

Dear Mr. Sterling:

You inquire whether a non-resident of Maine who has not had his personal car licensed in his home state should pay here the excise tax created by P. L. 1929, Chapter 305,—in case he is to use his car on our highways.

The answer depends on where the non-resident lives. If he lives in a state which gives certain reciprocal provisions to residents of Maine our statutes do not contemplate that he shall obtain his license or pay an excise tax in Maine. If he lives elsewhere my answer to your question is "Yes."

The Legislature in the motor vehicle law has distinguished these two classes of non-residents, and for very proper motives of public policy have given residents of reciprocal states a privilege under the motor vehicle license law which is confirmed and extended by the excise tax act.

To elucidate this conclusion let us first examine the excise tax law and the motor vehicle law to ascertain to what non-residents these laws apply.