

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

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.

By the first section of the excise tax act the excise is levied for the privilege of operating motor vehicles upon the public ways of the state. The general object of the statute is to subject every motor vehicle so operated to the tax. The section carries certain exemptions. It is familiar law that exemptions to a general tax law are to be construed strictly. Unless the non-resident can be brought within the exemption, therefore, he is liable to the tax.

The section exempts "persons registering under" Section 34 of P. L. 1921, Chapter 211.

This section 34 has been amended by P. L. 1925, Chapter 214; P. L. 1927, Chapter 161, section 1; P. L. 1927, Chapter 200. By it as amended a non-resident individual need not register his personal car in Maine if he has registered it in his home state, which gives a reciprocal privilege to Maine residents. Such non-residents are apparently "persons registering" under Section 34, viz.: they are persons registering in other states under such circumstances that they are exempted from registration in Maine.

A non-resident of Maine who lives in a non-reciprocal state cannot bring himself within the terms of this exemption. His car is not exempt from registration in Maine under Section 34, and he is, therefore, not exempt from the operation of the excise tax if he wishes to operate his car on our highways.

Secondly, let us examine the administrative provisions of the excise tax law. Section 78 of the law expressly requires a resident to pay his excise tax before he registers his vehicle. This section does not touch the case of the non-resident one way or the other. Officers administering the two laws find no express provisions to guide them in the place and manner of collecting the excise tax and granting the license to the resident of a non-reciprocal state who is liable to the tax and obliged to register in Maine.

The clue to the solution of this difficulty is, it seems to me, this: Section 78 is an administrative provision and as such not necessarily inclusive of all administrative requirements. Confronted with the problem of how and when to collect such excise taxes as are due from non-resident car owners, and finding no express administrative requirement in the statute, officials who have the duty of enforcing the excise tax law and the motor vehicle license law, will, I should say, find their guide by a consistent interpretation of the administrative provision of Section 78 by applying it to the similar situation presented.

In other words, a non-resident, just like a resident who applies for his license, should not obtain it unless he has paid the excise tax. Otherwise, the administrative provision operates to discriminate against residents of the state. It can hardly be conceived that the Legislature would have intended such a discrimination.

It would be unreasonable to rule that the administrative provision of Section 78 defining the method of collecting the excise tax from a

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