

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

be that the income or revenue from the operation of motor busses would not be properly included in computing the taxes on street railways, under our law.

A further question has been posed as to whether or not the mileage covered by the bus operations should be included or added to the trackage of the railway company in computing the tax.

"Words and Phrases," volume 18, page 771, cites the case of *Greenfield & T. F. Street Railway Co. vs. the Town of Greenfield*, 187 Mass. 352, as a case defining the words "gross receipts for each mile." In that case, the gross receipts of street railway companies shall be based on the annual gross receipts for each mile of track, and the computation is to be made by dividing the annual gross receipts by the entire number of tracks operated. In reaching the decision on the first question in this opinion, one necessarily must exclude anything except a negative answer to the second question. If the legislature did not intend to include bus operations when the statute was enacted, one could not reason that the mileage covered by the bus operation could be used. No attempt here is made to compute the tax on the return of the York Utilities Company, as that computation should be made by the taxing authority of the State; but it should be noted that in the return of the York Utilities Company to the Public Utilities Commission of the State of Maine, the miles of trackage set forth therein on page 400 in column (d) is 2.44 and under column (e) .50. An examination of the physical properties could determine whether or not the .50 miles should be added to the 2.44 miles of trackage for the purpose of final computation.

JOHN G. MARSHALL

Assistant Attorney General

April 8, 1943

To:

David H. Stevens, Assessor

Assessor

From:

John G. Marshall, Assistant

Attorney General

Supplemental Tax on York Utilities Co.

In response to your inquiry of March 31, 1943, as to whether or not the State Tax Assessor has the legal right to make a supplemental assessment against the York Utilities Company, using the method of computation in accordance with an opinion of this department on April 5, for previous years' taxes which were erroneously computed during those years.

The answer is in the negative.

The method for the computation of the tax by the State Assessor on street railroads is set forth in Chapter 12, Section 35 of the Revised Statutes. There is no statutory provision under that chapter for the correction of any errors or supplemental assessments of a tax.

Under Chapter 13, Section 32, there is a provision for a supplementary assessment to cover any *omitted* "polls or estate liable to be assessed." That section also specifies the procedure to be followed. This section was amended by the Public Laws of 1939, Chapter 84, section 1; but these two provisions relate to the general provisions affecting taxation in the State of Maine on personalty, realty, and polls.

One must consider the difference from a tax levied on property based upon a valuation multiplied by a mill rate and a franchise tax or excise tax, as the two are as distinct and different as the objects subjected to the tax. Our courts have ruled that the taxing authority, that is, the legislature, can provide for a franchise tax on corporations, and the method of computation may have no relation at all to the value of the corporate body itself. While in the case of realty or personalty, the levy is necessarily based upon valuations and the rate may vary according to necessity and exigency from year to year, in the latter case the physical properties of corporations, such as buildings, are taxable in the municipality where the same are situated, on the same basis and same method as other realty in the municipality; but in the cases of an excise or franchise tax, the value of the physical properties of the taxpayer are of no consequence and are not considered either in the levy or in the method of computation. Therefore, it would seem that the provisions of Chapter 13 and amendments thereto providing for a supplementary assessment would not be applicable in a case of the assessment of an excise tax on a street railroad under Chapter 12, Section 35 of the Revised Statutes.

There have been no decisions in Maine on this question of supplementary assessments against taxpayers who are obligated to pay excise taxes in the State. But our court has said in the case of *Dresden v. Bridge*, 90 Maine, 489, on page 492, "It is omission, and not erroneous judgment that the statute provides for. The omission may be supplied by a supplemental assessment; the erroneous judgment cannot be corrected in that way." In that case, the supplementary assessment was levied under a provision in the law similar to Section 32 of Chapter 13; but it might well be construed as an indication of what the court might say to the taxing authority of the State who made a similar error in the computation of the tax under Chapter 12.

The inquiry from the tax department also requested an opinion as to what effect the proposed Act of the legislature, L. D. 108, amending R. S. Ch. 12, Sec. 14, would have. This amendment to Sec. 14 is to the part of Chapter 12 dealing with real estate and lands. In view of the statement of the court in *Dresden v. Bridge*, it would seem to be very doubtful if the erroneous computation of the excise tax against the York Utilities Company in past years could be corrected by a supplemental assessment, under the terms of the proposed amendment.

JOHN G. MARSHALL
Assistant Attorney General