

MAINE STATE LEGISLATURE

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August 20, 1951

To Ernest H. Johnson, State Tax Assessor
Re: Sales Tax Transmitted by Retailer

I have your request for an opinion on sales under 25¢. In your inquiry you refer, of course, to the general understanding that the retailer is to transmit to the State approximately the amount he collects.

It cannot be determined that the sales tax law is clearly a tax on the retailer or that it is clearly a tax on the consumer. Either theory finds ample support. It is necessary to reconcile these inconsistent concepts by regulation.

Supporting the theory that the tax is on the retailer:

- (1) No retailer need register unless he makes sales in regular course of business. If the tax were solely on the consumer, it would be immaterial from whom the the consumer bought.
- (2) No use tax is imposed unless the property was "purchased at retail sale". (Section 4.) Thus, there is even no use tax unless the seller was selling in regular course of business, because "retail sale" is defined in Section 2 as a sale "in the ordinary course of business".
- (3) Section 3 provides that "a tax is hereby imposed at the rate of 2% of all tangible personal property, sold at retail. . ." This contrasts sharply with Section 5, which provides that the merchant collects no tax on sales under \$.25.
- (4) Section 3 states a \$.10 exemption in the following language, "No tax shall be imposed on property sold at retail for \$10 or less provided the retailer is primarily engaged in making such sales. . ." Thus, if the consumer buys 3 \$.10 articles from a merchant primarily engaged in making \$.10 sales, he pays no tax; if he buys from a merchant not primarily engaged in making \$.10 sales, he pays a tax.

There are evidences that the Legislature intended the sales tax to be one on the consumer:

- (1) In Section 34 appears the following language: "The liability for, or the incidence of, the tax on tangible personal property provided by this chapter is hereby declared to be a levy on the consumer."
- (2) A number of the exemptions depend upon the use to which the consumer puts them. Examples are: Tangible personal property which becomes an ingredient or component part of manufactured property (Section 2), use of fuel in domestic heating (Section 10, VII-A), the exemption of hospitals and churches (Section 10, XIII), etc.

Neither list above set forth is exhaustive.

Basically, the levying of a 2% tax on sales involves a bracket system or one where some sort of tokens are used. Section 5 describes the bracket system and provides that there shall be no tax paid by the consumer on purchases from \$.01 to \$.24. Section 3, on the other hand, provides that the retailer shall pay a tax at the rate of 2% "on the value of all tangible personal property sold at retail in this state. . . ."

Mr. Low of Rockland explained the bracket system to the House . . . as follows: "In order to simplify the tax as regards our customers, we have adopted the bracket system. By that a customer pays no tax up to \$.24. At \$.25, he pays \$.01. The merchant will pay a tax on all that amount, for which he will receive no payment from the customer, but, at \$.25, he will get a penny, that will cost him only half a cent tax. Pursuing that trend up to \$.74 and from \$1.74 to \$1.25, ultimately the merchant loses money and then makes it back."

"As regards the merchants' relationship to the tax assessor, which could cause so much trouble, it has been arranged on this basis. In the case of a merchant who has no exemption, all his paper work will consist of drawing a check for 2% of the amount of his sales. In the case of a merchant who does have exemptions, he will determine the proportion of his sales which are tax exempt. He will do this simply by figuring out what he paid for tax exempt items and how much he paid for items not tax exempt. He would then apply to the tax assessor for a permit which would establish his percentage and from then on he would simply pay the State 2% on the percentage of his sales indicated by the permit. In other words, if his sales were 60% taxable, he would simply take 60% of his gross sales and pay the tax on that amount. . . I do not believe that one extra bookkeeper would be hired in the State of Maine and I don't believe any merchant will have to sit up nights figuring out what his tax would be."

As Mr. Low puts the situation, the Legislature was primarily interested in simplicity of administration and overlooked the case where the merchant might collect less than he had to pay.

There is no question that there are some instances of serious hardship if the above principle is applied. Some businesses are so marginal that the tax may be greater than the net profit.

In this connection, there are provisions for granting of relief in Section 13: "If the failure to pay such tax, . . . is explained to the satisfaction of the assessor, he may abate or waive . . . interest, and for cause may abate the whole or any part of such tax." Hardship is unquestionably a ground sufficient to justify abatement.

Abatement should ideally be by reduction in order to maintain consistency.

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