

# MAINE STATE LEGISLATURE

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May 4, 1953

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**SALES TAX LAW - SECTION 10, I and II**

The question is posed whether materials bought by a national bank in Lewiston for the erection of a combination bank and office building are subject to the sales tax.

At this writing, we do not have a copy of the contract before us. The Attorney, John Mahan, Esq., states that he is going to prepare his contract with tax minimization in mind.

We have previously given opinion that sales to national banks, as a general principle, are exempt from the Sales Tax Law. The question raised by this case is whether any exception should be made for the construction of that part of the building which will not be used by the bank for its facilities but will be rented as office space to private persons.

The Sales Tax Law exempts by Subsection I: "Sales which this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state." Subsection II exempts "Sales to the state or any political subdivision, or to the federal government, or to any agency of either of them."

Thus the problem can be considered as in two subdivisions: (1) Is the State of Maine permitted to tax the sales in question? (2) If so, has it attempted to do so?

The case most directly in point is *O'Neil v. Valley National Bank of Phoenix*, 58 Ariz. 539, 121 P. 2d 646. This was a suit for a declaratory judgment to determine whether the state could tax the bank's rentals received from tenants of offices in the bank building. The court held the bank is exempt, upon the ground that the state was powerless to tax national banks except to the extent specifically authorized by Congress. I find that this case is not cited anywhere, according to *Shepard's Citations*.

*Federal Land Bank v. Bismark Lumber Co.*, 1941, 70 N.D. 607, 297 N.W. 42. The bank foreclosed some of its mortgages and then, in order to keep buildings in repair, bought lumber. The issue was whether the lumber was subject to the state sales tax. In a carefully reasoned opinion the state court held that the tax fell upon everyone alike and was in no way prejudicial to the federal banking system, further noting that the purchase was far removed from the banking business and only incidental to it. The state court therefore held that the transaction was taxable. This case was reviewed by the Supreme Court of the United States, 314 U.S. 95. The Supreme Court reversed the state court, not saying anything about the incidental nature of the sale but affirming that a congressional statute



which attempted to exempt the bank from all state taxes was in all respects constitutional.

It is my conclusion that the mere fact that the sale is to the national bank is sufficient to exempt it. In other words, I conclude that even though the bank makes its purchase for a purpose removed from and only incidental to its banking business, the sale nevertheless cannot be taxed without congressional assent.

We, therefore, do not reach the next question, whether, in any event, the State of Maine has exempted the sale.

It is of passing interest that the Supreme Court is in conflict upon the effect of the decision of a state court on the burden of the tax. Our Court in the *W. S. Libbey* case has found that the tax is upon the retailer. The Supreme Court of North Dakota in the *Federal Land Bank* case held that the sales tax is laid upon the purchaser. The United States Supreme Court, at page 99, said "The Supreme Court of North Dakota has held that the sales tax is laid upon the purchaser. (Case cit.) This holding was reaffirmed in the decision below. These determinations of the incidence of the tax by the state court are controlling, and respondents concede the point." On the other hand, in *Richfield Oil Corp. v. State Board*, 1946, 329 U.S. 69, the Supreme Court noted that the California court had held that the California sales tax burdens the retailer, not the consumer. "That construction, being a matter of state law, is binding on us. But it is not determinative of the question whether the tax deprives the taxpayer of a federal right. That issue turns not on the characterization which the state has given the tax, but on its operation and effect." (329 U.S. at 84)

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