

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date November 1, 1962

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

From John W. Benoit, Asst. Atty. Gen. Dept. " " "

Subject Cigarette Distributor's License

Your memorandum of October 25, 1962 is answered below.

Facts:

A Calais, Maine, partnership doing business under the name of Beckett and Company and registered under Section 201 of Chapter 16, R.S. 1954, as a cigarette distributor, caused its business form to be terminated and another business form to be substituted; the new business form being a Maine corporation of the same name organized after the termination of the partnership.

Questions:

- (1) Whether the partnership cigarette distributor's license can be transferred to the corporation?
- (2) Whether the corporation must obtain a new license involving payment of the \$25 license fee?

Answers:

- (1) No.
- (2) Yes.

Reasons:

Pertinent provisions of the Cigarette Tax Law are set forth below:

"Sec. 201. Dealers, unclassified importers and distributors to be licensed.

Each person engaging in the business of selling cigarettes in this state, including any distributor or dealer, shall secure a license from the tax assessor before engaging in such business. * * * Such license shall be issued on forms prescribed by the assessor, and shall contain the name and address of the applicant, the

Ernest H. Johnson, State Tax Assessor

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address of the place of business and such other information as the assessor may require for the proper administration of the provisions of sections 200 and 221, inclusive.
* * *

"Section 202. Validity of license. Each distributor's license issued under the provisions of section 201 shall expire on the 31st day of July next succeeding the date of issuance unless sooner revoked by the assessor as provided in section 203, or unless the business with respect to which such license was issued shall be transferred, in either of which cases the holder of the license shall immediately return it to the assessor. In the event that the holder of a license shall remove his business to another location within the state, the license with respect to the former place of business shall be reissued for the new location without the payment of an additional fee for the unexpired term." * * *

Note that section 202, above, requires that a distributor immediately return its license to the State Tax Assessor should its business be transferred. If a distributor is required to return its license because of a transfer of its business, thereby creating in the transfer the necessity of applying for its own license, certainly under the present facts the corporation will be required to apply for its own license pursuant to the law.

I find no provision in our cigarette tax law sanctioning such a transfer.

Note that mere relocation of the licensee's own business requires a reissuance of a license for the new location. Such issuance of a new license occurs "without the payment of an additional fee". Our legislature deemed such expression necessary in order that license reissuance not carry with it the payment of an additional fee. Certainly, in view of such expression, it cannot be assumed that like treatment was to be afforded the given facts.

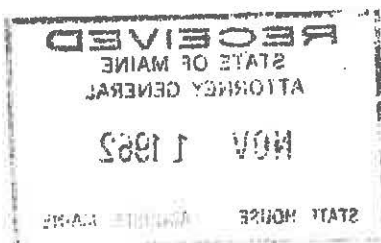
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The facts present two types of business forms for consideration, i.e., the terminated partnership on the one hand and the existing corporation on the other. The corporation is an entity, separate and distinct from that which was the partnership. The fact that the one-time partners are now corporate officers, or the fact that the words making up the corporate name are the same words under which the partnership transacted business are of no concern.

When the given facts are laid beside the material legislative enactment and other postulates of the law, the conclusion must be that the present corporation is required to secure its own license; that a transfer of the partnership license to the corporation is not authorized. (In fact, such transfer would be an act for which license revocation would be in order.)

JWB/sc



STATE OF MAINE

Inter-Departmental Memorandum Date October 25, 1962

To John W. Benoit, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Cigarette distributor's license

Beckett & Company in Calais was until recently a partnership. Beckett & Company was licensed, under Section 201 of Chapter 16 of the Revised Statutes, as a cigarette distributor.

In September of this year the partnership was terminated, and Beckett & Company was incorporated.

Will you please advise whether, under the circumstances, the cigarette distributor's license previously held by Beckett & Company, a partnership, can be transferred without charge to Beckett & Company, a corporation; or whether a new license, involving payment of the \$25 license fee, must be obtained by Beckett & Company, the corporation?

ENJ:J