

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 28, 1962

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation
From Jon R. Doyle, Asst. Attorney General Dept. " " "
Subject Your memorandum re R. S., Chapter 17, section 12.

Your memorandum of November 20, 1962, to John W. Benoit, Assistant Attorney General, is herein answered.

Facts:

R E A Express maintains a supply depot in St. Louis, Missouri, from which its offices in Maine are serviced. The express company has taken the position that the 2% Missouri Sales and Use Tax does not apply to the purchase of items going into this supply depot, at least with respect to such items as are subsequently withdrawn for use in Maine. However, the company is uncertain at this time as to whether it can sustain this position in the event of a challenge by the State of Missouri.

The company is willing to pay the 3% Maine tax on items shipped from Missouri into Maine for use in Maine. However, the company would like assurance that, if it is ultimately required to pay the 2% Missouri tax on the same items, it will be entitled to a refund of 2% of the taxable purchase price which was the basis for the payment of the tax to Maine on those same items. It would claim such a refund on the basis of section 12 of Chapter 17.

The Question:

Whether a refund under this section would be in order in a case where the use tax in Maine is paid first, but where the taxpayer is ultimately required to pay sales and use tax in Missouri on the same items because that state successfully challenges the taxpayer's interpretation of the Missouri law.

Answer:

No.

Reason:

The applicable law is as follows:

"Sec. 12. Sales or use taxes paid in other jurisdictions. The use tax provisions of this chapter shall not apply in respect to the use, storage or consumption in this State of tangible personal property purchased at retail sale outside the State where the purchaser has paid a sales or use tax equal to or greater than the amount imposed by this chapter in another taxing jurisdiction, the proof of payment of such tax to be according to rules and regulations made by the Tax Assessor. If the amount of tax paid in another taxing jurisdiction is not equal to or greater than the amount of tax imposed by this chapter, then the purchaser shall pay to the Tax Assessor an amount sufficient to make the tax paid in the other taxing jurisdiction and in this State equal to the amount imposed by this chapter." (Underlining mine).

The question is one of interpretation of the above section. The section must be construed in its entirety.

"The purpose of a statute is to be gathered from the whole act."
Alexander v. Casden Pipe Line Co.,
290 U.S. 484, United States v. Katz
271 U.S. 354.

The above section contemplates two broad factual situations as follows:

1. The situation where a taxpayer has paid a sales or use tax equal to or greater than the amount imposed by Chapter 17, R.S. 1934 in another taxing jurisdiction.
2. The situation where a taxpayer has paid, in another taxing jurisdiction, an amount not equal to or greater than the amount imposed by Chapter 17, R.S. 1934. Upon compliance with either of these broad factual situations the section then provides for the nonoperation or operation of the statute.

The key words in that section (section 12) are the words "has paid." These words, when read with the entire language of the section and interpreted in light of their normal and reasonable meaning must be taken to indicate an act which has been done prior to the payment of a sales or use tax in another taxing jurisdiction. "Conspicuously important to the interpretation of tax measures is the rule that words are to be given their common and ordinary meaning." Sutherland, Statutory Construction, 3rd Edition, Vol. 3, Section 6716 and the cases cited therein. The whole tenor of the statute indicates, in its whole context and more specifically by the use of the words "has paid" and "paid" that the legislature intended the section to apply only in the above situations, and more particularly where the taxpayer had, prior to paying any tax in Maine, previously paid or first paid a sales or use tax in another taxing jurisdiction. Such are not the facts here, in fact, in the facts given the taxpayer paid a sales or use tax first in Maine. Under the facts given then, a tax has not been "paid" within the meaning of the section.

The State of Missouri has in its law a provision similar to Section 12 of Chapter 17, that provision being Section 144.610, Subsection (3) of Chapter 144, Title X, Revised Statutes of Missouri, 1949, as amended.

That section exempts "tangible personal property which has been subjected to a tax by any other state in respect to its sales or use; provided, if said tax is less than the tax imposed by sections 144.600 to 144.745, said property if otherwise taxable, shall be subject to a tax equal to the difference between said tax and the tax imposed by sections 144.600 to 144.745;" it should be noted that the sections 144.600 to 144.745 are the use tax provisions of the Missouri Law.

The Missouri law is enlightening as to the particular question at hand as the Missouri Department of Revenue has promulgated Sales Tax Regulation (H) (6). In this Regulation appears the following illustration:

"If a person has purchased tangible personal property upon which a Use Tax and or Sales Tax equal to or in excess of the amount of the Missouri Use Tax has been paid in another state it is not subject to the Missouri Use Tax. If the prior tax paid (underlining mine) was less than the amount of the Missouri Use Tax then the difference, between the prior lesser tax paid and the Missouri Use Tax applicable, must be paid under the Use Tax Law. Of course, in the situation where a prior Sales or Use Tax was not paid or was not legally due, the purchaser would be liable for the full amount of the Missouri Use Tax" (Underlining mine).

This language then, requires that a prior tax be paid in order to set the statute into operation. The languages of the two statutes being similar, it is reasonable that the interpretation of one be of aid in the interpretation of the other.

"Interpretive regulations do not, and are not intended to have the force and effect of law However, such regulations are given great weight by the courts in resolving doubtful meanings of the taxing laws. . . ."

Sutherland, Statutory Construction, 3rd Edition, Vol. 3, section 6709 and the cases cited therein.

The conclusion then, must be that R E A Express cannot, because it cannot comply with the requirements of the Maine statute, receive a refund under the provisions of Chapter 17, section 12. It has not under the factual situation given previously paid a tax, it has instead first paid the tax in Maine, thereafter paying a tax in another jurisdiction. The statute would require the tax in another jurisdiction to be paid first, with a later payment in Maine or a request for a credit under section 12.

As can be seen from the above enumerated factual situations the section does not provide for the situation where a tax is first paid in Maine, with a later payment in another taxing jurisdiction with a subsequent request for credit under the provisions of the above section. "Exceptions not made cannot be read." *Lima v. Cemetery Assn.*, 42 Ohio St. 128. The section being silent on this point, together with the use of the language "has paid" lead the writer to the conclusion that R E A Express, in the given factual situation, cannot avail itself of the provisions of Chapter 17, section 12, R.S. 1954.

JRD:epd

STATE OF MAINE

Inter-Departmental Memorandum Date November 20, 1962

To John W. Dunoit, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject R.S. Chapter 17, Section 12

R E A Express maintains a supply depot in St. Louis, Missouri from which its offices in Maine are serviced. The express company has taken the position that the 2% Missouri sales and use tax does not apply to the purchase of items going into this supply depot, at least with respect to such items as are subsequently withdrawn for use in Maine. However, the company is uncertain at this time as to whether it can sustain this position in the event of a challenge by the State of Missouri.

The company is willing to pay the 3% Maine tax on items shipped from Missouri into Maine for use in Maine. However, the company would like assurance that, if it is ultimately required to pay the 2% Missouri tax on the same items, it will be entitled to a refund of 2% of the tax paid to Maine on these same items. It would claim such refund on the basis of Section 12 of Chapter 17.

That section provides that the use tax in Maine shall not apply "where the purchaser has paid a sales or use tax" in another taxing jurisdiction. Will you please advise whether a refund under this section would be in order in a case where the use tax in Maine is paid first, but where the taxpayer is ultimately required to pay sales or use tax in Missouri on the same items because that state successfully challenges the taxpayer's interpretation of the Missouri law.

EHJ:J