

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

70 ✓

March 11, 1963

Honorable Bradford Wellman  
House of Representatives  
Augusta, Maine

Re: Constitutionality of L.D. 1224 and L.D. 1295, pertaining  
to an income tax

Dear Brad:

You ask (1) whether the graduated rate provision in L.D. 1224 is unconstitutional, and (2) whether the provision in L.D. 1295 applying federal tax rates to a state tax is an unlawful delegation of power.

In answer to the first question, there is nothing in the State Constitution which would make a graduated rate of tax invalid. So far as the Federal Constitution is concerned, a graduated tax has been upheld by the Supreme Court. See 240 U.S. 1, and 240 U.S. 115.

As to L.D. 1295, there is nothing objectionable to applying federal rates so long as these rates are the ones in existence at the time the state law becomes effective. South Carolina, Guam and Pennsylvania have tax laws which tie in with the federal law. Pennsylvania's rate is based on the federal rate. Guam incorporates the whole of the federal law, including regulations made thereunder.

In section 3 of L.D. 1295, there are several unconstitutional provisions. In VIII and XIII appear the words "as hereafter amended," or "hereafter so promulgated." This is an unconstitutional delegation of power. See: State v. Holland, 117 Me. 288; State v. Vine Med. Co., 121 Me. 438; State v. Nebber, 125 Me. 319; State v. Gauthier, 121 Me. 524.

Honorable Bradford Wellman

-2-

March 11, 1963

Turning to section 5, we find the words "a tax equal to 5% of the total tax that would be payable for the same taxable year to the United States. . . ." and further along the same language applicable to corporations. The words I have underlined seem to refer to future tax rates, and would be an unlawful delegation of power.

Very truly yours,

Leon V. Walker, Jr.  
Assistant Attorney General

LVWJr:H