

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

Maine statutes give to every person of requisite age the right to attend the public schools in the administrative unit in which the person's parent or guardian has residence. *R. S. 1954, c. 41, § 44*. Section 44 defines residence as "the administrative unit where *the father maintains a home for his family*." (Emphasis supplied.) Free tuition privileges arise when the administrative unit wherein the "*parent or guardian maintains a home for his family*" does not support and maintain an approved secondary school. *R. S. 1954, c. 41, § 107*. (Emphasis supplied.) Note the similarity of language of the underlined portions of our statutes. Unless the doctor maintained a home for his family in Bethel the Town was not required to pay tuition to Gould Academy.

*Webster's New Collegiate Dictionary* defines "maintain" as: "To continue or preserve in or with; to carry on."

We interpret the words "maintains a home for his family" as being synonymous with maintenance of a domicile.

"Eminent courts hold that statutes relating to public schools should receive a liberal construction in aid of their dominant purpose which is universal elementary education. . . . The domicile of the 'parent or guardian' determines the town or district wherein the pupil has a legal right to free school privileges. . . ." *Shaw v. Small*, 124 Me. 36.

The doctor intends to return, someday, to Bethel; he maintains the house through payment of real estate taxes and by having a regard for the upkeep of the property.

Government officials residing abroad do not, generally lose their original domicile.

"Ambassadors, consuls, and other public officials residing abroad in governmental service do not generally acquire a domicile in the country where their official duties are performed, but retain their original domicile. . . ." *28 C. J. S., Domicile, § 12*.

In conclusion, the doctor maintains a domicile in Bethel and as a result thereof, Bethel properly expended tuition moneys re the doctor's two children attending Gould Academy.

JOHN W. BENOIT

Assistant Attorney General

September 23, 1963

To: Ernest H. Johnson, State Tax Assessor

Re: Application of Sales Tax to Refund Gasoline

Facts:

The State Tax Assessor has been deducting sales tax on refunds for gasoline purchased under section 166, Chapter 16, R. S., and the 101st Legislature enacted Chapter 367, P. L. 1963, amending section 160, Chapter 16, R. S. by inserting the word "commercial" before the words "motor boat" in two places, and amended section 167 of said chapter by inserting the words "and pleasure motor boats not used for commercial purposes," the State Tax Assessor had been deducting sales tax from refunds of 6c of the 7c tax for nonhighway use, and the refund of 6c on tax consumed in commercial boat

operations with eight mills of the remaining penny being paid over to the Sea and Shore Fisheries Department, and under the 1963 amendment he proposes to deduct the sales tax on refunds of 3c on fuel used in noncommercial boats, 3½c of the remaining 4c to be paid over to the "boating facilities fund"; on the refund of 3c tax on fuel used in piston engine aircraft under section 167, Chapter 16, and on the refund of 5c under 167-A and the refund of 3c tax paid on fuel in local bus operations he has not been deducting the sales tax from the amount of the refunds.

Question:

Whether under the sales tax law subsection VIII of section 10, Chapter 17, R. S. should we deduct the applicable sales tax from all types of refunds noted below, or should we deduct the sales tax only in certain types of refunds, and in the latter case which types of refunds are to be subjected to a deduction for sales tax?

- a. The normal refund of 6c of the 7c tax for nonhighway use. The remaining penny of tax is retained by the state;
- b. A refund of 6c of tax on fuel consumed in commercial boats, with eight mills of the remaining penny being paid over to the Sea and Shore Fisheries Department for research activities;
- c. A refund of 3c on fuel used in noncommercial boats, with 3½c of the remaining 4c being paid over to the boating facilities fund;
- d. Refund of 3c of tax on fuel used in piston engine aircraft, with the remaining 4c being paid over to the aeronautical fund.
- e. Refund of 5c of tax on jet aviation fuel, with remaining 2c being paid over to the aeronautical fund; and
- f. Refund of 3c of tax paid on fuel used in local bus operations.

Answer and Opinion:

It is our opinion that you should continue to deduct the sales tax on refunds under category "a" and "b" and also after September 21st deduct the sales tax on refunds under category "c."

As to categories "d" and "e" it is our opinion that you should deduct from the refund the sales tax on the gasoline and motor fuels purchases for aircraft as aircraft is a vehicle and not used on the highway; the statute provides that the tax payable upon such fuels not used by vehicles on the highway shall be deducted from the refund. (For the definition of "vehicle" see Volume 44, page 147, Words and Phrases, and *United States v. One Pitcairn Biplane*, 11 Fed. Supp. 24). In regard to category "f" relating to gas sold to busses or common carriers under section 166-A, we are of the opinion that you should not deduct a sales tax on refunds of tax paid on fuel used in local bus operations.

RALPH W. FARRIS

Assistant Attorney General

September 24, 1963

To: Earle R. Hayes, Executive Secretary

Re: Change from Disability Retirant to Retirant

Facts:

Public Laws, 1963, Chapter 361, effective September 21, 1963, provides:

"C. Any person who attains age 60 while a recipient of a