

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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

disability retirement allowance in accordance with paragraph A shall be entitled to a recomputation of benefits as provided in section 6 and shall be paid that amount which is greater. Further, if the amount of the service retirement allowance is greater than that being paid as the ordinary disability retirement allowance, the recipient shall no longer be considered as receiving a disability retirement allowance."

Question:

Can retirement benefits be recomputed under one of the options in section 12 rather than on a straight life basis?

Answer:

No.

Reasons:

A person retired upon disability allowance has always remained upon such allowance unless restored to service. Section 7, the last sentence states:

"For the purpose of this section, 'retirement allowance' shall mean the allowance payable without optional modification as hereinafter provided in section 12."

Without this sentence a disability retiree would have available the options listed in section 12.

Under the new provision of section 7, I, C, a disability retiree upon attaining age 60 may have his benefits recomputed as if retiring and take whichever benefit is the greater — disability benefits or regular retirement.

Because P. L. 1963, chapter 361, does not mention section 12, the question arises if the person will have the advantages of the options listed in section 12 or must he accept straight life benefits.

Chapter 63-A, section 12, provides in part:

"Upon attainment of eligibility for retirement the member may at any time within 30 days from the date he elects to make his benefits effective, if the written application is in the possession of the board of trustees on or before said effective date, or, at any time within 30 days of the actual receipt by the board of trustees of the written request for benefits, change his selection of option to retirement allowance, from retirement allowance to an option or from one of the options to another."

The key words in section 12 are "upon attainment of eligibility for retirement." This poses the question, when does a member attain eligibility for retirement? Section 1 states, "retirement shall mean termination of membership with a retirement allowance granted under the provisions of this chapter." Also the same section states, "retirement allowance shall mean the retirement payments to which a member is entitled as provided in this chapter."

There are three "retirement allowances" as provided by chapter 63-A.

1) Section 6 provides for a *service retirement allowance* upon reaching age 60. 2) Section 7, I, provides for a *disability retirement allowance* under

certain conditions. 3) Section 7, II, provides for a *disability retirement allowance* as a result of injuries received in the line of duty.

Hence, it follows that a member who receives a retirement allowance of any nature has entered the state of "retirement." The member has reached "attainment of eligibility for retirement" (section 12) when he first receives a retirement allowance.

It then follows that he cannot be said to have reached "attainment of eligibility for retirement" if he becomes entitled to a *service retirement allowance* upon age 60 while a recipient of a *disability retirement allowance*.

The member is, therefore, not eligible to exercise the options enumerated in section 12.

GEORGE C. WEST

Deputy Attorney General

September 30, 1963

To: Captain Ralph E. Staples, State Police — Div. Spec. Ser.

Re: Interpretation of Special Mobile Equipment as applied to Registration of Dump Trucks

Facts:

A dump truck is used exclusively for the transportation of earth on that portion of the highway actually under construction.

Question:

Is a dump truck which is used for the transportation of earth on that portion of the highway actually under construction only considered as Special Mobile Equipment?

Answer:

No.

Reason:

Chapter 22, section 16, provides in part:

"The annual fees for registration and licensing of vehicles shall be in accordance with the following schedule

III. Trailers.

"Special mobile equipment, which is permanently mounted on a traction unit or motor chassis, shall be registered and a fee of \$10 shall be paid for such registration in lieu of all other registration fees. Registration under the provisions of this paragraph shall not include any vehicle which may be used for the conveyance of property except hand tools or parts which are used in connection with the operation of such equipment, *except that road construction or maintenance machinery coming under the definition of special mobile equipment may be used for the transportation of earth on that portion of the highway actually under construction.* Such special mobile equipment may be operated unloaded over the highway between construction projects and to or from the place where such vehicles are customarily kept, if a permit for such movement is first obtained in accordance with section 98." (Emphasis supplied).