

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

The legislature, knowing that applicants for registration as instructors would not be as numerous as applicants for registration as hairdressers, has left the matter of examinations up to the rule-making power of the board. The board may make reasonable rules.

Specifically as to notice, the board is only required to be sure that the applicants have sufficient notice of the examination to allow them to be ready and present. The board cannot raise the question as to validity of a notice. Only an applicant can do that.

GEORGE C. WEST

Deputy Attorney General

February 25, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: Sales Tax Exemption to Out-of-State Educational Institutions and to Municipalities Outside Maine

Your memorandum of February 10, 1964 poses two questions.  
Question No. 1:

You ask whether subsection II of section 10 of Chapter 17 exempting "Sales to the State or any political subdivision . . ." exempts only sales to the State of Maine or political subdivision of the State of Maine and whether sales to other states or municipalities are excluded.

Answer:

The answer is yes.

Reasons:

The words "in this State" or "in the State" which are similar in import to the words "the State" are defined in section 2 of the Sales and Use Tax Law to refer specifically to the State of Maine.

It is significant that the legislature used the words "the State" in making specific reference to the entity entitled to the exemption. This phrase indicates an intent to exempt a particular state. Had the legislature intended otherwise it doubtless would have used the word "states" or other similar words to refer to other than a particular state.

The provision indicates an intent to exempt sales to the State of Maine or political subdivisions thereof.

Support for this result is found in Regulation No. 2 of the Maine Sales and Use Tax Law which provides:

"Sales made directly to the Federal Government, *this State or any political subdivision of this State*, or to any agency of the above, are exempt from sales tax. In addition to the Federal Government, the State of Maine, and any county, city, town or plantation in the State of Maine, this exemption covers sales to . . . ."  
(Emphasis supplied).

I conclude therefore that the exemption only applies to the State of Maine or to political subdivisions of the State of Maine.

Question No. 2:

You also ask whether subsection XVI of section 10 of Chapter 17 which exempts sales to certain educational institutions, is restricted to institutions existing or incorporated in Maine.

Answer:

The answer is no.

Reasons:

That subsection exempts:

"Sales to . . . schools . . . . 'Schools' mean incorporated non-stock educational institutions, including institutions empowered to confer educational literary or academic degrees, which have a regular faculty, curriculum and organized body of pupils in attendance throughout the usual school year, which keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual." *R. S. 1954, Ch. 17, sec. 10, XVI.*

There is no express language limiting the operation of this language to Maine "schools."

The question really is whether there is an inherent limitation of this sort, restricting the operation of the exemption provision to Maine "schools."

Generally speaking taxation is the rule and exemption the exception, (see 157 A. L. R. 806, 807) the presumption being against any surrender of taxing power unless the legislature has indicated a deliberate purpose to do so. See 1 A. L. R. 2d 466.

As to the particular problem of whether a nonresident entity comes within an exemption provision in a taxing statute when there is no express provision therefor, the courts are divided.

"Where tax exemption laws affecting charitable and benevolent institutions contain no express provision as to whether or not foreign corporations shall be exempt it has been both affirmed and denied that foreign charitable corporations or institutions fall within the benefit of exemption laws." 84 C. J. S., sec. 282, p. 539.

Some courts, e. g., Kansas, in the case of *Morgan v. Atchison, Topeka & Santa Fe Railway Co.* (1924), 225 P. 1029, have said:

"Taxes must be raised for the support and conduct of the government. Exemption to charitable, educational, and religious organizations is bottomed upon the fact that they render service to the state, for which reason they are relieved of certain burdens of taxation. The effect of an exemption is equivalent to an appropriation. It cannot be said to have been the intent of the Legislature to make appropriation for the benefit or maintenance of foreign charities which, at best, have a remote chance only of benefiting the citizens of this state." *Morgan v. Atchison, Topeka & Santa Fe Railway Co.* (Kan. 1924) 225, p. 1029.

There is no Maine law strictly in point. The case of *Everett v. Herrin*, 46 Me. 357 (1859) is, however, of some help.

That case involved the question of whether or not a nonresident "debtor" could avail himself of the benefit of a statute exempting certain personal chattels from attachment.

The court said in holding the exemption applicable to nonresidents as well as residents:

"The statute exempts certain property of the 'debtor' and does not limit the exemption to the property of a citizen . . . ."  
*Everett v. Herrin*, supra.

Clear legislative intent to limit exemptions can be found in other sections of the Sales and Use Tax Law (see discussion above re exemption of municipalities, etc.) and in other Maine statutes.

Such an intent is spelled out in R. S. Chapter 91-A, section 10, II. These provisions are property tax provisions but are nonetheless expressive of clear legislative intent providing:

"The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions *incorporated by this State*, and none of these shall be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation of the classes of persons for whose benefit such funds are applied . . . . No such institution shall be entitled to tax exemption if it is in fact conducted or operated principally *for the benefit of persons who are not residents of Maine*. . . ." (Emphasis supplied).

Noting that there is no restrictive language in the exemption, the cases above cited, the probable impact of the above cited Maine case and other statutory expressions of legislative intent, I conclude that the exemption applies as well to "schools" not existing or incorporated in Maine.

JON R. DOYLE

Assistant Attorney General

March 17, 1964

To: Irl E. Withee, Deputy Commissioner, Banks and Banking

Re: Purchase of Assets of Small Loan Company by Industrial Bank

Facts:

A recently organized industrial bank seeks approval of the Department of Banks and Banking to purchase the assets of a small loan company licensed and operating under R. S., c. 59, secs. 210-227, as amended. The small loan company and the industrial bank are controlled by the same corporation. It is the intent of the industrial bank, if purchase of the assets is allowed, to notify the borrowers of the small loan company of the purchase and to encourage them to refinance their loans with the industrial bank; and to segregate and then liquidate, as rapidly as possible, the existing loans of the small loan company.

Question No. 1:

Can purchase of the assets of the small loan company be made by the industrial bank?

Answer:

Yes, with qualifications.

Opinion No. 1:

Pertinent sections and portions of sections of R. S., c. 59 are quoted:

"Sec. 202. Government — Except as herein otherwise provided, such corporations shall be governed and conducted in the manner