

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 1, 1964 No.

To Ernest M. Johnson, State Tax Assessor Dept. Bureau of Taxation

From Ralph W. Harris, Asst. Attorney General Dept. " " "

Subject Exempt Sales of Cigarettes

Your memorandum of August 28, 1964, received relating to section 5 of the so-called "Regulations" issued in connection with the cigarette tax law where it is stated that cigarettes, cigars and tobacco products sold to instrumentalities of the United States, or to Maine State institutions, are not required to be stamped.

You state that you have been questioned as to whether cigarettes sold to county institutions such as county jails for distribution to prisoners must be stamped, and you request advice on the following questions:

1. Whether the provision in the regulation stating that sales of cigarettes to Maine State institutions are exempt from the cigarette tax is correct; and
2. Whether similar sales to county institutions are entitled to exemption from the tax.

The answer to No. 1 is that the regulation in our opinion is correct; the reason is that the cigarette tax law does not name the state and the state is not a person. *Banton v. Griswold* 95 Me. 450, and is not bound by statute unless expressly named, and, furthermore, section 218 of the cigarette tax law authorizes the State Tax Assessor to prescribe regulations and rulings not inconsistent with law.

These regulations have the force of law and are enforceable in administering the cigarette tax law.

I cite a later case, *Whiting v. Lubec* 121 Me. 124, which ruled that however and comprehensive the language of a statute the state is not bound unless expressly named therein.

In answer to question No. 2, whether similar sales to county institutions are entitled to exemption from the tax, it is our opinion that the county being an agency of the State cigarettes sold to the county commissioners for use of the county would be exempt, but the jail would not be exempt as the county by law is not supposed to supply prisoners with cigarettes, but if the jailer does this they are supposed to pay for them and should be stamped.

RWF:epd

STATE OF MAINE

Inter-Departmental Memorandum Date August 28, 1964

To Ralph W. Farris, Assistant Attorney General Dept. Bureau of Taxation
From Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation
Subject Exempt sales of cigarettes

Under section 5 of the so-called "Regulations" issued in connection with the cigarette tax, it is stated that "cigarettes, cigars and tobacco products" sold to instrumentalities of the United States, or to Maine State institutions, are not required to be stamped. This regulation, as can be seen from the reference to cigars and tobacco products, has remained unchanged for many years.

We have now been questioned as to whether cigarettes sold to county institutions, such as county jails for distribution to prisoners, must be stamped.

Will you please advise:

1. Whether the provision in the regulation stating that sales of cigarettes to Maine State institutions are exempt from the cigarette tax is correct; and
2. Whether similar sales to county institutions are entitled to exemption from the tax.

EHJ:j