

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

and sustain an interest in education among the people and to stimulate teachers to well-directed efforts in their work." *R. S., c. 41, § 11, II.*

JOHN W. BENOIT
Assistant Attorney General

December 28, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: Power Line Extension Charges

Facts:

Questions have arisen as to the application of the Maine sales and use tax to pole line extension charges. When a customer of an electrical company lives outside of the service area of that electrical company, arrangements are made to provide service to the customer at an increased rate. This rate is reflected in an additional charge to the customer on his monthly bill for electricity.

A customer who wishes electric service from a power company and who is outside the service area agrees with the utility, in writing, as follows that:

1. The stipulated minimum amount will be paid.
2. The customer will contract with the utility for electric service in accordance with the schedule of rates — payments made by the consumer for electricity will be credited toward the guaranteed minimum for such month.
3. If the customer sells or ceases to occupy the premises he shall still be bound to the guaranteed payments; payments made for electric service on another location will not be credited but payments made at the original premises will be. The agreement in effect sets up a new minimum, as approved by the Public Utilities Commission, for the electrical service.

The electrical companies file a schedule of their rules and regulations which, among other things, provide a set rate for pole line extension charges. These rules and regulations are approved by the Public Utilities Commission. That Commission indicates that it considers these charges to be "rates."

The practical operation of this set of facts is as follows: John Jones, a customer of X Electric Company contracts with X Electric Company for electrical power. Under his contract he is obligated to pay \$2 monthly if he purchases no electricity and an additional \$6 monthly for pole line extension charges regardless of whether or not he purchases electricity. If he does purchase electricity the price of the electricity over and above \$2 will apply toward the pole line extension charge.

Question No. 1:

Whether such charges are to be treated for tax purposes in the same manner as minimum charges within the normal rate schedule; that is, the entire charge being taxable if any current is used, and no tax being applicable if no current is used?

Answer:
Yes.

Question No. 2:

If the line extension charge is not itself subject to tax should the tax apply only to the amounts charged under the normal rate schedule (note that where there is a line extension charge, amounts which would be chargeable under the normal rate schedule are applied to the line extension charge), whether there is a separate statement or not?

Answer:

The line extension charge itself is not subject to tax unless there is a sale of tangible personal property; if there is a sale the charge is taxable whether separately stated or not.

Law:

The sales and use tax law, section 3, provides as follows:

"The tax imposed upon the sale and distribution of gas, water or electricity by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, shall be added to the rates so established."

Further, "sale price" is defined in section 2 of the sales and use tax law as follows:

"'Sale price' means the total amount of the sale . . . price . . . including services that are a part of such sale . . . nor shall 'sale price' include the price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated. . . ."

Reasons:

Clearly, the sales and use tax law contemplates the imposition of a tax only when there is a sale. Therefore, if the utility furnishes or sells no electricity to a customer and makes a minimum charge for a month only for the service, there is no tax. It follows that if a customer purchases no electricity during a particular month but is further obligated to pay an amount greater than the normal minimum on account of a line extension charge, there is no tax applicable to the new minimum.

Too, if a customer purchases electricity during the period under section 3 above a tax is applicable for the charge for that electricity. For example, if a customer purchases \$4 worth of electricity a tax is applicable for that figure; if he purchases electricity, the charge for which is less than the minimum amount, the tax is applicable to the minimum amount.

A problem arises when for example, a customer purchases \$3 worth of electricity but is obligated to pay \$8 as a result of a line extension agreement he has made with the utility. The customer might receive a bill for \$8 with no breakdown or he might receive a bill for \$3 plus \$5 for a line extension charge.

We will first consider the problem where there has been no breakdown and a lump sum billing is made for the entire charge.

The question may be approached in two fashions. We may consider first whether the additional charge is a "rate" established for a "sale and distribution" of electricity.

Every "electrical company" as defined in the Revised Statutes of 1954, Chapter 44, section 16 must under the provisions of section 17 of that chapter make a just and reasonable charge (rate or toll) for any light or power produced, transmitted, delivered or furnished.

The Public Utilities Commission has the power, as more specifically provided in the Revised Statutes of 1954, Chapter 44, to regulate the rates and charges of various utilities.

Both power companies referred to in your memorandum of October 27, 1964, have filed rules and regulations regarding line extension charges with the Public Utilities Commission; it is my understanding that these rules and regulations have been approved by the Maine Public Utilities Commission and are considered "rates" by that Department. Clearly, they are so considered by the statutes. These rules and regulations are quite detailed and provide the amount and method of charge for a line extension. It is my interpretation that the agreement for the sale of electricity including the line extension charges constitutes a new minimum charge for electricity and that it is a "rate for the sale and distribution of electricity" under section 3 and is taxable in the entire amount of the charge.

Therefore, if a customer purchases any amount of electricity to which is added a line extension charge to arrive at a new minimum, the entire amount is taxable.

In the alternative, we consider whether the charge for line extension is a service which is part of the sale.

Section 2 above referred to indicates that the "sale price" means a total amount of the sale price including any services that are a part of the sale.

We must conclude from a review of the documents here, particularly the contracts, that the customer wanted electricity furnished to its premises and the power company agreed to furnish this electricity. There was not a separate contract for the sale of electricity and a separate contract for the performance of the services but rather an integral agreement calling for the performance of the services as a necessary adjunct to the sale of the electricity.

If a different intention is shown by the parties that intention is controlling; however, here we have no facts, circumstances or statements which would show an intention other than to indicate that what the customer desired was electricity delivered to its premises.

Therefore, unless the services can be said to be services used in installing, applying or repairing the property sold, they are an integral part of the sale price and should be taxed as such whether separately stated or not. (See section 2 of the sales and use tax law.)

Clearly the line extension charges are not charges for repairing or applying the property sold by the definition of those words.

The real question is whether the line extension charges are installation charges. The statute contemplates the installation of the "property sold." Here, the only property sold is the electricity itself. To be sure, the utility may have installed its poles on land of the customer but there is no sale of these poles. Nor can we view the charges for the pole line extension to be a charge for the installation of the property sold. As pointed out earlier the charge for installation must have a specific reference to the property sold; they should not be considered as installation charges.

In summation: when a minimum charge is made for electricity and no electricity is sold there is no tax; when a minimum charge is made by virtue of a line extension charge and there is no sale of electricity alone this is taxable at the rate charged therefor; and when there is a sale of elec-

tricity coupled with a minimum charge, whether a line extension charge or not, we should consider the total charge as taxable.

JON R. DOYLE

Assistant Attorney General

December 29, 1964

To: Walter B. Steele, Jr., Executive Secretary

Re: Agency of State; University of Maine

Facts:

Recently, the University of Maine advertised for bids concerning their purchase of milk to be utilized at the facility. The price proposals could conceivably be for amounts less than the minimum prices established for the Bangor Marketing Area, which includes Orono.

Section 1 of the Maine Milk Commission Law defines "person" as follows:

"'Person' means any individual, partnership, firm, corporation, association or other unit, and the State and all political subdivisions or agencies thereof, except State owned and operated institutions."

R. S., c. 33, § 1.

It is unlawful for any person to engage in any practice which is destructive of scheduled minimum prices.

"It shall be unlawful for any person to engage in any practice destructive of the scheduled minimum prices for milk established under the provisions of this Chapter for any market, including but not limited to any discount, rebate, gratuity, advertising allowance or combination price for milk with any other commodity. . . ."

R. S., c. 33, § 4.

Presently, the University is an agency of the State for the purposes for which it was established.

"Sec. 131. State agency. The University of Maine is declared to be an instrumentality and agency of the state for the purpose for which it was established for which it has been managed and maintained under the provisions of chapter 532 of the private and special laws of 1865 and supplementary legislation relating thereto."

R. S., c. 41.

Question:

1. Whether, under the given facts, the words "agency of the State" and "State-owned and operated institutions" are synonymous?

2. If not, whether the minimum prices established by the Commission apply to the sale of milk purchased by the University?

Answer:

1. No.
2. Yes.

Reason:

The reference language (*R. S., c. 33, § 1*) provides that the word "person" shall mean, inter alia, the State, its political subdivisions, and its agencies; but does not include institutions which are owned and operated by the State. The Legislature has decreed that the State University is an

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STATE OF MAINE

Inter-Departmental Memorandum Date October 27, 1964

To Jon A. Doyle, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Power line extension charges

Please note the attached memorandum from Mr. McDonato to Mr. Ledow, dated October 12, 1964. The question has to do with the application of the Maine sales and use tax to line extension charges.

Are such charges to be treated for tax purposes in the same manner as minimum charges under the normal rate schedule; i.e., the entire charge being taxable if any current is used, and no tax being applicable if no current is used?

If the line extension charge is not itself subject to tax, should tax apply only to amounts charged under the normal rate schedule (you will note that where there is a line extension charge, amounts chargeable under the normal rate schedule are deducted from the line extension charge) whether there is a separate statement or not; or should the entire charge be taxable, unless the billing indicates the proportion charged under the normal rate schedule and the balance due under the line extension agreement?

Until now, according to Mr. McDonato, Central Maine Power Company indicates a breakdown on the bill, and adds tax only with respect to the charge for electricity used, under its normal rate schedule; whereas Bangor Hydro does not show a breakdown on its bills, and charges a tax on the entire bill if any current is used.

ELJ:j