

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date June 7, 1965

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

From Richard S. Cohen, Asst. Atty. General Dept. " " "

Subject Taxation of Oil in Storage

Your memorandum of May 6, 1965 poses two questions based on the following factual situation.

FACTS

A fuel oil dealer with his principal place of business in the town of Rumford, and with storage tanks in the town of Rumford, also has storage tanks, situated on land owned by him, in the town of Mexico. The business is completely conducted from the Rumford location. It is assumed from the information submitted to me that the tanks in Mexico serve solely as supplemental storage to cover heavy winter demands.

QUESTION 1.

Whether or not the fuel oil stored in Mexico is subject to property taxation in the town of Mexico.

ANSWER

The answer is yes.

QUESTION 2.

Assuming the proper determination as to the situs for taxation has been made, is the oil to be taxed on the basis of the average amount kept on hand during the year, or on the basis of the fuel oil present on April 1.

ANSWER

The oil is to be taxed on the basis of the average amount kept on hand for sale during the preceding taxable year.

LAW

"All real estate within the state, all personal property of residents of the state and all personal property within the state of persons not residents of the state is subject to taxation on the first day of April as provided; and the

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status of all taxpayers and of such taxable property shall be fixed as of that date. Personal property employed in trade and manufacturer's inventories of raw materials, unfinished and finished goods, shall be taxed on the average amount kept on hand for sale or for processing during the preceding taxable year, or any portion of that period when the business has not been carried on for a year. The taxable year shall be from April 1 to April 1." 36 N.R.S.A. §502. (Emphasis supplied).

"All personal property within or without the state, except in cases enumerated in section 603, shall be taxed to the owner in the place where he resides." 36 N.R.S.A. §602.

"The excepted cases referred to in section 602 are the following:

1. Personal Property Employed in Trade. All personal property employed in trade, in the erection of buildings or vessels, or in the mechanic arts shall be taxed in the place where so employed, except as otherwise provided for in this subsection; provided the owner, his servant, subcontractor or agent occupies any store, storeroom, shop, mill, wharf, landing place or shipyard therein for the purpose of such employment."

"3. All manufactured merchandise, except products either intended for manufacture into other merchandise or used or for use in connection therewith and except merchandise in the possession of a transportation company or other carrier for the purpose of transporting the same, shall be taxed in the place where situated." 36 N.R.S.A. §603. (Emphasis supplied).

REASONS

The statutory provision granting the right in the state and its political subdivisions to tax personal property within the state has always been interpreted and understood as establishing two rules, one of method and one of situs. The method of personal

Ernest H. Johnson, State Tax Assessor

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property taxation had always been interpreted to mean that the assessment was applied to the fair value of personal property on hand as of April 1. As to the taxable situs of personal property, it can be seen from the above statute, 36 M.R.S.A. §602 that it provides explicitly for taxation by the town in which the taxpayer was an inhabitant as of April 1, "except in cases enumerated in the following section."

These stated exceptions found in section 603, ante, all deal with situations in which the situs of taxation is varied. It should be noted that the exceptions in this statute did not change the method of taxation. Up until 1919, personal property taxable either under the general rule, in the place of residence, or under the exception, "where employed in trade," was all taxable on the basis of the fair value of the amount on hand as of April 1. In 1919 the Legislature changed the rule as to the method of personal property taxation, and it was stated that if personal property was employed in trade it would be taxed on the basis of the average amount kept on hand for sale during the preceding taxable year. P.L. 1919, Chapter 82. This rule as to the method of personal property taxation has remained constant and is now found in substantially the same language in 36 M.R.S.A. §502.

In arriving at where the fuel oil, stored in Mexico, should be taxed, the first thing to be determined is whether the oil is personal property "employed in trade" under the terms of 36 M.R.S.A. §603. The oil is unquestionably "employed in trade" within the meaning of the statute. In *Gower v. Jonesboro*, 83 Me. 142, in defining this term as used in what is now 36 M.R.S.A. §603, relating to the taxation of personal property, the Court said:

"The appropriate meaning of "trade" as used in the statute, as defined by Bouvier, embraces 'any sort of dealings by way of sale or exchange, commerce, traffic.' Webster, Trade."

See also *Farmingdale v. Berlin Mills Co.*, 93 Me. 336, 338. This term is applicable to a manufacturer of articles of trade as well as to a wholesale or retail dealer in such articles.

Since it has been determined that the oil is personal property "employed in trade," there now must be a determination as to where the property employed in trade is taxable, under the provisions of 36 M.R.S.A. §603. Under this section all personal property employed in trade is taxed in the place where employed, except as otherwise provided for in the subsection to the above. In subsection "B" it is stated that all manufactured merchandise, with certain exceptions that we are not concerned with here, is taxable in the place where situated.

Ernest H. Johnson, State Tax Assessor

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In *United States v. Sarchet*, 27 Fed. Cas. 958, 963, it is stated that "every alteration in an article does not confer on it a new character as a manufacture. To constitute a new and different article and a manufactured article, it must be so changed as to have a positive and specific use in its new state."

As was said in *Leeds v. Gravel Company*, 127 Mo. 51, 56 (1928), "Application of labor to an article either by hand or mechanism does not make an article necessarily a manufactured article. To make an article manufactured, the application of the labor must result in a new and different article with a distinctive name, character or use."

In the present case there cannot be serious question that oil is a manufactured product. The raw or crude oil, in the initial state is refined and split up into a number of commercial products by a process of fractional distillation and a relatively new "cracking" process. By purifying each fraction separately, the petroleum is made to yield various grades of gasoline and fuel oils as we are here concerned with. Prior to the changes brought about in the above processes the crude oil, in its natural state, is of little commercial value. Only after the manufacturing processes modify and change the oil from its natural state does the oil become an article of value or use.

Since the oil in question is determined to be manufactured merchandise it is taxable where situated and not where "employed in trade," and therefore Mexico would be the taxing authority.

Since the situs of taxation has now been disposed of we lastly turn to the method of taxation to be used.

It can be seen from 36 M.R.S.A. §501, above, that personal property employed in trade should be taxed on the average amount formula from April 1 to April 1. Since it has been previously determined, above, that the oil in question is "employed in trade" the oil is therefore to be taxed under the average amount formula. It matters not where the personalty is "employed in trade" for the average amount formula to be applicable. As was said in *Candron Lumber Co. v. Hiram*, 151 Mo. 430, ". . . the result of taxation of personal property employed in trade based upon an average, more realistically or less artificially, reflects his holdings of personal property as a basis of measuring his public obligation."

RSC:epd

STATE OF MAINE

Inter-Departmental Memorandum Date May 6, 1965

To Richard S. Cohen, Assistant Attorney General Dept. Bureau of Taxation
From Krist H. Johnson, State Tax Assessor Dept. Bureau of Taxation
Subject Taxation of oil in storage

A fuel oil dealer with a place of business in the town of Rumford, and with storage tanks in the town of Rumford, also has storage tanks in the town of Mexico. The business is conducted from the Rumford location. The tanks in Mexico are filled in the fall, and are emptied by the close of the winter season; apparently they simply serve as supplementary storage to cover winter requirements. Please see attached copy of memorandum from Mr. Birkenwald for additional details.

The applicable statutes would appear to be Title 36, section 502, which states in part that personal property employed in trade should be taxed on the average amount kept on hand for sale during the preceding taxable year; and Title 36, section 603, subsection 1 B, which provides that manufactured merchandise shall be taxed in the place where situated.

Will you please advise whether the fuel oil stored in Mexico is subject to taxation in the town of Mexico; and if so, whether it is to be taxed on the basis of the average amount kept on hand during the year, or on the basis of the fuel oil there on April 1.

EHJ:J