

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum

Date June 11, 1965

To Ernest H. Johnson, State Tax Assessor
John A. Doyle, Asst. Attorney General

Dept. Bureau of Taxation
" " "
Dept. _____

From _____
Subject Accrual Date of Tax on Property Withdrawn from Inventory

FACTS

Taxpayer, a registered retailer, purchased an airplane for resale in 1959; due to the death of the prospective purchaser, the airplane was stored until 1963 when it was withdrawn from inventory and registered for use in this State.

The question has arisen now as to whether a (sales) tax is due on the original sale or a (use) tax is due as of the date of withdrawal.

ISSUE

Whether the airplane in question, purchased for resale in 1959, withdrawn from inventory and registered for use in 1963, resulted in a situation whereby sales tax accrued in 1959 (in which no assessment could be made because of the statute of limitations) or in a transaction giving use to tax liability in 1963 (in which case tax could now be assessed).

ANSWER

Sales tax accrued in 1959 and is not now assessable.

LAW

"A tax is imposed at the rate of 4% on the value of all tangible personal property sold at retail in this state" Title 36 M.R.S.A. §1811.

"A tax is imposed on the storage, use or other consumption in this State of tangible personal property, purchased at retail sale . . . at the rate of 4% of the sale price." Title 36 M.R.S.A. §1861.

"'Retail sale' or 'sale at retail' means any sale of tangible personal property, in the ordinary course of

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business, for consumption or use, or for any purpose other than resale" Title 36 M.R.S.A. §1752 (11).

"After a report is filed under Chapters 211 to 225, the Tax Assessor shall cause the same to be examined, and may make such further audits or investigations as he may deem necessary and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under Chapters 211 to 225, he shall assess the taxes and interest due the State, give notice of such assessment to the person liable, and make demand on him for payment but no such assessment can be made after 2 years." Title 36, M.R.S.A. §1955. (Emphasis supplied).

REASONS

The sales and use tax law contemplates that a "retail sale" is any sale of tangible personal property except a sale for resale.

Therefore, when the taxpayer herein purchased the property for resale no tax was due. Too, no tax was due so long as he held the property for resale.

Subsequently however, the taxpayer changed his intention to hold the property for resale by registering the property for use in this State. He therefore changed his intent from an intent to hold the property for resale to an intent to use the property.

It might be said that the taxpayer had an original intent to resell the property since he did not know what the ultimate disposition of the property would be. His original intent however, should not be controlling where the actual use of the property is repugnant to that intent.

Concluding that the taxpayer's changed intent made the original sale a "retail sale" and thus taxable we must consider the problem of the time of accrual of tax liability, i.e., whether there was a "retail sale" when the property was withdrawn from inventory or whether the "retail sale" relates back to the original sale.

Clearly no sale, retail or otherwise, occurred when the property was withdrawn from inventory; this act merely fixed the character of the original transaction as a "retail sale."

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The sales and use tax law is silent as to when tax liability accrues when property held for resale is withdrawn from inventory.

The Legislature recently enacted, and the Governor, on April 1, 1965, signed the following legislation:

"When tangible personal property purchased for resale is withdrawn from inventory by the retailer for his own use, use tax liability accrues at the date of withdrawal."
(P.L. 136).

This legislation will become effective 90 days after the adjournment of the present session of the Legislature.

Under this provision tax liability accrues at the time of withdrawal. However, under presently existing law we must reach a different conclusion.

Since the sale was really a "retail sale" ab initio we must conclude that under the facts given, sales tax liability accrued in 1959 because under the reasoning above a "retail sale" took place at that time.

This conclusion is supported by the enactment of the above language which expressly changes the law by fixing a date of tax accrual. The courts of this state have long recognized the presumption that an amendment changes the meaning of a statute. (See discussion in *Basynski v. Knox County*, 159 Me. at 59 and discussion in 50 Am. Jur. Statutes §275).

Considering the statute as a whole, absent the above recent statutory enactment, the sale must be considered as taking place at the time of the original purchase and is thus barred under section 1955.

JRD:epd

STATE OF MAINE

Inter-Departmental Memorandum Date May 20, 1965

To Jon R. Boyle, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Ancient date of tax on property withdrawn from inventory

Please note the attached memorandum from Mr. Lynch of the Sales Tax Division dated May 20.

Will you please advise whether the airplane in question, which had been purchased for resale in 1959, but which, in 1963, was withdrawn from inventory and registered for use in this state, resulted in a situation whereby sales tax accrued in 1959 (in which case no assessment could be made because of the statute of limitations), or in a transaction giving rise to tax liability in 1963 (in which case tax could now be assessed).

In this connection, you will probably want to consider that Chapter 136 of the Public Laws of 1965, which will become effective 90 days after adjournment of the present session of the Legislature, which provides that "When tangible personal property purchased for resale is withdrawn from inventory by the retailer for his own use, the tax liability accrues at the date of withdrawal."

EHJ:j