STATE OF MAINE

# REPORT

OF THE

# ATTORNEY GENERAL

for the calender years

1965 - 1966

enactment otherwise. There is nothing in such language to indicate any intention upon the part of the Legislature to affect the nature of owners of property or an interest in property affixed to land other than to make certain that, for the purposes of taxation, it be considered real estate.

RICHARD S. COHEN
Assistant Attorney General

August 26, 1965
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Sales and Use Tax Status of National Banks

*FACTS:*

National banks have recently been permitted to engage in the business of leasing tangible personal property. This office has previously ruled that national banks are exempt from both sales and use tax.

*QUESTION:*

Whether the previous opinions regarding the status of national banks under the sales and use tax law are correct, particularly with respect to the liability of such banks for tax on purchases by them.

*ANSWER:*

Yes.

*LAW:*

The sales tax law exempts by Subsection 1 of Section 1760: "Sales which this State is prohibited from taxing under the constitution or laws of the United States or under the constitution of this State."

Subsection 2 exempts: "Sales to the State or any political subdivision, or to the Federal Government, *or to any agency of either of them.*" (Emphasis supplied).

*REASONS:*

Specifically, this office has previously ruled as follows regarding the status of national banks under the sales and use tax law:

1. *Sales to* national banks are exempt. (Opinions of May 4, 1953 and October 4, 1961).
2. *Sales by* national banks are exempt. (Opinion of October 4, 1961).
3. Use tax may be imposed upon the purchaser of tangible personal property sold by a national bank in the ordinary course of business. (Opinion of October 10, 1961).

1. *Taxation of sales to national banks reviewed.*

Briefly, previous opinions have reasoned that sales to national banks are exempt because of the specific exemption accorded them under the sales and use tax law as agencies of the Federal Government.

National banks are deemed agencies of the Federal Government. (See 12 U.S.C.A. § 548 and O'Neil v. Valley National Bank of Phoenix, Ariz. 1942, 121 P. 2d 646).

Other states, e.g., California, tax sales to national banks. (See Western Lithograph Co. v. State Board of Equalization, Cal. 1938, 78 P. 2d 731).

This is due to language in the California statute which effectively eliminates national banks from exemption from sales taxation and by reasoning of the California courts that the tax is on the retailer and not the purchaser or consumer.

California's sales and use tax law (Cal. Rev. & Taxation Code, Div. 2, Part 1, Sec. 1) provides exemption for an unincorporated agency or instrumentality of the government or one wholly owned by the United States. It is not my understanding that national banks fall within this classification.

The California courts (Cf. Western Lithograph v. State Board of Equalization, supra) as part of their reasoning that sales to national banks are taxable conclude that the tax is on the retailer and that the banks are not burdened thereby as purchasers. The Maine Supreme Court has taken a similar position that the incidence of tax is on the seller in the case of *W. S. Libbey v. Johnson,* 148 Me. 410.

This conclusion, coupled with the appropriate statutory language is necessary for taxation of sales to national banks since under the provisions of 12 U.S.C.A. § 548 only certain taxes, as will be explained later herein, can be levied against national banks.

Other states taxing sales to national banks are Pennsylvania, South Carolina, South Dakota, New York City, Florida, Iowa, Kansas, Mississippi, Michigan and Illinois.

Therefore, the only prohibition at this time against the taxing of sales to national banks is that contained in our own sales and use tax law prohibiting taxation of sales to the Federal Government. If this language were repealed and language similar to that of California substituted, sales to national banks could be taxed.

2. *Taxation of sales by national banks reviewed.*

Previous opinions have also ruled that *sales by* national banks are nontaxable.

12 U.S.C.A. § 548 permits only the taxing of national banks (1) on their shares (2) stockholder's dividend income (3) the bank's income or (4) the banks measured by income.

Since the Libbey case holds the incidence of the tax is on the retailer and since such a tax is prohibited by 12 U.S.C.A. § 548, then sales by national banks have been properly ruled exempt from tax.

3. *Payment of tax by purchaser from national banks re-examined.*

This office has previously ruled that sales by national banks of tangible personal property in the ordinary course of business subject Maine purchasers to the use tax.

This result is still true since the incidence of the use tax is on the purchaser. (See also Bank of America National Trust & Savings Association v. State Board of Equalization. Cal. Dist. Ct. App. 11-20-62).

*CONCLUSION:*

Since it is not possible under the Federal constitution and Federal statutes to tax sales *by* national banks, we can only affect the area of taxation of sales *to* national banks

by corrective legislation in this State. The California law would be a good guide to use if you wish to propose such legislation.

JON R. DOYLE
Assistant Attorney General

October 8, 1965
Executive

Governor John H. Reed

Public Law 89-11 – Letter from President of Board of Commissioners, Government of District of Columbia

*FACTS:*

On April 14, 1965 the Congress of the United States granted consent to the following states, Maine, Massachusetts, New Hampshire, Pennsylvania, Maryland, and the District of Columbia, to enter into a compact relating to taxation of motor fuels consumed by interstate buses and to a compact relating to bus taxation proration and reciprocity. Both compacts were enacted into law by the Maine Legislature in 1963 and are set forth in 36 M.R.S.A. § 3091-3153 and 29 M.R.S.A. § 431-474 respectively. The District of Columbia, having adopted the same compacts through its legislative body, (in actuality, the Congress of the United States) has contacted the Governor of the State of Maine in order to carry out the terms of the compacts.

*QUESTION:*

Is it necessary that the legislature adopt an enabling statute expressly authorizing the Governor or some other state official to execute agreements to carry out the terms of said compacts?

*ANSWER:*

No.

*OPINION:*

The Bus Tax Proration Agreement as set forth in 29 M.R.S.A. § 431-474 and the compact entitled Taxation of Motor Fuels Consumed by Interstate Buses as set forth in 36 M.R.S.A. § 3091-3153 represent completely executed agreements on behalf of the State of Maine and sister states, adopting similar legislation, to accomplish the objectives set forth in said compacts.

29 M.R.S.A. § 433 (10) of the Bus Taxation Proration Agreement provides in part:

> "This agreement shall enter into force and become binding between and among the contracting states when enacted or otherwise entered into by any 2 states. . . ."

Likewise, in 36 M.R.S.A. § 3099 of the compact on Taxation of Motor Fuels Consumed by Interstate Buses, it is clearly stated that:

> "This agreement shall enter into force when enacted into law by any 2 states. Thereafter it shall enter into force and become binding upon any state