

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

November 27, 1967
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Subject: Effect of Increased Sales Tax Rate on "Interim Rental" Transactions

QUESTION:

Whether the increase in the sales tax rate, which became effective November 1, 1967, will apply to the tax on rental payments under leases entered into prior to November 1, where the lessor has elected to account for tax under the provisions of Section 1758 of the Sales and Use Tax Law.

LAW:

"Every person making a purchase for resale or use in this State and other than at casual sale of any article of tangible personal property as to which no sales tax has been paid pursuant to Chapters 211 to 225 and renting it to another in this State shall be liable for a use tax thereon as provided in Section 1861 based on the purchase price thereof, unless such renting is while holding it for resale and unless within 30 days after first so renting it he certifies in writing to the Tax Assessor on a form prescribed and furnished by the Tax Assessor that such article was purchased by him for resale. A tax is imposed at the same rate as that provided in the case of sales taxes by Section 1811 upon all rentals received by such person for use of the article covered by such certification; and if such person thereafter makes any use of, or disposes of, such article other than by renting it to others or by making a sale thereof which is subject to a sales tax or by holding it for such sale, he shall be liable for a use tax thereon as provided in Section 1861 based on the purchase price paid therefor by him less the aggregate amount of tax paid pursuant to this Section on the rentals thereof. The tax on rentals imposed by this Section shall be subject to Section 1812 and all other pertinent provisions of Chapters 211 to 225 and for the purposes thereof shall be treated the same as the sales tax imposed by Section 1811 with the rentor deemed to be the retailer, the rentals deemed to be the sale price, and the rentee deemed to be the purchaser and consumer. Any certification under this Section shall cover one article only with its attachments and accompanying accessories, if any. The term 'renting' as used in this Section shall include renting, letting, leasing and chartering and the term 'rentals' as used in this Section shall include any receipts derived from the use of any such article covered by any such certification." Title 36 M.R.S.A. § 1758.

ANSWER:

The increase in the sales tax rate, which became effective November 1, 1967, will apply to the tax on rental payments received after October 31, 1967, even though they be rental payments under leases entered into prior to October 31, 1967, where the lessor has elected to account for the tax under the provisions of Section 1758 of the law.

REASONS:

The above section contains a provision to cover cases where personal property which

has in fact been purchased for resale, is rented as an incident to holding the property for resale rather than as a regular business. Section 1758 permits the retailer in such cases to elect to pay the tax on rental payments rather than on the purchase price.

The rate of tax is the same as for sales of personal property. All other provisions of the Sales and Use Tax Law apply to this scheme of taxation. The rentor is the retailer, the rentals are the sales price and the rentee is the purchaser and consumer.

Since the sales tax rate applies to interim rentals, it becomes necessary to examine the enacting law and its relationship to the rental provisions.

“Sales and use tax liability *accruing* after October 31, 1967 shall be computed on the basis of the rates imposed by Section D. Retail sales and purchases made after October 31, 1967, including retail sales and purchases made pursuant to contracts entered into prior thereto and telephone, telegraph charges first billed on or after November 1, 1967 shall be subject to the taxes imposed by Section D.” (Emphasis supplied), C. 191 P & S.L. of 1967 §D (4).

Under the scheme set up in the statute concerning the reporting and payment of tax on interim rentals, the tax is due when the rental payments are due. The law contemplates that each rental payment shall be considered as a separate transaction and that tax will be paid separately on each rental receipt.

Under the language of Ch. 191 above tax is due at the rate of 4½% of liability *accrued* after October 31, 1967.

Therefore, since each rental payment is treated as a separate transaction, the rate of 4½% applies to each rental payment received by the rentor-retailer subsequent to October 31, 1967 whether or not the contract of lease was entered into prior to November 1, 1967.

JON R. DOYLE
Assistant Attorney General

December 15, 1967

BAXTER STATE PARK AUTHORITY

Power of Baxter State Park Authority to Purchase Property Located on Leased State Land Within Baxter State Park

FACTS:

A request has been made for an opinion concerning the prerogative or lack of prerogative of the Baxter State Park Authority to purchase property located on leased State land within the confines of the Park without Governor and Executive Council approval.

QUESTION:

May the Baxter State Park Authority purchase at a negotiated price without Governor and Executive Council approval certain tangibles, capital improvements, inventory, as well as other personal property, all of the foregoing being located on State land within the confines of the Baxter State Park leased to the seller by the State?

ANSWER:

Yes.