

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

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.

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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.

*OPINION:*

All of the tangible property, capital improvements and inventory located on the leased State land is personal property and not realty. It is assumed for purposes of this opinion that the Baxter State Park Authority is either a party to, or has actual notice of, an agreement that the buildings at the time they were erected upon the land, were to be considered personal property.

It is well-established law in the State of Maine that an agreement that a building erected with the consent of the land owner, by one not the owner of the land upon which it is erected, shall be and remains personal property. *Tapley v. Smith*, 18 Me. 6. (Shep. 12). *Adams v. Goddard*, (1859) 48 Me. 212. Without such an agreement, the building becomes annexed to the realty. *Bonney v. Foss*, 62 Me. 248. Such an agreement is effective as to the owner of the land, his heirs, devisees, and all persons having actual notice of the agreement; but to be effective against others, the agreement must be in writing and signed by the land owner or a duly authorized person and acknowledged and recorded. 33 M.R.S.A. § 455. It should be noted that for tax purposes buildings erected on the land of another are considered real property. 36 M.R.S.A. § 551 as amended by Public Laws of 1967, Chapter 271, § 1.

12 M.R.S.A. § 901 as repealed and replaced by the Public Laws of Maine 1965, Chapter 225, § 17, confirmed that all of certain specified lands donated and conveyed, and all lands within certain specified areas to be donated and conveyed to the State of Maine by Percival Baxter, have been and will be in trust for state forest, public park and public recreational purposes, and will be named Baxter State Park in honor of Percival Baxter. The reference section then establishes the supervision, control and management of the Baxter State Park by reading in pertinent part as follows:

“They shall be under the joint supervision and control of, and shall be administered by the Forest Commissioner, the Commissioner of Inland Fisheries and Game and the Attorney General, and the said commissioners and Attorney General shall have full power in the control and management of the same, under the title of Baxter State Park Authority.”

As the administrating body, the Baxter State Park Authority has been given full power and management over Baxter State Park. It must follow that the Baxter State Park Authority has power and control sufficient to purchase personal property within the confines of the Park without obtaining approval of the Governor and Executive Council; especially since the funds used to purchase the personal property are trust funds managed and controlled by the Baxter State Park Authority.

The only limitation on the powers and duties of the Baxter State Park Authority in its control and management of the Park is stated in 12 M.R.S.A. § 906 as amended by the Public Laws of Maine, 1965, Chapter 226, § 20, which reads as follows:

“The powers and duties of the Baxter State Park Authority shall not be so construed as to interfere or conflict in any way with the powers and duties of the Maine State Park and Recreation Commission, Department of Inland Fisheries and Game or the Forestry Department and their duly appointed wardens or rangers, and the enforcement of the inland fisheries and game and forestry laws in respect to Baxter State Park or to the State generally.”

Thus, it is clear that nothing in the foregoing section requires the Governor and Council to approve a purchase of personal property by the Baxter State Park Authority; nor have we found any other reference in Maine law requiring such approval.

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Assistant Attorney General