

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Ernest H. Johnson, State Tax Assessor

Subject: Treatment of leases with option to purchase under sales and use tax law.

QUESTION:

If a lease with written option to purchase is entered into prior to November 1, 1967, and the option to purchase is exercised subsequent to November 1, 1967, then is the sales tax applicable to the purchase at the 4% rate in effect at the time the lease with option to purchase was entered into, or the 4½% rate in effect at the time the option to purchase was exercised?

LAW:

P. & S. L. 1967, Ch. 191, Sec D(4) states:

“Effective date. 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 and telegraph charges first billed on or after November 1, 1967, shall be subject to the taxes imposed by Section D.”

ANSWER:

The increase in the sales tax rate, which became effective November 1, 1967, will apply to the sales price where the option to purchase is exercised subsequent to November 1, 1967, even though the lease with option to purchase was entered into prior to November 1, 1967.

REASONS:

The question here is when did the sale take place.

“An option is not of itself a purchase, but merely secures the privilege to buy. Its distinguishing characteristic is that it imposes no binding obligation on the person holding the option, aside from the consideration for the offer. Until acceptance it is not, properly speaking, a contract, and does not vest, transfer, or agree to transfer, any title to, or interest or right in, the subject matter, but is merely a contract by which the owner of the property gives the optionee the right or privilege of accepting the offer and buying the property on certain terms; and until the option is exercised the delivery of the goods to the optionee is a mere bailment.” C.J.S., Sales § 33.

“There is no completed contract for the sale of the property until the optionee has accepted the offer according to its terms, or, to put it otherwise, has performed the condition contained in the offer.” Corbin on Contracts, § 264, footnote No. 44.

Under the language of Chapter 191 above tax is due at the rate of 4½% if liability accrues after October 31, 1967. The sales tax liability accrues at that point in time when the option is exercised. If the option is exercised on November 1, 1967 or later, then the

applicable rate of tax is 4½%.

WENDELL R. DAVIDSON
Assistant Attorney General

January 10, 1968
Bureau of Watercraft Registration and Safety

Robert H. Johnson, Director

Transmittal of Boating Accident Reports by the Bureau to Private Sources.

FACTS:

Pursuant to the terms of 38 M.R.S.A. § 239 the operator of any watercraft involved in an accident which results in injury to another person or damage to property in an amount of \$50.00 or more is compelled to submit a written report of said accident to the Bureau of Watercraft Registration and Safety. In your memorandum submitted to this office under date of December 11, 1967, you state that the Bureau of Watercraft Registration and Safety transmits copies of these accident reports to the U. S. Coast Guard which assembles the data into yearly statistical accident reports. This is done pursuant to express statutory authority. You state in your memo that frequently the Bureau receives requests from insurance companies, claims offices, attorneys, etc., for copies of these accident reports. In reference to these private inquiries you ask the following question:

QUESTION:

Is it permissible for the Bureau to transmit copies of these accident reports to such private sources in accordance with Title 38, section 239 or any other statutes of our State with respect to the transmittal of official state records?

ANSWER:

No, unless the author of the report consents to a transmittal of same.

OPINION:

Reports of private individuals to government officials, even pursuant to statute, are generally held not to be public records unless made so by statute. Any reports or surveys of accidents compiled by the Bureau would be public records but the reports of private individuals furnished to the Bureau are of a confidential nature.

38 M.R.S.A. § 239 entitled "Accidents" provides in part as follows:

"3. Accident reports. The operator of any watercraft involved in any accident or casualty, which results in death, disappearance or injury to any person or damage to property to the estimated amount of \$50. or more, shall report the same by the quickest means possible to the nearest available inland fisheries and game warden, coastal warden, state police officer, or the sheriff of the county where the accident occurred. All law enforcement officers shall forthwith report accidents to the bureau. The operator shall file a written accident report on forms provided by the bureau within 48 hours. He should include his name and address