

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

March 11, 1968
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Tape Recordings Sold on a Subscription Basis

FACTS:

The "Surgery Digest", published by Audio Digest Foundation, is published on magnetic tapes rather than being reduced to printed form.

The "Surgery Digest" is issued every two weeks at an annual subscription cost. Dated tapes are mailed to the subscriber together with a printed table of contents. The tables of content are filed in a loose-leaf binder so that future reference can be made to the content of the magnetic tapes. The tapes contain a variety of articles by different authors devoted to different aspects of surgery.

QUESTION:

Does the sales tax exemption for publications, Title 36 M.R.S.A. § 1760 (14), apply only to printed publications or also to tape recordings?

ANSWER:

The exemption is not limited to printed publications and may also be applied to tape recordings.

LAW:

"No tax on sales, storage or use shall be collected upon or in connection with:

Sales of any publication regularly issued at average intervals not exceeding 3 months." Title 36 M.R.S.A. § 1760 (14).

REASONS:

Although normally a "publication" is thought to involve printed matter the question is whether by definition the word also includes tape recordings.

"A publication is something, as a book or print, which has been published, made public or known to the world; and a writing, as well as a printing may be published."

We have previously ruled that "publication" as used in the above mentioned statute may be fairly interpreted to mean the same as "periodical". (See opinion of June 12, 1963).

A leading case on the determination of the meaning of "periodicals" is *Business Statistics Organization v. Joseph*, (N.Y., 1949) 87 N.E. 2d 505.

In that case since the meaning of the word periodical was not defined in the statutory or decisional law of the state, as is the case here, the Court said that it would adopt a test of the common understanding of the meaning of the word.

(Our Court has followed a similar procedure in determining the meaning of words used in the Sales & Use Tax Law. See *Androscoggin Foundry vs. Johnson*, 1952, 147 Me.

452, 456 and *Camp Walden v. Johnson*, 1960, 156 Me. 160, 165).

The Court in *Business Statistics* stated the meaning of the word "periodical" in the following language (citing *Houghton v. U.S.* 194 U.S. 88 at 97):

"A periodical, as ordinarily understood, is a publication appearing at stated intervals, each number of which contains a variety of original articles by different authors, devoted either to general literature of some special branch of learning or to a special class of subjects. Ordinarily each number is incomplete in itself, and indicates a relation with prior or subsequent numbers of the same series. It implies a continuity of literary character, a connection between the different numbers of the series in the nature of the articles appearing in them, whether they be successive chapters of the same story or novel or essays upon subjects pertaining to general literature***" *Business Statistics Organization v. Joseph*, supra at p. 508.

The court also went on to explain the meaning of the word "literature" when used in the statutory context:

". . . 'literature' in this context means 'no more than productions which convey ideas by words, pictures, or drawings' ". (Citing *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 153, 66 S. Ct. 456, 460, 90 L. Ed.) *Business Statistics Organization v. Joseph*, supra at p. 508.

It is the sense of the meaning of the word as used in the statute that a "publication" or "periodical", as literature, is something that conveys ideas by words, pictures or drawings. Too, a "publication" or "periodical" appears at regular intervals, contains a variety of articles relating to a particular class of subjects and implies a continuity of literary character. Therefore, a tape recording, of such information is as much a periodical as is a printing containing the same information.

So long as the tape recording contains information within the above definition and it is published at regular stated intervals within the statute, it would be exempt.

In this case "Surgery Digest" is published at regular stated intervals, it contains a variety of original articles by different authors; they are devoted to a special class of subjects, they are incomplete in and of themselves and indicate a relation to prior and subsequent issues and they have a continuity of literary character.

"Surgery Digest" tape recordings issued at two week intervals should be considered exempt publications within the meaning of Title 36 M.R.S.A. § 1760 (14).

JON R. DOYLE
Assistant Attorney General

March 13, 1968
Water and Air Environmental
Improvement Commission

George Gormley, Civil Engineer

Drainage of Sanitary Sewage into Wetlands under Jurisdiction of Wetlands Control Board.

FACTS:

A municipality proposes to drain sanitary sewage from a treatment plant onto wetlands bordering coastal waters.