

MAINE STATE LEGISLATURE

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April 11, 1968

yes

Ernest H. Johnson, State Tax Assessor

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Subject: Application of Motor Vehicle Excise Tax to Snow Traveling Vehicles

SYLLABUS:

THE EXCISE TAX IS APPLICABLE TO SNOW TRAVELING VEHICLES. PAYMENT IS A PREREQUISITE TO REGISTRATION.

FACTS:

Snow traveling vehicle means "any vehicle propelled by mechanical power that is primarily designed to travel over ice or snow supported in part by skis, belts or cleats, or low pressure tires." 29 M.R.S.A. §2151 (3). (P.L. 1967, c. 479 effective July 1, 1968).

Such vehicles are required to be registered by the Secretary of State pursuant to 29 M.R.S.A. §2151 et. seq. Under certain circumstances snow traveling vehicles are exempted from regulation. 29 M.R.S.A. §2155.

Operation of snow traveling vehicles is prohibited "upon controlled access highways or within the right-of-way limits thereof." 29 M.R.S.A. §2157. Also prohibited, generally, is use "upon the main traveled portion, or the plowed snow banks, or of any other public way...." Ibid.

Snow traveling vehicles are allowed to operate "on that portion of a public way that is not maintained or utilized for the operation of conventional motor type vehicles," and they are allowed to cross public ways under certain circumstances. Ibid.

The excise tax law provides that "for the privilege of operating a motor vehicle upon the public ways, each motor vehicle...shall be subject to...excise tax...." 36 M.R.S.A. §1482 (1)(C).

For the purposes of the excise tax, a motor vehicle is defined as "any self-propelled vehicle not operated exclusively on tracks, including motorcycles, but not including aircraft. 'Motor vehicle' shall not include any vehicle prohibited by law from operating on the public highways." 36 M.R.S.A. §1481 (3).

QUESTION:

Whether snow traveling vehicles required to be registered under 29 M.R.S.A. §§2151-2163 (P.L. 1967 c. 479) are to be considered motor vehicles within the definition of that term in the excise tax law and thus subject to the motor vehicle excise tax as a prerequisite to registration.

ANSWER:

Yes

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REASONS:

In order to determine whether snow traveling vehicles are subject to the excise tax it is necessary to decide two things; first, whether a snow traveling vehicle is a "motor vehicle" for tax purposes, second, whether a snow traveling vehicle operates upon the public ways.

The key to determining whether a snow traveling vehicle is a motor vehicle is to determine whether it is allowed to operate on the "public highways." 36 M.R.S.A. §1481 (3).

Highway "shall mean all of the right-of-way that may have been laid out by the State, county or town." (Emphasis added) 23 M.R.S.A. §2. A highway thus includes that portion of the right-of-way, or "public way that is not maintained or utilized for the operation of conventional motor type vehicles."

"The word highway in popular language means public way." Cleaves v. Jordan 34 Me. 9, 11 (1852).

The term way includes all kinds of public ways. 29 M.R.S.A. §1(21).

The vehicle in question is thus allowed to travel on a public highway. Since the portion of the highway upon which the vehicle is allowed to travel is a "public way", the imposition of the excise tax follows for the privilege of operating upon the public way.

An early Maine court discussed the limitation of use of a highway and remarked:

All public ways and streets are for the accomodation primarily of travelers of all classes and kinds, but the traveler is not in all, or in many cases, entitled to the whole width of the street for his accomodation. He is entitled to a reasonably safe, convenient and practicable opportunity for travel and passage. A portion of a way is located, not being needed for travel, may be left outside of the wrought road, another portion may be set off for sidewalks and the use of the remaining width of the way so regulated that heavily loaded teams and other vehicles shall use exclusively different portions thereof, and still no one would be deprived of his rights, but upon the other hand all might be very much benefited in the excise of them. State v. Beardman, 93 Me. 73, 76 (1899).

It can not be argued that because snow traveling vehicles are limited to a particular portion of the highway, that they are not motor vehicles subject to taxation.

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Should the use of these vehicles increase substantially, it might become necessary to set aside a portion of the highway right-of-way solely for the use of them just as there is a paved section for cars and a side section for pedestrians.

These vehicles do travel upon a public way, which "way" is part of a public highway and are thus subject to the excise tax.

Finally, since snow traveling vehicles are required to be registered under Title 29, the excise tax must be paid as a prerequisite to registration. 29 N.R.S.A. §109.

JHC:lpn