

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

*ANSWER:*

Yes, when an official becomes entitled to it.

*REASONS 2:*

P. & S. 1963, c. 202 prescribes when an individual is eligible for one or two longevity steps. The increase authorized under P. L. 1967, c. 542 does not change longevity eligibility. If the recipient is presently receiving longevity consideration there is no reason or authorization to add additional longevity benefits. When an official, not now receiving longevity, becomes eligible he shall have it even though the increase will put him above the maximum salary set by statute.

GARTH K. CHANDLER  
Assistant Attorney General

April 18, 1968  
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Application of sales tax to sales of Naval oceanographic office navigation charts and publications

*SYLLABUS:*

THE HARRIS COMPANY, AS AN AGENT OF THE UNITED STATES GOVERNMENT FOR SELLING NAVAL AND OCEANOGRAPHIC OFFICE NAVIGATION CHARTS AND PUBLICATIONS, IS NOT REQUIRED TO COLLECT A SALES TAX ON SALES OF THESE ITEMS. HOWEVER, THE HARRIS COMPANY MUST COLLECT AND REMIT A USE TAX.

*FACTS:*

The Harris Company of Portland, hereinafter called the seller, is in the business of selling marine and yachting supplies, and is a registered seller under the Maine Sales and Use Tax Law. The seller sells Naval and Oceanographic Office navigation charts and publications as an agent or consignee of the United States Government. Title remains in the United States Government and at any time the United States Government may request the return of any and all of the charts and publications.

The Office of the General Counsel, Department of the Navy, has issued a directive to the effect that its sales agents are no longer authorized or required to collect state or local sales taxes on sales of these Naval Oceanographic Office charts and publications.

For the purposes of this opinion it is assumed that the Harris Company is an agent of the United States Government. However, at this time this office is not in possession of documented proof of the agency relationship.

*QUESTION:*

Is the seller responsible for collecting a use tax on the sales price of these charts and

publications under the Maine Sales and Use Tax Law?

ANSWER:

Yes.

LAW:

“A tax is imposed on the storage, use or other consumption in this State of tangible personal property, purchased at retail sale at the rate of 4½% of the sale price. Every person so storing, using or otherwise consuming is liable for the tax until he has paid the same or has taken a receipt from his seller, thereto duly authorized by the Tax Assessor, showing that the seller has collected the sales or use tax, in which case the seller shall be liable for it. Retailers registered under sections 1754 or 1756 shall collect such tax and make remittance to the Tax Assessor.” Title 36 M.R.S.A. § 1861.

REASONS:

The seller is registered pursuant to 36 M.R.S.A. § 1754. Normally, the seller would be required to collect from the purchaser the applicable sales tax, however, being an agent of the U.S. Government, the seller cannot be compelled to collect and remit a sales tax. Nevertheless, these charts and publications are purchased at retail sale, and as a result, a use tax is due and payable on them, which the seller must collect and remit to the Tax Assessor. Title 36 M.R.S.A. § 1861 states that “Retailers registered under section 1754 . . . shall collect such tax and make remittance to the Tax Assessor.”

It should be noted that a sales tax is unenforceable because the incidence of the tax is on the retailer, who, on these facts, is an agent of the United States Government. *W. S. Libbey and Co. v. Johnson*, 148 Me. 410. However, the use tax is proper because the incidence of the tax is on the purchaser, not the retailer. *Northwestern National Bank of Sioux Falls v. Gillis*, 148 N. W. 2d 293; *Bank of America National Trust and Savings Asso. v. State Board of Equalization*, 26 Cal. Rptr. 348; *Felt & Tarrant Co. v. Gallagher*, 306 U.S. 62.

WENDELL R. DAVIDSON  
Assistant Attorney General

April 25, 1968  
Executive

Allen G. Pease, Administrative Asst.

Compatibility of Judge of Probate and Commissioner on Uniform State Laws

SYLLABUS:

The offices of Judge of Probate and Commissioner on Uniform State Laws are incompatible.

FACTS:

A Judge of Probate has been a Commissioner on Uniform State Laws for a number of years. His term of office has expired.