

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

29 c.f.r. "778. 105 Determining the workweek.

An employee's workweek is a fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different work weeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act....."

COURTLAND D. PERRY
Assistant Attorney General

April 1, 1969
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Ammex Warehouse, Inc. – Property Taxes

SYLLABUS:

BONDED LIQUOR LOCATED IN WAREHOUSES IN MAINE, UNDER U. S. CUSTOMS CONTROL IS NOT SUBJECT TO PROPERTY TAXATION.

FACTS:

Ammex Warehouse, Inc., a non-resident corporation, operates a store in Van Buren for the purpose of selling tax-free liquor for export. It is assumed for the purposes of this opinion that the operation in Van Buren is similar to that in Calais: A customer enters the store, orders and pays for the liquor, receives a receipt, returns to his car, drives twenty-five feet or so and receives merchandise from store clerk who has carried package to the motor vehicle.

The operation of Ammex is subject to the Internal Revenue Code and the Customs Duties Laws of the United States. Some of the applicable statutory provisions will be quoted as follows:

"Distilled spirits on which the Internal Revenue Tax has not been paid or determined as authorized by law may, under such regulations as the Secretary or his delegate may prescribe, be transferred in bond between bonded premises in any approved container. For the purposes of this chapter, the removal of distilled spirits for transfer in bond between bonded premises shall not be construed to be a withdrawal from bonded premises." *26 U.S.C.A. § 5212.*

"All articles manufactured in whole or in part . . . materials subject to Internal-Revenue Tax, and intended for exportation without being charged with duty, and without having an Internal-Revenue Stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses

similar to those known and designated in Treasury Regulations as bonded warehouses, Class 6: *Provided* that the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury.

....

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

....

A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturer containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

....

Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class 6, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section, and may be withdrawn as herein before provided . . . subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be re-warehoused and subsequently withdrawn for consumption . . . Provided further, that no Internal-Revenue Tax shall be imposed on distilled spirits and wines rectified in class 6 warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section and that no person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier." 19 U.S.C.A. § 1311.

Regulations have been promulgated pursuant to the Internal-Revenue Laws and Customs Laws and are located at 19 C.F.R. parts 8, 12, 18, 19, 21, 23 and 25. In effect the statutes and regulations control the business of exportation of Ammex, Inc. so that the property is continually treated as "in bond" and in a continual process of exportation. Each bottle sold is treated as being in the custody of the customs officials until the purchaser crosses the border.

QUESTION:

Whether the property of Ammex Warehouse, Inc. is property "within the State" and thus subject to local property taxation by the town of Van Buren.

ANSWER:

No.

REASONS:

In order to be subject to personal property taxation, property of non-residents must

be located within the State of Maine. 36 M.R.S.A. § 603(3). Although the question of property taxation of liquor being stored at border points for export sales has not been raised previously, the question of jurisdiction to tax has been the subject of litigation involving Ammex in other states.

California attempted to bar Ammex from operating in that state since its operations did not fall within any of the categories subject to the licensing laws. *Ammex Warehouse, Inc. Department of Alcoholic Bev. Con.*, 224 F. Supp. 546 (1963). The key question for determination was whether the goods became part of the common mass of property within the state. The facts, in part, are quoted from the opinion of the Court:

“The Plaintiffs are two California corporations which have worked out a method of doing business, consisting of handling liquor, “in bond” and exporting it to Mexico.

....
.... Each bonded warehouse consists of a bonded storage area and adjoining such warehouse is a display room open to the public, used to display empty bottles of the brands stored in the bonded warehouse. Customers will not be permitted to enter the bonded warehouse area, but may enter the display room, pay for liquor and receive a receipt for the purchase. No liquor is delivered until it is exported.

All liquor handled by plaintiffs will be ‘in bond’ for exportation out of the State of California. It will be imported into the State of California for exportation only. The liquor will be ‘in bond’ continually until the delivery to the customer as described hereafter.

The liquor will leave bonded warehouses of manufacturers or distributors pursuant to ‘withdrawal entry’ as provided by the Customs Service, and will be shipped to the plaintiffs at the two ports, but will be consigned in care of the Collector of Customs at the two ports. The carrier will unload the liquor from its bonded truck into its bonded warehouse, which is under government seal, and notify the Customs of the arrival of such shipment. The liquor will then be transported in bond to the bonded warehouses of the plaintiffs.

By arrangements worked out with the United States Collector of Customs of San Diego, the United States Bureau of Customs will keep a U.S. Customs Officer stationed at Plaintiff’s respective warehouses six a week. These officers will be employees of Customs and paid by the U.S. However, under federal law, reimbursement will be made monthly to the United States by the plaintiffs for their salaries.

....
All liquors sold by plaintiffs will be delivered to the office of the U.S. Bureau of Customs located within such strip and the export officer stationed there will see to it that the liquor is exported and will so certify

.... We find that the customer received *custody* of the liquor moments before crossing the border, but that the *possession* of the liquor in a legal sense is in the U.S. Customs Export Officer, since he has allowed the custody of the liquor to the customer for the sole purpose of crossing the border. If he does not cross the border, the custody may be taken from the customer.

Under these facts, we conclude that there is no complete and full delivery to the customer until the moment that he crosses the border; up to that moment he merely has physical custody of the liquor under the control and possession of the U.S. Customs Export Officer.” *Id.*, p. 548, 549.

After discussing the commerce laws and the export and import laws the court

concluded that “the goods are ‘in bond’ or under control of the U.S. Customs until the moment of export. They never become part of the common mass of goods in the State.” *Id.*, p. 555.

It should be noted in passing that there is no prohibition from regulation, licensing, taxing, prohibiting the delivery or use of liquor within a state since the 21st Amendment grants this power to the state. The primary question however, is *whether the goods have come to rest within the State of Maine so that they can become subject to the taxing authority of the town or the state.*

Although in most cases it would be considered that export did not begin until there had been an actual sale and a delivery to a carrier for the purpose of removal of the product, here we have a situation controlled by federal statute, which control is initiated outside of the State of Maine and continues until the product is removed from the state and the country. Although the facts of the decided cases are not necessarily similar to the Maine situation, we assume that there is compliance with the statutes and regulations of the federal government.

The reasonable conclusion to be reached is that the property never comes to rest for tax purposes within the State of Maine because it is treated by federal law as exported merchandise throughout the warehousing and transportation process.

JAMES M. COHEN
Assistant Attorney General

April 4, 1969
Executive

Governor Kenneth M. Curtis

Retirement benefits and mileage allowances; are they emoluments.

SYLLABUS:

The term “emoluments” appearing in Article IV, Part Third, Section 10 of the Maine Constitution does not include retirement benefits or mileage allowances.

FACTS:

The Constitution of Maine contains the following proviso regarding the appointment of legislators to civil offices of profit in this State:

“No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people.” *Constitution of Maine*, Article IV, Part Third, Section 10.

During the present legislative session, both the retirement benefits and the automobile mileage allowance may be increased: L. D. 480 (mileage allowance); L. D.'s 565; 576; 871; 992; 993; and 994 (retirement benefits). One of the members of this present Legislature proposes to resign and to accept an appointment to a civil office of profit in Maine. Although the salary of the reference office is not to be increased by this Legislature, the office to which the person is to be appointed participates in the State retirement program and mileage allowance provision.