

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

institutions empowered to confer educational, literary or academic degrees, which have a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year, *which keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank*, no part of the net earnings of which inures to the benefit of any individual.” (Emphasis supplied).

The above definition establishes certain criteria which must be met before an educational institution can be considered a “school” under the Sales and Use Tax Law. We have been asked to assume that all qualifications have been met except that which relates to entrance requirements. Exemptions to tax laws must be construed strictly. The educational institution requesting the tax exemption certificate does not keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank; therefore the institution does not meet all the requirements established by 36 M.R.S.A. § 1760 sub. 16 for tax exempt status and the tax exemption certificate must be denied.

JEROME S. MATUS  
Assistant Attorney General

October 15, 1969  
Maine State Retirement System

E. L. Walter, Executive Secretary

State Income Tax on State Retirement System Benefit Payments

**SYLLABUS:**

STATE RETIREMENT SYSTEM BENEFIT PAYMENTS IN EXCESS OF CONTRIBUTIONS ARE NOT EXEMPT FROM THE MAINE STATE INCOME TAX. ONLY THOSE BENEFIT PAYMENTS WHICH ARE INCLUDABLE FOR FEDERAL TAX PURPOSES WILL BE INCLUDABLE FOR MAINE INDIVIDUAL INCOME TAX PURPOSES. SUCH BENEFIT PAYMENTS ARE NOT SUBJECT TO THE WITH-HOLDING PROVISIONS OF CHAPTER 827 OF THE LAW.

**FACTS:**

Pursuant to Chapter 101 of Title 5 M.R.S.A., the State retirement system provides various benefit payments, both retirement and disability, for qualifying State of Maine employees. Section 1003 of the law states:

“The right of a person to a retirement allowance, such retirement allowance itself, to the return of contributions, any optional benefit or death benefit or any other right accrued or accruing to any person under this chapter, and the moneys in the various funds created thereby, shall be exempted from any state, county or municipal tax in the State, and shall not be subject to execution, garnishment, attachment or any other process whatsoever, and shall be unassignable except as this chapter specifically provides.”

On June 28, 1969 the 104th Legislature passed a personal and corporate income tax law which took effect as to individuals on July 1, 1969. 36 M.R.S.A., Chapters 801-839.

*QUESTIONS:*

1. Are State retirement system benefit payments in excess of contributions exempt from the Maine State Income Tax?
2. Are retirement system benefit payments subject to the withholding provisions of Chapter 827 of the law?

*ANSWERS:*

1. No.
2. No.

*REASONS:*

1. Title 5 M.R.S.A. § 1003 was first passed by P. L. 1941, Ch. 328 Sec. 227-P. Pursuant to § 1003 State retirement system benefit payments are exempted from any state tax.

On June 28, 1969 the 104th Legislature passed an individual and corporate income tax law, 36 M.R.S.A. Chapters 801-839, which took effect as to individuals on July 1, 1969. Section 5111 of the income tax law imposes a tax upon the "entire taxable income" of every resident individual. Section 5121 defines "entire taxable income."

"The entire taxable income of a resident individual of this State *shall be* his federal adjusted gross income as defined in the laws of the United States with the modifications . . . provided in this chapter." (emphasis supplied).

Thus the basis is "federal adjusted gross income" subject only to those modifications specifically noted in § 5122.

Those State of Maine employees who qualify to receive any of the various benefit payments pursuant to Chapter 101 of Title 5 M.R.S.A. and who are resident individuals will treat these payments in the same manner as they do for federal tax purposes. If the payment is taxable for federal purposes, then it is taxable for State purposes. It should be understood that the Maine Individual Income Tax is based on federal adjusted gross income and as a result there is no tax upon an individual's contribution to the retirement system. Also, disability and death benefit payments will be includable in Maine income only if they are includable for federal purposes.

It is manifest that § 1003 of the retirement act is repugnant to or inconsistent with the newly enacted Maine Individual Income Tax Law. The question then becomes whether or not the doctrine of implied repeal will control. This doctrine was reviewed by the Maine Supreme Court in *State v. London*, 156 Me. 123 (1960). The Court stated at page 127:

"It is, however, equally well established that repeals by implication exist when a later statute covers the whole subject matter of an earlier statute, or when a later statute is repugnant to or inconsistent with an earlier statute. This principal has been expressed in appropriate language in many cases in this State."

The newly enacted individual income tax law is not repugnant to the whole of Title 5 M.R.S.A. § 1003, but only to that part dealing with the exemption of benefit payments from any state taxes. With reference to a partial inconsistency or repugnancy such as the one before us, the Court in the decision cited above stated at page 128:

"Where a later statute does not cover the entire field of the earlier statute but is inconsistent or repugnant to some of its provisions, a repeal by implication takes place to the extent of the conflict."

The Court's reasoning above has been followed in recent Maine decisions. *State v. Bryce*, 243 A2d 726 (1968), *State v. Taplin*, 247 A2d 919 (1968). It is the opinion of this office that the doctrine of implied repeal, which has long been recognized by our Court, must be followed.

The legislature in enacting a state income tax made specific provision for certain modifications to federal adjusted gross income. No reference was made as to the includability or excludability of these benefits. It must be assumed that in enacting this law, the legislature was aware of the existence of Title 5 M.R.S.A. § 1003, and that the failure to include these benefit payments within the modifications of § 5122, shows clearly that the Legislature did not intend to exclude these benefit payments from "entire taxable income." One must first look to the statute itself for evidence of legislative intent. *Hunter v. Totman*, 146 Me. 259, 265 (1951). The income tax law does include these benefits. In *Knight v. Aroostook Railroad*, 67 Me. 291 (1877), the Court stated at page 293:

"This well settled rule of interpretation is founded on the reasonable inference that the legislature cannot be supposed to have intended that there should be two distinct enactments embracing the same subject matter in force at the same time, and that the new statute, being the most recent expression of the legislative will, must be deemed a substitute for previous enactments, and the only one which is to be regarded as having the force of law."

Lastly, it should not be forgotten that taxation is the rule and exemptions from taxation are exceptions to the rule and are to be strictly construed against the individual claiming the exemption. *Inhabitants of Town of Owls Head v. Dodge*, 151 Me. 473.

2. Section 5250 of Chapter 827 of the law requires that "every employer maintaining an office or transacting business within this State and making payment of any wages taxable under this part . . . shall deduct and withhold from such wages for each payroll period a tax . . ." (emphasis supplied). Since such retirement benefits are not wages, they are not subject to withholding pursuant to the provisions of § 5250.

WENDELL R. DAVIDSON  
Assistant Attorney General

October 16, 1969  
Personnel

Willard R. Harris, Director

**SYLLABUS:**

The decision of the Director of Personnel under 5 M.R.S.A. § 753, subsection 5, adverse to a department or commission, is binding on the department.

**FACTS:**

A State employee was on "lay-off" status. The department hired another employee in place of the complaining employee. The Director of Personnel in accordance with 5 M.R.S.A. § 753, subsection 5, advised the department head that he had improperly failed to re-employ the employee. The department refused to accept the ruling of the