

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

January 14, 1970
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Liability of National Banks for Sales and Use Taxes

SYLLABUS:

FOLLOWING THE ENACTMENT INTO LAW OF H.R. 7491 ON DECEMBER 24, 1969, NATIONAL BANKS ARE AUTOMATICALLY SUBJECT TO MAINE SALES AND USE TAX LAW.

FACTS:

The United States Supreme Court held in *First Agricultural National Bank v. State Tax Com'n.*, 88 S. Ct. 2173 (1968) that national banks are immune from state sales and use taxes. On December 24, 1969 H.R. 7491 was enacted into law. The intent of this federal legislation was to liberalize state taxation of national banks by amending 12 U.S.C.A. § 548. Section 3 (b) (1) of H.R. 7491, which section is titled "Saving provision", reads:

"The prohibition of subsection (a) of this section does not apply to any sales tax or use tax complementary thereto . . ."

Section 1 (a) (5) (c) of H.R. 7491 reads:

"No sales tax or use tax complementary thereto shall be imposed pursuant to this paragraph 5 upon purchases, sales, and use within the taxing jurisdiction of tangible personal property which is the subject matter of a written contract of purchase entered into by a national bank prior to September 1, 1969."

QUESTION:

Are national banks automatically subject to Maine sales and use taxes in the light of H.R. 7491?

ANSWER:

Yes.

REASONS:

Section 3 (b) (1) of H.R. 7491 is a "Saving provision" which automatically subjects national banks to Maine sales and use taxes. Affirmative action by the Maine legislature is unnecessary. However, it should be noted that pursuant to § 1 (a) (5) (c) of H.R. 7491 sales or use taxes may not be imposed upon the sale or use of " . . . tangible personal property which is the subject matter of a written contract of purchase entered into by a national bank prior to September 1, 1969."

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