

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 7, 1970

To Frank M. Hogerty, Jr., Commissioner Dept. Insurance

From Charles R. Larouche, Assistant Dept. Attorney General

Subject Apparent Conflict between Insurance Code and Tax Statute re
Retaliation Taxes on Foreign Insurance Companies

Your memorandum to me dated November 13, 1970, enclosed copies of: The State Tax Assessor's memorandum to you dated November 11, 1970; your memorandum to the Director of the Excise Tax Division dated June 11, 1970; letter of Robert D. Williams, Esquire, to you dated June 8, 1970; your letter to Robert D. Williams, Esquire, dated May 22, 1970; and the State Tax Assessor's memorandum to Assistant Attorney General Jerome Matus, dated April 13, 1970.

It appears from the foregoing that a section of the recently enacted Insurance Code seems to conflict with the more ancient taxation statute on the subject of retaliation taxes on foreign insurance companies. The question presented seeks the proper resolution of this seeming conflict. 36 M.R.S.A. § 2519 provides:

"Any insurance company incorporated by a state of the United States or province of the Dominion of Canada whose laws impose upon insurance companies chartered by this State any greater tax than is herein provided shall pay the same tax upon business done by it in this State, in place of the tax provided in any other section of this Title."

24-A M.R.S.A. § 428, subsections 1 and 2 provide:

"1. When by or pursuant to the laws of any other state or foreign country or province any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material requirements, obligations, prohibitions or restrictions are or would be imposed upon Maine insurers doing business or that might seek to do business in such state, country or province, or upon the agents or representatives of such insurers or upon brokers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or obligations, prohibitions or restrictions directly imposed upon similar insurers, or

upon the agents or representatives of such insurers, or upon brokers, of such other state, country or province under the statutes of this State, so long as such laws of such other state, country or province continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material requirements, obligations, prohibitions or restrictions of whatever kind shall be imposed by the commissioner upon the insurer, or upon the agents or representatives of such insurers, or upon brokers, of such other state, country or province doing business or seeking to do business in Maine. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state, country or province on Maine insurers or their agents or representatives or upon Maine brokers shall be deemed to be imposed by such state, country or province within the meaning of this section.

2. This section shall not apply as to personal income taxes, or as to ad valorem taxes on real or personal property, or as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section. "

The predecessor of the above-quoted insurance statute, 24 M.R.S.A. § 526, provided:

" Reciprocity

When by the laws of any other state of the United States or province of the Dominion of Canada,

any fines, penalties, licenses, fees or deposits, or other obligations or prohibitions in excess of those imposed by the laws of the state upon foreign insurance companies and their agents are imposed on insurance companies of this State and their agents, the same fines, licenses, fees or deposits, penalties, obligations or prohibitions shall be imposed upon all insurance companies of such state of the United States or province of the Dominion of Canada and their agents doing business in or applying for admission to this State. All insurance companies incorporated by another country shall be regarded for the purposes of this section as though incorporated in the state where they have elected to make their deposit and establish their principal agency in the United States."

It is apparent that the former insurance statute governing retaliation did not include the word "taxes," whereas that word is included in the current version of the insurance statute on retaliation. Mr. Williams, an eminent authority on insurance law and the General Counsel for the Maine Insurance Law Revision Commission, contends that this inconsistency between the new insurance section(428) and the old taxation section (2519) results in "a repeal by implication of that portion of section 2519, Title 36, relating to premium taxes." However, while it is true that "subsequent enactments should be declaratory of the intent to repeal pre-existing laws," (Sutherland, Statutory Construction, Third Edition, §2011) such a repeal only arises as a result of "necessary implication." Id.

Resolution of this question requires a determination of the legislative intent. It is a fundamental rule of construction that:

"The legislature is presumed to intend to achieve a consistent body of law

"When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict." Sutherland, § 2012.

There is a presumption against repeal by implication:

"The bent of the rules of interpretation and construction is to give harmonious operation and effect to all of the acts upon a subject, where such a construction is reasonably possible, even to the extent of superimposing a construction of consistency upon the apparent legislative intent to repeal, where two acts can, in fact, stand together and be given a coterminous operation. When the repealing effect of a statute is doubtful, the statute is to be strictly construed to effectuate its consistent operation with previous legislation." Sutherland, § 2014.

It appears from Chapter 357 of Title 36, that the Legislature has set forth therein a comprehensive system of taxation of insurance companies. It provides for assessment and collection of all such taxes by the State Tax Assessor. It also provides for reports to the Insurance Commissioner and for the latter's assistance to the Tax Assessor by suspending the right to do business of such companies that fail to pay these taxes. It is clear beyond cavil that Chapter 357 of Title 36 provides for only one State Tax Assessor. It is equally clear that 36 M.R.S.A. § 2519 provides for an automatic escalation of the tax assessment by the State Tax Assessor upon a foreign insurance company whose domiciliary State imposes a greater tax upon Maine insurance companies. On the other hand, it is contended that 24-A M.R.S.A. § 428, confers upon the Insurance Commissioner the function of determining whether and to what extent foreign insurance companies shall pay higher taxes. Such a construction would repeal 36 M.R.S.A. § 2519 in at least two material respects: it eliminates the automatic escalation

provision of that section 2519 and it creates a second, State level tax assessor. While such a construction is possible, another construction is reasonably possible which avoids conflict and gives harmonious operation to both of these statutory provisions: that the Legislature intended 36 M.R.S.A. § 2519 to remain fully effective and to require automatic tax escalation by the State Tax Assessor; and that the Legislature intended by 24-A M.R.S.A. § 428, to require the Insurance Commissioner, when computing the extent of the retaliatory action required by him, to take into full consideration the aggregate financial impact, i.e., of "taxes, licenses, and other fees, in the aggregate," (emphasis supplied) recognizing that the Maine State Tax Assessor has already effected the greater tax assessment upon the foreign insurance company.

While such a construction does require some interchange of information between the Insurance Department and the Bureau of Taxation, such a requirement would not seem to be infeasible, and is supported by the express statutory requirement of coordination between these two agencies. Therefore, it is concluded that 36 M.R.S.A. § 2519 has not been repealed by the Legislature; that the seeming conflict between that statute and the more recent 24-A M.R.S.A. § 428, can be properly resolved by a reasonable interpretation that avoids conflict, gives harmonious effect to both statutes, and avoids intrusion by the Insurance Commissioner into the field of tax assessment.

CRL/mf

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