

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

If any other municipality wishes to assert its jurisdiction over the activity in question it must resolve the issue with the applicant. If it is determined that the proposed dredging requires a permit from other municipalities, then of course, such permits must be obtained prior to undertaking the proposed work.

2. In view of the above conclusion, it is not necessary for us to decide the meaning of "municipality affected".

JOHN M. R. PATERSON
Assistant Attorney General

October 18, 1971
Bureau of Taxation

Neal Bodwell, Director, Excise Tax Division

Subject: Taxability of Variable Annuity Insurance

SYLLABUS:

THE PAYMENTS RECEIVED EACH YEAR BY AN ANNUITY COMPANY ON ANNUITY CONTRACTS FROM THE CONTRACT OWNER ARE TAXABLE AS ANNUITY CONSIDERATIONS IN THE YEAR WHEN RECEIVED AND NOT AT A SPECIFIED TIME IN THE FUTURE WHEN THE ACCUMULATED PAYMENTS ARE CONVERTED TO PURCHASE ANNUITIES.

FACTS:

The ITT Variable Annuity Insurance Company is a South Carolina Corporation licensed by the State of Maine Insurance Commissioner to do business in the State of Maine. The company sells annuity contracts, individual and group, fixed and variable. The annuity contracts considered in this opinion are those in which the prospective annuitants are Maine residents and under the contract terms there are provisions for an accumulation of funds until a specified time in the future, at which time the funds are applied to purchase an immediate life annuity. The ITT Variable Annuity Insurance Company contends that the periodic purchase payments by the contract owner to the company in the case of the individual annuity contracts and the periodic contributions by the contract owner to the company on behalf of prospective Maine Resident annuitants in the case of group contracts are not subject to the tax on annuity considerations under the provisions of 36 M.R.S.A. §2513 until the specified time in the future when the accumulated purchase payments or contributions are used to purchase an immediate life annuity.

The ITT Variable Annuity Insurance Company has provided annuity contract forms which are attached hereto and are referred to in this opinion. The funds used to purchase the fixed annuities are kept in so-called general accounts and the funds used to purchase the variable annuities are placed in so-called separate accounts. The annuities purchased are measured in annuity units for accounting purposes, the number of units varying with the amount of funds that have accumulated in the general or special accounts.

QUESTION:

Are annuity contracts issued by an out-of-state annuity company licensed to do

business in the State of Maine, that provide for the accumulation of funds for the purchase of an annuity (fixed or variable) (individual or group) at some time in the future, the prospective annuitant being a resident of the State of Maine, subject to the tax on the payments received by the annuity company from the contract owner as annuity considerations pursuant to 36 M.R.S.A. § 2513 for the year when received or at the time when the accumulated funds are converted into an annuity.

ANSWER:

The payments received by the annuity company pursuant to such annuity contracts are taxable as annuity considerations for the year when received.

REASONS:

36 M.R.S.A. § 2513 provides:

“Every insurance company or association which does business or collects premiums or assessments including annuity considerations in the State, except those mentioned in sections 2511 and 2517, including surety companies and companies engaged in the business of credit insurance or title insurance, shall, for the privilege of doing business in this State, and in addition to any other taxes imposed for such privilege annually pay a tax upon all gross direct premiums including annuity considerations, whether in cash or otherwise, on contracts written on risks located or resident in the State for insurance of life, annuity, fire, casualty and other risks at the rate of 2% a year.”

The insurance companies excepted from the provisions of 36 M.R.S.A. § 2513, are those mentioned in 36 M.R.S.A. § 2511, being insurance companies or associations organized under the laws of the State of Maine, and those mentioned in 36 M.R.S.A. § 2517, being mutual fire insurance companies incorporated under the laws of other states.

The annuity considerations subject to tax under 36 M.R.S.A. § 2513 are those considerations on annuity contracts written on risks resident in the State of Maine, with the exception of certain non-taxable annuity considerations set forth in 36 M.R.S.A. § 2514 as amended by P.L. 1967 C. 453 and P.L. 1969 C. 412.

We construe the term “annuity considerations” in 36 M.R.S.A. § 2513 to include consideration which the individual annuity contract owner pays annually to the annuity company in cash or otherwise for an annuity contract when the prospective annuitant is a Maine Resident and under its terms an annuity is to be purchased with the accumulated funds; or in the case of a group annuity contract that portion of the consideration which the group policy contract owner pays annually in cash or otherwise under a group annuity contract which is accumulated and allocated for the purchase of annuities on covered participants residing in the State of Maine. The term “annuity considerations” in 36 M.R.S.A. § 2513 are the considerations for annuity contracts.

We look now to the contract forms that have been supplied us to determine what the consideration for the annuity contract is, as stated by the ITT Variable Annuity Insurance Company.

The front page of the Individual, Flexible Payment, Deferred Annuity Contract (Form V-3000) reads in pertinent part:

“This Contract is issued in consideration of the Application, a copy of which is attached to and made a part of this Contract and the payment of the Purchase Payments in accordance with the terms and conditions of this Contract.”

The purchase payments referred to are payments which are paid by the contract

owner to the ITT Variable Annuity Insurance Company and which accumulate in accounts for the purchase of an immediate life annuity at a specified time in the future. We are satisfied that pursuant to 36 M.R.S.A. § 2513 the annual amount of purchase payments received under such a contract is an annuity consideration and is subject to tax for the year when received. It should be noted that the attorneys who drafted this contract form recognized that taxes might be due to certain states or municipalities as it was provided in the first paragraph of Section 1 of the Valuation Provision of the Contract Form that:

“The Net Purchase Payment is equal to the Purchase Payment less deductions totaling 8.50% (6% for sales expenses, 1.75% for administrative expenses and .75% for the minimum death benefit) plus *any applicable premium taxes.*” (Emphasis supplied)

Form V-3001 is an Individual Single Payment Immediate Annuity Contract Form. This contract form differs from V-3000 Individual, Flexible Payment, Deferred Annuity, Contract Form in that Form V-3001 provides for just one purchase payment. The consideration language of the latter form is as follows:

“This Contract is issued in consideration of the application, a copy of which is attached to and made a part of the contract, and the payment of the Total Purchase Payment in accordance with the terms and conditions of the Contract which is due in one sum on the Date of Issue.”

The single purchase payment is subject to a tax in the year when made as an annuity consideration pursuant to 36 M.R.S.A. § 2513.

One of the two forms relating to Group Contracts furnished this office for the purposes of this opinion is a certificate issued to employee participants, which certificate evidences the employee’s entitlement to certain benefits under the Group Annuity Contract. This certificate form (V-4001) states:

“All matters pertaining to such benefits are subject to the terms and conditions of the said Group Contract and the description following is merely a summary or excerpt of some of the provisions of the Group Contract as they affect the participant.”

Thus, we look to the first page of Group Annuity Contract Form (V-4000) and find the ITT Variable Annuity Insurance Company issues the Group Annuity Contract to the contract owner “in consideration of the application therefor and of the payment by contract owner of contributions as provided herein.” The contributions referred to are the amounts payable on behalf of each employee who is an individual participant in the plan. Section 3A of the form reads as follows:

“Each Contract Year The Company shall receive such contributions from the Contract Owner as are made in accordance with the requirements of the Plan. Such contributions will be applied by The Company to provide accumulation units for each Participant in accordance with Section 3(B) and the instructions of the Contract Owner.”

Section 3B of the form reads in pertinent part as follows:

“Deductions totaling 6% (5¼% for sales and administrative expenses and ¾% for the minimum death benefit guarantee) plus any applicable premium taxes on the contributions shall be made by The Company from each contribution received”

It is thus apparent the ITT Variable Annuity Insurance Company was aware that premium taxes could be due and owing on the contributions. Those contributions received and allocable to employee participants resident in the State of Maine are subject

to a tax for the year received under the provisions of 36 M.R.S.A. § 2513 as an annuity consideration.

JEROME S. MATUS
Assistant Attorney General

November 10, 1971
Education

Elwood A. Padham, Assistant Commissioner

Interpretation of grants to regional technical vocational centers.

SYLLABUS:

A School Administrative District, which regularly operates a regional technical and vocational center in its own district, cannot receive state aid as reimbursement for its operation and administration of an evening adult vocational education program located in another school administrative district.

FACTS:

The Lake Region School District, School Administrative District (S.A.D.) No. 61, which is located in Bridgton, Maine, has a regional technical vocational center as part of the comprehensive high school. When evening programs are offered at this regional center, 90% of the cost of instruction for approved part-time and evening classes is paid by the State of Maine, pursuant to 20 M.R.S.A. § 2356-B(2), and the remaining 10% of the cost of instruction is paid by S.A.D. No. 61.

School Administrative District No. 17, which is located in South Paris, Maine, does not have a regional technical and vocational center; however, it pays the tuition for its secondary level students who are sent to the regional technical and vocational center operated by S.A.D. No. 61 in Bridgton.

A plan has been presented to the Maine Department of Education whereby S.A.D. No. 61, in Bridgton, would operate and administer an adult vocational education program that would be located in South Paris (S.A.D. No. 17), as a "satellite center" to the regional technical and vocational center in Bridgton. Under the proposed plan, S.A.D. No. 61 would be applying to the State for reimbursement, in the amount of 90% of its cost of instruction resulting from the adult vocational education program to be conducted at South Paris, and S.A.D. No. 17 would be required to pay the remaining 10% of said cost.

QUESTION:

Can a school administrative district, which regularly operates a regional technical and vocational center in its own district, receive State aid as reimbursement for costs of instruction resulting from its operation and administration of an adult vocational education program located in another school administrative district?

ANSWER:

No.