

MAINE STATE LEGISLATURE

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To: Ernest H. Johnson, State Tax Assessor March 13, 1973
Re: P. L. 92-512 (The Federal Revenue Sharing Law)
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(B) any change made by the State in the tax imposed by the State will not apply to taxable years beginning in any calendar year for which the State agreement is in effect unless such change is enacted before November 1 of such calendar year."

QUESTION:

In view of Section 6362(f)(2) paragraphs (A) and (B) of the Internal Revenue Code of 1954 as amended, enacted by P. L. 92-512 (The Federal Revenue Sharing Law), is it possible for the State of Maine to qualify for federal collection of state individual income taxes short of a constitutional amendment?

ANSWER:

No, in respect to Section 6362(f)(2)(A).

REASONS:

The Maine Supreme Judicial Court made a pronouncement in 1970 on the constitutionality of the delegation of legislative authority when it stated:

"The Legislature may not constitutionally delegate general legislative authority. State v. Prescott 1930, 129 Me. 239, 151 A. 426. But it may delegate authority to a governmental agency charged with the duty of administering an act, provided the legislation sets up sufficient standards to guide the administrative body in the exercise of its discretionary functions respecting implementation of the law to particular situations. Smith v. Speers, 1969, Me., 253 A.2d 701." Opinion of the Justices, (1970) Me., 261 A.2d 58, 76

The limitation on delegation of general legislative authority also applies to a delegation of authority by the Maine Legislature to the Congress of the United States:

"The principle is firmly established that a state legislature has no power to delegate any of its legislative powers to any outside agency such as the Congress of the United States. Thus, it is generally held that the adoption, by or under authority of a state statute, of prospective federal legislation, or federal administrative rules thereafter to be passed, constitute an unconstitutional delegation of legislative authority.

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"There is, however, authority holding that no unconstitutional delegation of authority inheres in a state statute providing that prospective federal legislation shall control." 16 Am. Jur. 2d Constitutional Law §245 p. 495, 496

The State of Maine is among the majority of jurisdictions holding general legislative authority cannot be delegated by its legislature to the Congress of the United States. State v. Intoxicating Liquors, Vino Medical Company, Inc. (1922) 121 Me. 438, State v. Gauthier (1922) 121 Me. 522, 118A 380, State v. Webber (1926) 125 Me. 319, 133A 738.

In the Vino Medical Company, Inc. case supra, the holding was an act of the State of Maine Legislature insofar as it purports to incorporate by reference into the statute, future enactments of Congress establishing a definition of intoxicating liquors, "... constitutes an unlawful delegation of legislative power, and an abdication by the representatives of the people of their power, privilege and duty to enact laws." Id 443.

In answer to the question as to whether or not it is valid in Maine for the legislature to enact a statute establishing federal regulations as a standard by reference, it was stated in an opinion from the office of the Attorney General that:

"... it has been held invalid in Maine to enact legislation adopting standards which may change from time to time by the action of some agency not within the control and direction of our own legislature. To the extent that any such legislation contemplates that the law may change from time to time without further action of the Maine legislature, such a statute in Maine is definitely unconstitutional. ..." 1949-50 Atty Gen Rep p. 230.

Title II of P. L. 92-512 (The Federal-State Collection Act [a copy of which is attached]) provides that the Secretary of the Treasury or his delegate can enter into an agreement with a state to collect and administer the individual income taxes of the state. The state must have "a qualified state individual income tax" as qualified in the Federal-State Collection Act. The State of Maine at the present time does not have "a qualified state individual income tax" however, the Maine Legislature could make the necessary changes so that the Maine Individual Income Tax Law would be "a qualified state individual income tax."

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Section 6362(f)(2)(A) as enacted by Title II of P. L. 92-512 (The Federal-State Tax Collection Act) requires that any state desiring the federal government to collect its state individual income tax must, in addition to other requirements, including the requirement of "a qualified state individual income tax", contain a provision in a state statute which makes it mandatory for the state to agree to any change in the provisions of the federal collection subchapter (and regulations prescribed thereunder) during the period for which the state agreement is in effect. These changes in the provisions of the federal collection subchapter of necessity would be made by the United States Congress or (in respect to the regulations prescribed thereunder by the Secretary of the Treasury or his designated delegate, presumably of the Internal Revenue Service.)

Should there be a change in the federal statutory requirements (or regulations prescribed thereunder) during the period of the agreement, the State would be bound by the changes in the federal statutory law (or regulations prescribed thereunder) for a limited period of time of at least six months as set forth in the provisions of the federal statute dealing with withdrawal of a state from the agreement (or for a period yet to be prescribed by the regulations).

A provision in the Maine Statutes permitting the United States Congress to alter at any time during the period of the agreement the State of Maine Income Tax Law even though the alteration of Maine law might be for a limited period of time, is an unlawful delegation of general legislative authority from the Legislature of the State of Maine to the Congress of the United States. This unlawful delegation would violate Article IV Part Third Section 1 of the Constitution of the State of Maine, which section reads in pertinent part as follows:

"The Legislature shall ... have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States."

It would follow that regulations prescribed under such laws would also be in violation of the same constitutional provision.

A Maine Statute containing the required provision of 6362 (f)(2)(B) as enacted by P. L. 92-512 (The Federal Revenue Sharing Law) would not violate the Constitution of the State of Maine since the required provision does not involve a delegation of legislative authority and is a limitation that can be changed at any session of the Maine Legislature.

Assistant Attorney General

JSM:gr
cc: Attorney General