

# MAINE STATE LEGISLATURE

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March 20, 1973

To: Norman K. Ferguson, State Treasurer - Department of Treasury  
 From: Jerome S. Matus, Assistant Attorney General - Bureau of Taxation

SUBJECT:

State - Municipal Revenue Sharing Law

SYLLABUS:

PURSUANT TO 30 M.R.S.A. §5055 SUB. 5, AS AMENDED, RECEIPTS FROM THE TAXES IMPOSED UNDER TITLE 36 PART 3 (THE STATE OF MAINE SALES & USE TAX LAW) AND THE TAXES IMPOSED UNDER TITLE 36 PART 8 (THE STATE OF MAINE INCOME TAX LAW) INCLUDE INTEREST AND PENALTIES. THE TERM "RECEIPTS" IN THE STATE-MUNICIPAL REVENUE SHARING LAW 30 M.R.S.A. §5055 SUB. 5 MEANS "NET RECEIPTS" AND THEREFORE REFUNDS MUST BE TAKEN INTO CONSIDERATION IN THE DETERMINATION OF "RECEIPTS."

FACTS:

An act establishing a State-Municipal Revenue Sharing Program 30 M.R.S.A. §5055 Sub. 1-6 was enacted by the 1971 P. & S. Laws of Maine, Chap. 478. The act was subsequently amended by the 1971 P. & S. Laws of Maine, Chap. 605. You have provided this office with photo copies of Chapters 478 and 605 of the 1971 P. & S. Laws of Maine.

By inter-office memorandum you have indicated that it is your understanding that refunds on income taxes during the last six months of the fiscal year are substantial. It is also your understanding that under the reference law, no provision is made to take refunds into consideration in computing the monthly payments to municipalities.

QUESTION:

1. Should the word "receipts" be construed to include interest and penalties collected on the subject taxes?

ANSWER:

1. Yes.

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REASON:

30 M.R.S.A. §5055 sub. 5 enacted by 1971 P. & S. L. Chap. 478 §1 as amended by 1971 P. & S. L. Chap. 605 §1 reads as follows:

"Treasurer of State. An amount equal to 4% of the receipts from the taxes imposed under Title 36, Parts 3 and 8, and credited to the General Fund shall be transferred by the Treasurer of State to the Local Government Fund on the first day of each month, beginning July 1, 1973.

"The Treasurer of State shall distribute the balance in the Local Government Fund as of July 1, 1972, on the 15th day of July 1972, and the balance in the Local Government Fund as of December 1, 1972, on the 20th day of December 1972; and, thereafter, the balance in the Local Government Fund on the first of each month, beginning July 1, 1973, shall be distributed on the 20th day of each month, beginning July 20, 1973."

The amounts to be transferred by the Treasurer of State from the General Fund to the Local Government Fund and subsequently to be distributed to the municipalities is 4% of receipts from the State of Maine Sales and Use tax (Title 36 Part 3) and 4% of receipts from the State of Maine Income Tax (Title 36 Part 8).

The State of Maine sales and use tax law specifically provides:

"...

"The Tax Assessor shall pay over all receipts collected to the Treasurer of State daily and such receipts shall be credited to the General Fund."  
36 M.R.S.A. §1952

These receipts collected and turned over include taxes, interest and penalties, imposed by chapters 211 to 225 (Sales & Use Tax Law), being personal debts of a retailer or user to the State of Maine. 36 M.R.S.A. §1953

The State of Maine Income Tax Law specifically provides:

"The assessor shall pay over all receipts collected to the Treasurer of State promptly and such receipts shall be credited to the General Fund." 36 M.R.S.A. §5342

There are numerous provisions in the State of Maine Income Tax Law (Title 36 Part 8) for the assessment and collection of interest and penalties, as well as tax. The interest and penalties collected are receipts turned over to the Treasurer of the State along with the receipts collected from taxes.

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Thus in both the State of Maine Sales & Use Tax Law and State of Maine Income Tax Law receipts collected include interest, and penalties as well as taxes.

QUESTION:

2. Is the assumption that refunds should not be taken into consideration in computing the monthly payments to municipalities, a correct assumption?

ANSWER:

2. No. Refunds must be taken into consideration.

REASON:

The monthly payments must be based on "net receipts" not "gross receipts". State budgeting for each biennium is based on net figures and not gross figures. Certainly it was not the intention of the Maine legislature in passing the State-Municipal Revenue Sharing Program to provide municipalities with 4% of a gross figure. When the word "receipts" appears in 30 M.R.S.A. §5055 sub. 5, it must be read as "net receipts" and not "gross receipts."

/s/ Jerome S. Matus  
Assistant Attorney General

JSM/etd  
cc: Attorney General  
cc: State Tax Assessor