

# MAINE STATE LEGISLATURE

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April 18, 1974

To: Ernest H. Johnson, State Tax Assessor Bureau of Taxation

From: Jerome S. Matus, Asst. Atty. Gen. Bureau of Taxation

Subject: "Equivalent taxing statute of another state" for purpose of Maine Corporate Income Tax Law

SYLLABUS:

THE STATE TAX ASSESSOR OF THE STATE OF MAINE IS CORRECT IN DISALLOWING ANY DEDUCTION FOR THAT PORTION OF THE MASSACHUSETTS EXCISE TAX WHICH IS BASED ON NET INCOME, AS THE PORTION OF THE MASSACHUSETTS EXCISE TAX IMPOSING SUCH A TAX IS AN "EQUIVALENT TAXING STATUTE OF ANOTHER STATE" WITHIN THE INTENT AND MEANING OF 36 M.R.S.A. Section 5102 sub-88 Par. B.

FACTS:

A notice of proposed assessment of a State of Maine Corporate income tax deficiency was sent to a Massachusetts Corporation. The proposed assessment is based in part upon disallowance of a deduction for that portion of the Massachusetts corporation excise tax which is based on net income. The deduction for the balance of the Massachusetts corporation excise tax has been allowed.

The Massachusetts corporation objects to the proposed assessment contending that the Massachusetts corporation excise tax is not "an equivalent taxing statute" within the meaning of the Maine Income Tax Law.

QUESTION:

In its determination of the income of a Massachusetts corporation subject to the Maine Corporate Income Tax Law, is the State Tax Assessor of the State of Maine correct in disallowing any deduction for that portion of the Massachusetts Excise Tax which is based on net income?

ANSWER:

Yes.

REASONS:

"Maine net income" for any taxable year and for any corporate taxpayer is defined by the Maine Income Tax Law as "... the taxable income of the taxpayer for that taxable year under the laws of the United States, allocated or apportioned to this State under chapter 821 excluding:

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- A. Income which under laws of the United States is exempt from taxation by states;
- B. A deduction for tax imposed by this part or the equivalent taxing statute of another state;
- C. The amount added to Income under Internal Revenue Code, Section 78. (Foreign dividend gross-up)."  
36 M.R.S.A. Section 5102 sub-88.

Thus in arriving at "Maine net income", one must first determine the taxable income of the taxpayer subject to allocation or apportionment.

We must ascertain whether this taxable income subject to allocation or apportionment should exclude a deduction (as defined by 36 M.R.S.A. Section 5102 sub-88 par. B) for that portion of the Massachusetts Corporation Excise Tax which is based on net income. The net effect of the exclusion of the deduction is to increase the taxable income subject to allocation and apportionment by the amount of the deduction excluded.

The use of the phrase "equivalent taxing statute of another state" in 36 M.R.S.A. Section 5102 sub-88 Par. B is significant. "Equivalent" does not mean identical.

"'Equivalent' 1. Something equivalent; that which is equal in value, worth, force or significance; ..."  
Websters New International Dictionary Unabridged 2nd Ed. page 865

In the field of patent law, one device is considered to be the equivalent of another, when it performs the same function in substantially the same way. Chicago Forging & Mfg. Co. v. Bade-Cummings Mfg. Co. C.C.A. Ky., 63 F2d 928, 931 Donner v. Sheer Pharmacal Corporation, C.C.A. Mo., 64 F2d 217, 223 Corcoran v. Riness D. C. Cal., 19 F. Supp. 344, 347. We are of the opinion that in the field of corporate taxation, a taxing statute is equivalent to another, if the statute performs the function of taxing a corporation in substantially the same way as the other taxing statute.

The Maine Corporate Income Tax Law imposes a tax on the net income of a corporation allocable or apportionable to the State of Maine, thus the Maine Corporate Income Tax is a tax measured by net income. The portion of the Massachusetts Excise Tax measured by net income, is a tax imposed by the Commonwealth of Massachusetts measured by the net income of a corporation allocable or apportionable to the Commonwealth of Massachusetts. Both statutes perform the function of taxing a corporation in substantially the same way.

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In the examination of the 1973 Maine Corporate Income Tax Return Form 1120-Me. and Schedule E of the 1973 Domestic Business or Manufacturing Corporation Return Form 355A of the Commonwealth of Massachusetts, the similarities between the Maine Corporate Income Tax Law and that portion of the Commonwealth of Massachusetts Excise Tax Law based on income taxable in Massachusetts become most apparent. (Copies of these Forms are appended to this opinion.) Both tax forms make adjustments to a starting income figure from the Federal Corporate Tax Return Form 1120. Both taxing jurisdictions make an adjustment in respect to taxes imposed by its own jurisdiction and other taxing jurisdiction, (see Line 3 of Schedule E of the Massachusetts Return and Line 5 of the Maine Return appended hereto) by adding these taxes imposed in arriving at the income figure subject to allocation and apportionment. In those instances when a corporation is doing business in more than one jurisdiction, the income is apportioned to the taxing jurisdiction, and a net taxable income figure is determined. In both Massachusetts and Maine, the appropriate tax rate is applied to that taxable income figure. (See Line 18 of Schedule E and Line 4 of the Computation of Excise Portion of Form 355A of the Massachusetts Excise Return and Line 7 and 8 of the Maine Corporate Return appended hereto.)

While it is recognized there are some differences between the Maine Corporate Income Tax Statute and that portion of the Massachusetts Excise Tax Statute where the tax is measured by net income, nevertheless, the function of the Maine Corporate Income Tax based on "Maine net income" and the function of that portion of the Commonwealth of Massachusetts Excise Tax measured by net income allocable or apportionable to Massachusetts is accomplished in a substantially similar way, and the Massachusetts Statute is an "equivalent statute of another state" within the intent and meaning of 36 M.R.S.A. Section 5102 sub-§8 Par. B.

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Assistant Attorney General

JSM:mb

cc: Attorney General