

# MAINE STATE LEGISLATURE

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AN INFORMAL OPINION  
STATE OF MAINE

Inter-Departmental Memorandum Date May 28, 1974

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

From John M. Dudley, Asst. Atty. Gen. Dept. Bureau of Taxation

Subject Requested Sales Tax Exemption: H.O.M.E. Inc.

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A corporation entitled "H.O.M.E. Inc." seeks sales and use tax exemption. The organization has the following characteristics:

1. A regular faculty.
2. A regular curriculum.
3. An organized body of pupils or students.
4. The students attend throughout the usual school year.
5. Records required for admission to schools of secondary, etc. rank are kept.
6. The corporation is nonstock and nonprofit.
7. The Department of Education and Cultural Services approves the curriculum and certifies the teachers. This Department also provides funds for the programs.
8. The Certificate of Organization reads as follows:

"The purposes of said corporation are to provide a method whereby persons in, but not limited to, the following classifications: may find more, better, and more profitable employment particularly through the use of their manual and artistic skills in the production of handcrafted or individually manufactured goods and products, those persons being the unemployed, under-employed, fixed income, low income, and those who can not find practical employment beyond the confines of their homes; To provide education and educational programs to develop the skills necessary for the productive employment for the aforesaid persons; To promote in the general public an attitude receptive to the needs of these persons and acceptance of their products; To provide sales outlets and markets for their products; to acquire, take by gift, purchase, devise or bequest real and personal property for

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purposes appropriate in the exercise of its powers and may lease, mortgage and dispose of real and personal property, including the right to take, hold and dispose of shares of stock in other corporations; to make, manufacture, fabricate, produce, process, purchase, buy, sell, trade, import, export items and goods of all types and descriptions which may generally assist in the primary purpose of this corporation, the co-operative sales of individual member goods and products; to borrow money, contract debts, make contracts and to exercise any and all powers as a natural person could lawfully make, do, perform or exercise which may be necessary, convenient or expedient for the accomplishment of any of its objects or purposes, providing the same be not inconsistent with the laws of the State of Maine and to that end, enumeration of such powers shall not be deemed inclusive. The members of the Corporation shall adopt, amend or repeal by-laws required for the management of the corporate affairs. The Corporation shall not be operated for profit, and no part of the net earnings of the Corporation will inure to the benefit of any member. Upon the dissolution of said Corporation, after the payment of all just debts and obligations of said corporation and the return to each member of his individual contributions, all remaining assets of said Corporation shall be given either to the Town of Orland, or if in existence, some other non-profit Corporation within a fifty (50) mile radius having the same or similar purposes and aims.

1. In the light of its Certificate of Organization and the available information, can H.O.M.E. Inc. be considered an incorporated nonstock educational institution so as to be exempt from tax under subsection 16 of Section 1760 of the Sales and Use Tax Law? Yes.

2. If H.O.M.E. Inc. is not so entitled with respect to all its activities, it is nevertheless entitled to an exemption limited to purchases made in connection with the activities designated as "H.O.M.E. Learning Center" and "H.O.M.E. Adult Education Program"? Affirmative answer to first question renders second question moot.

36 M.R.S.A. Section 1760(16) reads in part as follows:

"Schools" mean incorporated nonstock educational institutions, including institutions empowered to confer educational, literary or academic degrees, which have a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year, which keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual."

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When the Legislature enacted the Sales and Use Tax Law, it undoubtedly felt that all schools should be exempt. The public schools are exempt under Section 1760(2). To grant exemption to other schools, they were included in Section 1760(16). The Legislature, to avoid any vagueness, included in the law a definition of "schools". H.O.M.E. Inc. complies with this definition, and is an incorporated nonstock, nonprofit institution.


Although the Certificate of Organization lists many purposes, education is the primary purpose.

H.O.M.E. Inc. is engaged in only two activities:

1. Its educational program.
2. Its craft program, which consists of providing outlets for the sale of the craft work. This is in furtherance of its primary purpose.

The following is from an Ohio Sales and Use Tax Case decided in 1972. This case involved a religious organization which owned ten (10) acres of land on which it had an auditorium and on which it operated a radio station. The Tax Commissioner determined that whereas it operated a radio station it was not exempt. The Court said in part:

"Where a nonprofit religious corporation affirmatively shows that it otherwise has the essential attributes of a church within the meaning of R.C. 5739.02(B)(12), it may not be denied exempt status for the reason that it operates a radio facility in conjunction with and in furtherance of its religious and charitable activities". (Emphasis added) Maumee Valley Broadcasting Assn. v. Porterfield, Tax Commr. of Ohio, Northeastern Reporter 2nd Series Vol 279, Page 863.

  
Assistant Attorney General

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