

# MAINE STATE LEGISLATURE

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September 18, 1975

Keith H. Ingraham, Director

Alcoholic Beverages

Phillip M. Kilmister, Assistant

Attorney General

Agency Stores - Promulgation of Rules and Regulations Pertaining Thereto.

In answer to your inquiries relating to the establishment and operation of agency stores, enclosed are my answers thereto.

Question 1. It is the desire of the Bureau that agents resell for the same price as our State stores; therefore, must an agent charge sales tax?

Answer: Yes.

Although it would seem to be a wise policy to sell liquor in agency stores at the same price as liquor is sold through state stores, elimination of the imposition of a sales tax on liquor sold through agency stores is not a permissible vehicle by which to effectuate such a result.

In construing statutes relating to the assessment of taxes, taxation is the general rule, and exemption is clearly the exception. This principle is so firmly established as to require little elaboration. (see Bouchard v. Johnson, 157 Me. 41, 170 A.2d 372 (1961)).

Sales of liquor through state stores is specifically exempted from taxation by statute, as is set forth in Title 36, section 1760, subsec. 11, which provides that no sales tax shall be collected upon:

"11. Sales of liquor. Sales of spirituous or vinous liquors sold in stores operated by the State Liquor Commission."

Even if a liberal construction of the above-designated statute were permitted, which is not the case, it could not be concluded that liquor sold through agency stores should be subject to exemption status.

In summary, it should be emphasized that were it not for the clearly expressed Legislative declaration set forth in 36 M.R.S.A. § 1760 (11) quoted above, all liquor sold at state-operated stores would be subject to the imposition of a sales tax. The Commission cannot formulate by rule or regulation, exemption status for liquor sold by agency stores upon the fragile basis that said stores are licensed by the Commission and thus the liquor sold is subject to state control.

Question 2. It is the desire of the Bureau to have an Agreement with a 30-day cancellation. Must the license be issued for one year, and can the license be issued subject to the Agency Agreement?

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Answer: A license may be issued for a maximum period of one year or on a seasonal basis, for a period of time less than one year in duration.

A license may not be revoked by the unilateral action of the licensing authority (Liquor Commission) by the exercise of a proposed 30-day cancellation agreement in a lease.

There would appear to be no need for the execution of any lease between an agency store and the licensing agency, the State Liquor Commission, since no landlord-tenant relationship will be created, but merely a relationship of licensor-licensee.

Question 3. May the Bureau cancel the Agreement for just cause without going through the Administrative Judge?

Answer: No.

In essence, the inquiry is whether or not the Bureau (actually the Commission) may suspend or revoke an agency store license for just cause, without resort to the Administrative Court Judge, and the answer is clearly in the negative. The procedure for revocation and suspension of licenses is set forth and governed by the terms of 28 M.R.S.A. § 401-403.

Question 4. Is the proposed (enclosed) Agreement legal and proper?

Answer: Yes, except as concerning the cancellation clause.

As noted in the answer to the second question, an agreement which purports to give the licensing authority, the power to cancel or terminate the use of one's premises for the sale of liquor, regardless of cause, is not permitted by the statute.

Any so-called Agency Agreement may be consummated between the agency store and the Commission, which governs method of operation, and which agreement is founded upon rules and regulations promulgated by the Commission pursuant to the terms of 28 M.R.S.A. § 153, sub§ 2 (P.L. 1975, c. 256).

Question 5. May we insist on amount of inventory and items carried for resale by the agent?

Answer: Yes.

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This appears to be strictly an administrative matter and since the Commission will be the sole supplier of liquor for agency stores, the Commission will have complete control over the amount of liquor to be sold to said stores.

Question 6. Does the Bureau or the Commission make the selection of the agent?

Answer: The Bureau, with the approval of the Commission.

  
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PHILLIP M. KILMISTER  
Assistant Attorney General

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