

MAINE STATE LEGISLATURE

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STATE OF MAINE

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36 M.R.S.A. 2062

Freedom of Access Tax Records

Inter-Departmental Memorandum Date October 25, 1976

To Thomas S. Squiers, Director

Dept. Bureau of Taxation

From Clifford B. Olson, Assistant

Dept. Attorney General

Subject Confidentiality of Sales Tax Registration

FACTS:

A Maine newspaper has requested that the Bureau of Taxation disclose to it whether or not two businesses which purport to collect and turn over sales taxes are, in fact, registered with the State of Maine as sellers. The newspaper intends to use the requested information as the basis for an exposé if the businesses are not registered.

QUESTION:

Does the confidentiality provision of the Sales and Use Tax Law (36 M.R.S.A. §2062) prohibit the State Tax Assessor from disclosing whether a certain business is registered as a seller under the same act?

ANSWER:

THE STATE TAX ASSESSOR MAY NOT DISCLOSE WHETHER OR NOT A CERTAIN BUSINESS IS REGISTERED AS A SELLER UNDER THE SALES AND USE TAX LAW.

REASONING:

36 M.R.S.A. §2062 provides that

[t]he records and files of the Tax Assessor respecting the administration of [the Sales and Use Tax Law] shall be confidential and privileged, and neither the Tax Assessor nor any employee engaged in the administration of [said law] or charged with the custody of any such records or files shall divulge or disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person. . . [emphasis supplied].

This provision is dispositive of the instant question, notwithstanding

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the fact that 36 M.R.S.A. §1754, which generally requires registration of sellers, specifically provides that "[f]or each place of business the Tax Assessor shall issue a registration certificate which shall be conspicuously displayed at such place." The argument has been advanced that, because of the latter provision, the fact that a person is or is not registered as a seller has become a matter of public record and, consequently, an absurd result would follow if the Bureau of Taxation withheld that information on the basis of its being "confidential". However, both provisions were enacted simultaneously, and the legislature must therefore be presumed to have intended both to be operative. Laws of Maine of 1951, c. 250 (1951)

Moreover, the provisions are not necessarily contradictory. The legislature may well have intended that the fact of registration be public, but that the information be conveyed only through the medium of conspicuous display at the selling place. This method would provide ready knowledge to the seller's customers and to Bureau of Taxation enforcement agents, presumably the parties most concerned with the seller's status, while relieving the Bureau of Taxation of the administrative burden of answering inquiries regarding registration status. Also, the appearance of compromise of the confidentiality of the entire sales tax return would be avoided.

This approach would also not hamper enforcement of the Sales and Use Tax Law by preventing public assistance in the detection process. If a concerned citizen is not satisfied by checking the seller's place of business for "conspicuous display" of a registration certificate, he need only notify the Bureau of Taxation, which will investigate the seller's status.

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This interpretation does not conflict with the Maine freedom of access statute, which specifically excludes from the definition of "public records" those "records that have been designated confidential by statute". 1 MRSA §402. Consequently, I conclude that the confidentiality provision must be read literally with the result that the State Tax Assessor may not disclose the requested information.


Assistant Attorney General

CBO:spa .

cc: Joseph E. Brennan, Attorney General
R. L. Halperin, state Tax Assessor