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Taxation Delegation of Inventory Tax

36 M.R.S.A. § 455

Me. Const. Art. IX, § 9

Me. Const. Art. IX, § 8

STATE OF MAINE

Municipalities' Taxing Powers

Inter-Departmental Memorandum Date February 2, 1977

To John P. O'Sullivan, Commissioner

Dept. Finance and Administration

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject Inventory Tax

This responds to your request for an opinion on legislation relating to the inventory tax.

QUESTION:

May the Legislature grant the right to all municipalities to levy a personal property tax at each municipality's option upon those categories of personal property formerly subject to state property taxation under 36 M.R.S.A. § 455?

ANSWER:

The Legislature may grant municipalities the right to levy an optional personal property tax upon those categories of property formerly subject to tax under 36 M.R.S.A. § 455, but only if that property is not assessed as part of any state, county or special district property tax.

REASONING:

Me. Const. Art. IX, § 9

Me. Const. Art. IX, § 9 prohibits the Legislature from surrendering or suspending its power to tax. Section 9, however, does not constitute an absolute bar to legislative delegation of taxing authority. Rather, the Supreme Judicial Court has held that the Legislature may grant municipalities the right to tax, Opinion of the Justices, 159 Me. 420, 425-26 (1963), although such grants will be construed strictly. See City of Auburn v. Paul, 110 Me. 192, 202-03 (1912). In Opinion of the Justices, 159 Me. 420 at 425-26, the court held that the Legislature could delegate to municipalities the authority to levy excise and business taxes. Although the court also stated that the Legislature could not delegate to municipalities the right to levy property taxes, it excepted from this rule "taxes for municipal . . . purposes." 159 Me. 420, at 425, quoting Opinion of the Justices, 146 Me. 239, 248 (1951) [passage quoted and discussed in this opinion, infra]. The constitutional bar to certain local option property taxes lies not with Art. IX, § 9, but rather with Art. IX, § 8.

Me. Const. Art. IX, § 8

Me. Const. Art. IX, § 8 unequivocally requires property taxes to "be apportioned and assessed equally, according to the just value thereof . . ." Although on more than one occasion the Supreme Judicial Court has stated that property taxes, or property tax exemptions,

John P. O'Sullivan, Commissioner

Page 2

February 2, 1977

enacted at the option of a particular municipality violate Art. IX, § 8, the court in these decisions was focusing on taxes which were to be assessed as part of the state property tax. See Opinion of the Justices, 159 Me. 420 (1963); Brewer Brick Co. v. Brewer, 62 Me. 62 (1873). The provisions of Art. IX, § 8 do not operate in a vacuum, but rather only apply within a specific taxing jurisdiction. Thus a local option property tax which is assessed and apportioned independently of any state or county tax neither falls within the confines of the decisions noted above nor violates Art. IX, § 8.

The Supreme Judicial Court's concern with local option property taxes has focused on the inequity that such taxes will create between taxpayers in different municipalities. See Opinion of the Justices, 161 Me. 182, 208 (1965); 62 Me. 62, at 74. If municipality A enacts an optional property tax on inventory to be assessed as part of the state property tax, while municipality B does not enact such a tax, taxpayers owning inventory in municipalities A and B will not be assessed equally. Since the state property tax must be assessed and apportioned equally between all taxpayers in the state, Art. IX, § 8 will be violated if taxpayers in only selected municipalities pay a state property tax on their inventory. However, if a local option property tax is not assessed as part of the State property tax, but is assessed and apportioned equally solely within a particular municipality, Art. IX, § 8 will not be violated. The provisions of Art. IX, § 8 apply only to the particular taxing jurisdiction which is subjected to the burdens of a tax. If a local option property tax is assessed and apportioned throughout the state, then such a tax will result in unequal assessments. If an optional property tax is assessed only within a particular municipality, and has no relation to the State property tax, then such a local option tax will be constitutional.

Opinion of the Justices, 146 Me. 239 (1951) further supports this position. The court in that case held that an act imposing a separate property tax on the unorganized territory violated Art. IX, § 8. The court, however, added the following exceptions.

Subject to the right to levy taxes for municipal and county purposes and to exceptions . . . permitting the assessment of special local taxes for special local purposes based upon local benefits, any and all taxes assessed upon real and personal property by the State must be assessed on all of the property in the State on an equal basis while that provisions of the Constitution remains unchanged. [emphasis added]
146 Me. 239, at 248; quoted in Opinion of the Justices, 159 Me. 420, 425 (1963) (holding that, in the context of a state property tax, local option property taxes violate Art. IX, § 8.)

John P. O'Sullivan, Commissioner
Page 3
February 2, 1977

Although the court cited no cases approving "taxes for municipal and county purposes," it did cite two cases which upheld the assessment of special purpose local taxes. Hamilton v. Portland Pier Site District, 120 Me. 15 (1921); Inhabitants of Sandy River Plantation v. Lewis and Maxcy, 109 Me. 472 (1912). In Hamilton, the Supreme Judicial Court upheld a tax imposed on a special port district (comprising the cities of Portland and South Portland), reasoning that when "the benefit and burden of taxation are reasonably proportionate" the provisions of Art. IX, § 8 are satisfied. 120 Me. 15, at 21. The Supreme Judicial Court, therefore, has upheld the constitutionality of special purpose local taxes and has excepted taxes for municipal purposes from the requirement that taxes must be assessed on all property in the state.

Note: Since a local option property tax cannot be assessed as part of the state property tax, a municipality would be prohibited from off-setting its state tax obligations by applying to those obligations the revenues collected through its optional tax. For example, pursuant to 36 M.R.S.A. § 451 (Supp. 1976) municipalities must collect a state property tax. If municipalities were authorized to enact at their option a local property tax on inventories, the municipality would still be required to meet its state tax obligation. The municipality could not lower the mill rate of the state tax, by enacting an optional tax on inventories.

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