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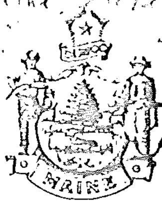
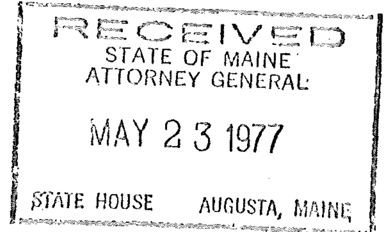
Vending Machine Sales LD 1355



TEL. (207) 289-2076

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
BUREAU OF TAXATION
AUGUSTA, MAINE 04333



RECEIVED
STATE OF MAINE
ATTORNEY GENERAL
MAY 23 1977
STATE HOUSE AUGUSTA, MAINE

May 20, 1977

The Honorable Thomas M. Teague
House of Representatives
Legislative Post Office
State House
Augusta, Maine 04333

Re: Constitutionality of L.D. 1355

Dear Representative Teague:

You have asked whether L.D. 1355, "AN ACT Regarding the Sales Tax for Sales Made Through Vending Machines", if enacted into law, would violate the constitutional mandates of equal protection. U.S. Const., Amend. XIV, § 1; Maine Const., Art. I, § 6-A. Our opinion is that the provisions of this bill would not violate these constitutional requirements.

If L.D. 1355 were enacted, sales for resale through vending machines would be treated as taxable "retail sales" when made to persons who derive more than 50% of their gross receipts through such resale. The resale to the ultimate consumer would then become tax-exempt. On the other hand, sales for resale through vending machines would continue to be tax-exempt sales when made to persons who derive 50% or less of their gross receipts through such resale. The resale to the ultimate consumer would thus continue to be a taxable "retail sale." L.D. 1355 purports to recognize the inability of so-called "automatic retailers" to collect sales tax in other than five cent increments by providing for a different method of taxation for certain of such retailers. As a result, retailers as a whole would be classified into two groups - those persons deriving more than 50% of their gross receipts from sales through vending machines and all other sellers, including those persons who derive 50% or less of their gross receipts from sales through vending machines.

A legislative classification of persons, although discriminatory, does not violate equal protection if that classification is based upon a reasonable difference fairly related to the object of the legislation. Union Mutual Life Insurance Co. v. Emerson, 345 A.2d 504, 507-508 (Me. 1975). Therefore, if the legislature could

reasonably differentiate between the class of persons deriving more than 50% of their gross receipts from sales through vending machines and the class containing all other sellers, the bill would not violate equal protection.

The classification appears to be a two-level process. The first level recognizes the difference between persons who sell through vending machines and those who do not (i.e. that the former are incapable of recovering sales tax from the purchaser in other than five cent increments, which increments could provide a small additional profit to the seller but could conceivably price the seller's product out of the market). This difference is explicitly stated in the bill's statement of fact and is rationally related to the difference in tax treatment proposed in the bill.

The second level is the classification of persons making sales through vending machines into two groups, based upon such sales as a percentage of the person's total gross receipts. While the 50% cut-off appears to be arbitrary, the legislature could rationally conceive that the vast majority of persons making sales through vending machines derive either a very large or a very small percentage of their gross receipts from such sales. Under this rationale, borderline cases would be minimal, and the 50% cut-off would serve, in practise, only to separate sellers who sell exclusively through vending machines from general retailers who have a few vending machines as a small part of their total operation. For the former group, the different method of taxation proposed in the bill can be rationally justified since their inability to pass on the sales tax to the ultimate consumer without increasing their sales price by more than the amount of the tax would produce a substantially greater economic burden because of their presumably greater volume of sales through vending machines. On the other hand, the legislature might rationally conclude that, for sellers deriving 50% or less of their gross receipts from sales through vending machines, such sales generally constitute such a small proportion of total gross receipts that the benefits accruing to those sellers from the different method of taxation would be outweighed by the administrative burden of separately accounting for "ordinary" and vending machine sales. Therefore, since a rational basis for the proposed differentiation can be conceived, this office is of the opinion that L.D. 1355, if enacted into law, would not violate the constitutional guarantee of equal protection.

Sincerely,

Clifford B. Olson
Assistant Attorney General

CBO:gr
cc: Attorney General