

# MAINE STATE LEGISLATURE

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Tax Exemption of Schools and Commercial Activity  
36 MRSA § 1760(16)

STATE OF MAINE

Inter-Departmental Memorandum Date June 28, 1977

To Thomas Squiers, Director Dept. Bureau of Taxation  
State Tax Division  
From Clifford B. Olson, Asst. Atty. Gen. Dept. Attorney General  
Subject Sales Tax Status of Brunswick Apartments

FACTS:

The Brunswick Apartments, consisting of approximately 90 apartment units in five separate buildings, were bought by Bowdoin College in 1973 as a hedge against anticipated housing demands resulting from increased enrollment. Enrollment has not expanded beyond the 1973 level, but Bowdoin students have been allowed to occupy apartments as units became available with the result that approximately one-third of the units are now occupied by students.

QUESTION:

Are purchases by Bowdoin College of tangible personal property for use in the Brunswick Apartments totally or partially exempt from Maine sales tax?

ANSWER:

IF AN APARTMENT COMPLEX OPERATED BY A SCHOOL CAN REASONABLY BE SUBDIVIDED INTO INDEPENDENT HOUSING ACTIVITIES, SALES OF TANGIBLE PERSONAL PROPERTY TO THE SCHOOL FOR USE IN MAINTAINING THOSE ACTIVITIES IN WHICH MORE APARTMENT UNITS ARE OCCUPIED BY STUDENTS THAN BY THE GENERAL PUBLIC ARE EXEMPT FROM THE MAINE SALES TAX.

REASONING:

36 MRSA § 1760(16) provides a sales tax exemption for "schools" as follows (Bowdoin College is assumed to meet the definition of "schools" therein contained):

No tax on sales . . . shall be collected upon . . . [s]ales to . . . schools . . . excepting sales . . . in activities which are mainly commercial enterprises.

Three theories of exemption under this section have been advanced: 1) that the apartment complex should be entirely exempt; 2) that a pro-rata exemption based upon the ratio of student-occupied units to total units should be applied to the whole complex; 3) that certain of the five separate apartment buildings should be exempt.

First, notwithstanding the fact that the Brunswick Apartments were bought with the intent of providing future living space for students, approximately two-thirds of the units are currently rented

Sales Tax Status of Brunswick Apartments

June 28, 1977

Page two

to the general public, presumably at competitive rates. Assuming that the units are of equal size, the plain language would seem to require that a majority of units be used for education-related activity in order for the exemption to apply.<sup>1/</sup> Consequently, the apartment complex as a whole is, at present, unquestionably a "mainly commercial enterprise" and therefore not tax-exempt.

Second, a pro-rata exemption appears to be inconsistent with the language of section 1760(16). "[A]ctivities which are mainly commercial enterprises" suggests that each "activity" is to be treated as a whole, with exemption depending upon the predominant nature - commercial or educational - of the activity. The pro-rata result could be approached by treating each apartment unit as a separate activity. However, the individual units within one apartment building cannot reasonably be considered to constitute separate activities because of their common physical location and consequent sharing of facilities.

Third, while the activity involved is arguably the entire Brunswick Apartment complex, a valid argument can be made that each of the five apartment buildings constitutes a separate activity. This argument would be reinforced by a showing that each building is capable of functioning as a separate entity and that Bowdoin College is treating each building as a separate activity (for example, designating certain buildings exclusively for dormitory use and others for rent to the general public). Further, such a result would be in accord with the apparent purpose of the exemption - to relieve schools from taxation insofar as their activities are directly related to their educational purposes. Consequently, I conclude 1) that Bowdoin College may be exempted from sales tax on the entire Brunswick Apartment complex whenever the complex as a whole loses its character as a mainly commercial activity by renting more units to students than to the general public and 2) that a building or group of buildings in the complex may be sufficiently independent from the remaining buildings to constitute a separate activity for the purpose of applying the "mainly commercial enterprise" test.

CBO:gr

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<sup>1/</sup> "Mainly" has been defined as "principally", "chiefly" and "in the main" and interpreted to be comprised of an amount greater than 50% McGill v. Baumgart, 288 N.W. 799, 802, 233 Wis. 86 (1939)