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New Hampshire Commuter Tax Credits LD 1698

STATE OF MAINE

Inter-Departmental Memorandum Date July 18, 1977

To John P. O'Sullivan, Commissioner Dept. Finance and Administration
From Stephen Wessler, Assistant Dept. Attorney General - Taxation Div.
Subject Effect of L.D. 1698 on New Hampshire Commuter Tax case

You have asked me to discuss the effect of L.D. 1698 on the New Hampshire Commuter Tax case and to comment on whether the case could be resolved by the next legislative session. In early April of this year, the Attorney General's office brought a legal action against the State of New Hampshire on behalf of all Maine taxpayers who paid the New Hampshire Commuters Tax between July 1970 and March 1975. The Attorney General's office is seeking return to Maine taxpayers of approximately \$3,000,000.

Between July 1970 and December 1974, the Maine Bureau of Taxation gave its citizens a credit on the Maine income tax for taxes paid to New Hampshire pursuant to the commuters tax. Because Maine citizens received this credit, they actually suffered no economic loss because of the New Hampshire tax. However in 1975, after the United States Supreme Court declared the New Hampshire tax unconstitutional, the Bureau of Taxation ceased giving credits to Maine taxpayers. Thus, Maine citizens who paid the commuters tax for the period January 1, 1975 through March 19, 1975 suffered an out of pocket loss, in that they paid two state income taxes on the same income.

The 1975 taxpayers, who suffered an economic loss of approximately \$120,000, clearly suffered a legally cognizable injury. The 1975 taxpayers, therefore, have standing to bring this action. The legal standing of taxpayers who paid the New Hampshire tax on the previous years (1970 through 1974), however, is questionable. The Attorney General's office believes that the attempt to recover the \$120,000 paid to New Hampshire in 1975, has a much greater chance of success than does the attempt to recover for the previous years.

L.D. 1698, by extending a credit to the 1975 taxpayers, will seriously impair our chances of recovering the \$120,000 paid by Maine taxpayers in 1975. The effect of L.D. 1698 will be to place the 1975 taxpayers in the same legal position with respect to standing as the taxpayers for the previous years are in. Although L.D. 1698 does not affect our claims for recovery of taxes paid prior to 1975, L.D. 1698 does adversely affect the part of our case with the best chance of success.

Our advice at this point, both from our own attorneys and from our New Hampshire retained counsel, is that the case will go directly to the New Hampshire Supreme Court. If the case is reported directly to the Supreme Court, we may receive a decision during the next Maine

Effect of L.D. 1698 on New Hampshire Commuter Tax case

July 18, 1977

Page two

legislative session. Since the case will likely be argued on stipulated facts, with only legal issues in controversy, hopefully we can obtain a relatively quick resolution of the case. Moreover, it is possible (although this is not clear at this point) that we will not have grounds for appeal from the New Hampshire Supreme Court to the United States Supreme Court.

Although we must prevail on a number of different legal issues if we are to recover any monies paid to New Hampshire, we have a reasonable chance of recovery of the \$120,000 paid in 1975. Moreover, we would hope (although it is not at all certain) to have a decision from the New Hampshire Supreme Court sometime during the next year.