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Potato Tax Application
36 M.R.S.A. 4561 et seq
36 M.R.S.A. 4562-4

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

November 6, 1978

Honorable Luman Mahaney
Easton
Maine 04740

Re: Payment of Potato Taxes.

Dear Representative Mahaney:

This is in response to your oral request of November 2, 1978, for an opinion as to whether potatoes bought pursuant to the federal diversion program now proposed in Aroostook County are subject to the potato tax provided for in 36 M.R.S.A. § 4561, et seq. These potatoes are subject to such tax.

It is my understanding from conversation with you and representatives of the Federal government that payment will be made to growers at a per pound rate for "diversion" of potatoes for use as livestock feed.

Title 36 M.R.S.A. § 4569 provides for payment by a shipper of potatoes of a tax per hundredweight of potatoes purchased, sold or shipped. The tax rate is established by 36 M.R.S.A. § 4565 which provides that the tax shall be paid on all potatoes raised in the State of Maine except for those potatoes retained by a grower for seed or for home consumption. The terms "shipper" and "shipment" are defined by Title 36 M.R.S.A. § 4562.6 and 36 M.R.S.A. § 4562.7; a shipper may charge one-half of the tax to the person from whom the shipper acquired the potatoes. See Title 36 M.R.S.A. § 4568.

The crucial term in determining the applicability of the potato tax is the definition of "potatoes." Title 36 M.R.S.A. § 4562.4 provides:

"'Potatoes' shall mean and include all potatoes, whether graded or ungraded, including all potatoes sold for processing into food; but shall not include potatoes sold for processing into starch unless such potatoes are sold under a federal diversion program and paid for as grade potatoes."

This language, when given the plain meaning of its terms, does not provide an exemption for potatoes sold as part of a federal diversion program for livestock feed.

The applicability of the potato tax to such potatoes is supported by the legislative history of Title 36 M.R.S.A. § 4562.4. This section was enacted in its present form by P.L. 1971, c. 428.* Public Laws of 1971, c. 428 was first introduced to the Legislature as L.D. 1436. As first introduced, L.D. 1436 made no change in the then existing definition of potatoes, namely:

"Potatoes shall mean and include all potatoes of the grades as recommended by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture and such other grades as may from time to time be promulgated by the Department of Agriculture of the State of Maine and all potatoes sold for processing into food for human consumption in any form other than starch. The records of the Department of Agriculture of the State of Maine of the grades recommended by said Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture shall be prima facie evidence of such grades."

L.D. 1436 was subsequently submitted to the Legislature in new draft as L.D. 1751. The new draft provided as follows:

"'Potatoes' shall mean and include all potatoes, whether graded or ungraded, including all potatoes sold for processing into food. Potatoes shall not include potatoes under a federal diversion program or potatoes sold for processing into starch."
(emphasis supplied)

Had L.D. 1751 been enacted as proposed, the answer to your question would be clearly in the negative for the federal diversion program.

* Although other parts of § 4562 have been amended, sub-§ 4 remains as it was enacted at that time by P.L. 1971, c. 428.

However, L.D. 1751 was amended by Senate Amendment A (S-211, 1971) to reflect the language of Title 36 M.R.S.A. § 4562.4 as it currently exists. The Statement of Fact for Senate Amendment A to L.D. 1751 indicated that the amendment was "to provide that grade potatoes under a federal diversion program would be subject to the tax, even if such potatoes are sold for starch production, other potatoes being sold for starch production being untaxable," (emphasis supplied)

In addressing the proposed amendment, Senator Harding of Aroostook told his fellow Senators that:

"I am putting on this amendment at the request of some people who are concerned with the potato industry in Aroostook County. It seems that there has been some question about whether the potato tax law would apply when the potatoes are sold for starch and are used in a diversion program, under a federal diversion program. This amendment which I hope to offer is an attempt to clarify that, and the purpose of the amendment would be to provide that grade potatoes under a federal diversion program would be subject to the tax. That is the reason why I would like to reconsider it and that would be the effect of the amendment." (emphasis supplied) Legislative Record, Senate, June 1, 1971, at 3411.

The amendment was adopted and the bill ultimately enacted as amended by Senate Amendment A, Document No. S 211. The language of the definition as enacted, supported by the legislative history, would indicate that the exemption contemplated by section 4562.4 was for potatoes used in making starch. Where potatoes which were to be used in making starch were part of a federal diversion program, they were to be subject to the tax. Where potatoes were used for some other purpose, they would be subject to the potato tax under the general language regardless of the existence of a federal diversion program, since the legislative intent of the enactment was to include potatoes sold in a federal diversion program under the potato tax law.

I hope the preceding analysis has been helpful to you. If you should have any further questions, please let me know.

Sincerely,



SARAH REDFIELD
Assistant Attorney General

SR/ec