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Maine Potato Tax Liability
36 M.R.S.A. § 4567

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

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

December 5, 1978.

Edwin Plissey
Executive Director
Maine Potato Commission
Agricultural Center
Box 71
Presque Isle, Maine 04769

Re: Liability for the Maine Potato Tax.

Dear Ed:

This is in response to your letter of November 9, 1978, in which you requested an opinion as to the applicability of the Maine Potato Tax Law, Title 36 M.R.S.A. § 4561, et seq., to certain persons engaged in producing and shipping potatoes. Specifically, you have inquired as to the liability for payment of the potato tax of a person who maintains his residence or headquarters in another state; who has no business office in Maine; but who owns a farm, grows, and stores potatoes in Maine, and who transports potatoes in his own trucks from Maine (presumably to his out-of-state location).* Such a nonresident shipper is liable for payment of the State potato tax provided that he does not retain the potatoes for seed or home consumption, but rather sells them for purposes other than processing into starch.

The tax liability of a nonresident grower/shipper is defined by the terms of Title 36 M.R.S.A. §§ 4561-4572, which provisions establish a tax rate for all potatoes raised in this State except potatoes retained by the grower for seed purposes or for home consumption, Title 36 M.R.S.A. § 4565.

* For purposes of this opinion, the person you have described will be referred to as a "nonresident grower/shipper."

The method of reporting and computation of the tax are established pursuant to Title 36 M.R.S.A. § 4567 which provides, in pertinent part, that:

"Every shipper of potatoes, as defined in section 4562, shall file an application with the State Tax Assessor (State Director of Property Taxation). . . which shall contain the name under which such shipper is transacting business within the State, the place or places of business and location of the loading and shipping places and agents of the shipper;. . . The State Tax Assessor (State Director of Property Taxation) will then issue a certificate to the shipper and no shipper shall sell or ship any potatoes, as defined in section 4562, until such certificate is furnished as required by this section." (emphasis supplied)

After having obtained the appropriate certificate from the State Director of Property Taxation, a shipper must keep records of "all purchases, sales and shipments of potatoes" which records shall show the quantity of potatoes "received, sold or shipped by him during the preceding calendar months," Title 36 M.R.S.A. § 4569 (emphasis supplied). Each shipper must file reports with the Director of Property Taxation and is required to pay a tax per hundredweight upon any particular lot or quantity of potatoes reported as "purchased, sold or shipped," Title 36 M.R.S.A. § 4569; see also Title 36 M.R.S.A. § 4566.*

The tax is levied on the purchase, sale or shipment of potatoes, which are defined as follows:

"'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," Title 36 M.R.S.A. § 4562.4.

* Where a shipper purchases potatoes, he may collect from the seller of those potatoes half of the assessed tax per hundredweight, which tax may be deducted from the purchase price; see Title 36 M.R.S.A. § 4568. This section would not appear to be applicable to the situation which you have described.

The tax on such potatoes is based upon the amount received, sold or shipped, See Title 36 M.R.S.A. § 4569. The term "shipment" is defined as:

"'Shipment' shall be deemed to take place when the potatoes are located within the State in the car, boat, truck, or other conveyance in which the potatoes are to be transported," 36 M.R.S.A. § 4562.6.

The shipper becomes responsible for reporting the shipment and paying tax to the State. The term "shipper" is defined as:

"'Shipper' for the purposes of this chapter, shall mean any person, partnership, association, firm or corporation engaged in the business of any of the following:

"A. Agent or broker, by selling or distributing potatoes in commerce for or on behalf of growers or others, or by negotiating sales of potatoes in commerce for or on behalf of the seller or the purchaser, respectively;

"B. Dealer, by purchasing potatoes in commerce for resale to other than directly to consumers;

"C. Processor, as defined in subsection 5;

"D. Grower, only when selling potatoes to anyone other than the parties set forth in paragraphs A, B or C." Title 36 M.R.S.A. § 4562.7. (emphasis supplied)

A nonresident grower/shipper falls within the scope of the definition of "shipper" in sub-§ 7.D* so long as he ultimately sells the potatoes

* The definition of "shipper" was amended in 1975 by Chapter 554 of the Public Laws of that year. Prior to that time, "shipper" had, for many years, with some slight variations, been defined as "any person, partnership, association, firm or corporation engaged in the shipping of potatoes OR transporting his own potatoes, whether as owner, agent or otherwise, to other than a licensed shipper, or engaged in the processing of potatoes into food for human consumption in any form other than starch," (Title 36 M.R.S.A. § 4562.4 as appearing in the Revised Statutes of 1964). The legislative history of the amendment in 1975 does not indicate any reason for the change in definition. See generally L.D. 1798 and House Document 750. While the nonresident grower/shipper would have perhaps been more clearly covered by the definition as it formerly existed, he is nevertheless covered by the current definition regardless of what the purpose may have been for the amendment.

to anyone other than an agent, dealer or processor.* Reading the definition of shipper together with the other sections of the potato tax statute indicates that the tax is levied on the hundredweight of potatoes shipped, although responsibility to report the shipment and pay the tax is not incurred until the sale by the grower/shipper.

The potato tax is clearly intended to be placed on potatoes raised in Maine and to be based upon the receipt, sale or shipment of these potatoes. The liability for payment rests with the shipper of the potatoes, and is, accordingly, contingent upon sale of the potatoes in the situation you have described.

The fact that the sale of the potatoes takes place outside of the State of Maine does not alter the liability of a nonresident grower/shipper. Generally the taxation power is limited to personalty and property which is within the State or subject to its jurisdiction.** The fact that the final transaction making the person liable for the Maine potato tax may take place outside of this State does not necessarily lessen the State's taxing power. See, generally, 84 C.J.S. Taxation § 11.

The United States Supreme Court has addressed the issue of the applicability of certain state income tax provisions to transactions within a state where the exaction of the tax is contingent upon events occurring outside the state, State of Wisconsin v. J. C. Penney Company, 311 U.S. 435 (1940). The Court analyzed the issue by indicating that the test is

"whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return," J. C. Penney, supra, at 444.

The Court found that the privilege of doing business in the State of Wisconsin was sufficient to support the tax in question and that

* Where a nonresident grower/shipper does sell to an agent, dealer or processor, such agent, dealer or processor becomes liable for the payment of the tax.

** The statute defining the personal jurisdiction of the state courts indicates that the transaction of any business within the state will establish such jurisdiction as will "the ownership, use or possession of any real estate situated in this State," Title 14 M.R.S.A. § 704-A.2.A, § 704-A.2.C.

"The state has not given the less merely because it has conditioned the demands of the exaction upon happenings outside its own borders. The fact that a tax is contingent upon events brought to pass without the state does not destroy the nexus between such a tax and transactions within a state for which the tax is an exaction." Id., 311 U.S. 435, 445.

Compare, also, Buscaglia v. Bowie, 139 F.2d 294 (1st Cir., 1943) where the court found a Puerto Rican molasses tax similar to the Maine potato tax, to be applicable where contracts and shipment were in Puerto Rico and sale was outside.

The tax in the present case is an excise tax based on the privilege of raising Maine potatoes. The purpose of the tax is to benefit the State by providing certain funds for improvement and promotion of the Maine potato industry, Title 36 M.R.S.A. § 4561. All persons who raise, sell, ship or otherwise distribute "Maine potatoes" benefit from the imposition of this tax and the functions of the Maine Potato Commission, Title 36 M.R.S.A. § 4571. The nexus between the tax and the State of Maine exists because of the location of the production, the benefits derived from the function of the Maine Potato Commission, a State agency, as well as because of the name "Maine potatoes." See, generally, Title 36 M.R.S.A. § 4561 and State of Maine v. Vahlsing, Inc., 147 Me. 417 at 427-431. So long as this is the case, it appears that the analysis in the United States Supreme Court decision in J. C. Penney would be applicable. The nonresident shipper/grower derives as much benefit from the tax as does a resident shipper. The facts that the definition of "shipper" in Title 36 M.R.S.A. § 4562.7 incorporates the requisite of selling potatoes and that the sale does not occur in Maine do not alter the liability of a nonresident grower/shipper for the payment of the potato tax for all potatoes raised in and shipped from the State of Maine that are not exempt. To construe the definitional and assessment sections to treat a nonresident shipper/grower differently would lead to a result which would not reasonably have been within the contemplation of the Legislature. (See, generally, Ballard v. Edgar, 268 A.2d 884 at 885 (Me., 1970) as to the principle of statutory construction requiring avoidance of a result not within contemplation of the Legislature.)

I hope this information has been helpful to you. If you should require further advice, please feel free to contact me.

Sincerely,



SARAH REDFIELD

Assistant Attorney General

SR/ec