

# MAINE STATE LEGISLATURE

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80-123  
Steve

# STATE OF MAINE

Inter-Departmental Memorandum Date August 5, 1980

To John R. Stevens, Supervisor, Feed & Fertilizer Reg. Div. of Regulations  
from Jeffrey Frankel, Assistant

Dept. Agriculture, Food & Rural Resou  
Dept. Attorney General

Subject Fertilizer Tax Rate

This will confirm my oral advice to you concerning the change in the fertilizer tax rate effected by P.L. 1979, c. 672, § 65. You have orally inquired whether this increase applies to fertilizer sold during the one-year period ending June 30, 1979. We conclude that it does not.

Title 36 M.R.S.A. § 4441 generally requires that on or before September 1 of each year sellers of mixed fertilizer file a statement with the State Tax Assessor declaring the tonnage of sales made by them "during the twelve months preceding July 1st of the current year." Until the enactment of P.L. 1979, c. 672, § 65, Section 4441 levied a fee on such sales at the rate of 10 cents per ton. Payment of this fee must accompany the statement.

The sole change made to § 4441 by P.L. 1979, c. 672, § 65 was the substitution of "12¢" for "10¢" in the statutory language. The effective date of this change, pursuant to Me. Const. Art. IV, pt. 3, § 3, is July 3, 1980--after the taxable sales period, but before the due date for payment.

Your request raised two issues:

(1) Does the rate increase apply to sales made from July 1, 1979 through June 30, 1980 - before the effective date of the rate change? In other words, is the rate increase retroactive?

(2) If the legislation does purport to raise the tax rate retroactively, is such action constitutional?

This office researched both issues extensively. Although retroactive application of § 65 would not be unconstitutional if the Legislature so intended (issue #2), we are unable to state with certainty that either the text of the law or its legislative history evinces such an intent (issue #1). In such circumstances, we feel that we must give the taxpayer the benefit of the doubt.

Accordingly, the tax payment which accompanies the statement of sales due September 1, 1980 should include a tax payment calculated at the rate of 10 cents per ton, the old rate. The new rate, 12 cents per ton, will first apply to sales reported on the statement due September 1, 1981.

We have on file in our office a detailed research memorandum which discusses these issues in more detail. Should you wish to examine this, or if you have any questions, please feel free to call. A copy of this memorandum has been forwarded to the Senior Assistant Attorney General who represents the Bureau of Taxation.

  
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JEFFREY FRANKEL  
Assistant Attorney General

JF/ec

cc: Clayton Davis  
Stephen Diamond, Esq.  
Jerome Matus, Esq.