

MAINE STATE LEGISLATURE

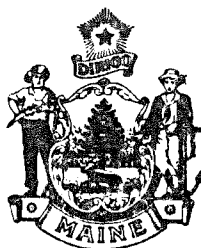
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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 14, 1981

Honorable Thomas M. Teague
State House
Augusta, Maine 04333

Honorable Bonnie Post
State House
Augusta, Maine 04333

Dear Senator Teague and Representative Post:

This will respond to your inquiry regarding L.D. 735 which, if enacted, would repeal 36 M.R.S.A. § 1760(8), thereby subjecting gasoline and motor fuels to Maine's sales and use tax. Your specific question is whether the revenues generated from the imposition of that tax on fuel sold for use in vehicles operated on the highways would be restricted to Highway Fund use. We conclude that those revenues would be limited to highway uses, pursuant to art. IX, § 19 of the Maine Constitution.

Art. IX, § 19 provides as follows:

Section 19. All revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for the propulsion of such vehicles shall be expended solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a state department having jurisdiction over such highways and bridges and expense for state enforcement of traffic laws and shall not be diverted for any purpose, provided that these limitations shall not apply to revenue from an excise tax on motor vehicles imposed in lieu of personal property tax. (Emphasis added)

To answer your question, it is necessary to determine whether the proceeds from the application of the sales and use tax to gasoline would constitute revenues derived from an excise relating to fuels used for the operation of vehicles on the public highways.

In resolving this matter, we must be guided by the directive of our Law Court that the language of a constitutional provision is to be interpreted "in accordance with the intention with which it was used, if that result may be accomplished by giving words their ordinary and usual significance." Portland Pipe Line Corp. v. Environmental Imp. Com'n., 307 A.2d 1, 12 (Me. 1973), quoting from Opinion of the Justices, 142 Me. 409, 415 (1947). Looking then to the ordinary meaning of the term "excise," it is defined by Webster's New International Dictionary as "an inland duty or impost levied upon the manufacture, sale or consumption of commodities. . . ." Similarly, Black's Law Dictionary includes within its definition of excise "a tax laid on . . . [the] sale or consumption of commodities." Since the Law Court has expressly held Maine's sales and use tax to be an excise tax, Bangor-Hydro Electric Company v. Johnson, 225 A.2d 371, 374 (Me. 1967), it is clear that it must also be deemed to be an "excise" as that term is used in § 19. Thus, to the extent that the sales and use tax is applied to "fuels used in the propulsion of . . . vehicles [on public highways]," it is an excise relating to those fuels, and the revenue from that excise must be expended for highway use.

To justify a contrary conclusion, it would seem necessary to argue that § 19 was intended to reach only those excise taxes specifically directed at activities involving gasoline, and was not designed to encompass generally applicable sales and use taxes which apply to gasoline as well as other commodities. While certain historical factors might be invoked to support such a proposition,^{1/} we have found no evidence that this was, in fact, the intent of the framers of § 19. Furthermore, acceptance of the argument would require a strained reading of the constitutional provision, which expressly extends its coverage to "all revenues derived from . . . excises" relating to funds used for the propulsion of vehicles on the public highways.^{2/}

^{1/} For example, at the time Maine first adopted a prohibition against diverting highway funds, excise taxes were customarily limited to specific activities or commodities. Thus, it might be argued that the framers of § 19 were thinking solely in terms of this type of excise. In the final analysis, however, this argument requires speculation about how the framers of § 19 would have viewed a generally applicable excise tax, and accordingly, it does not afford a basis for ignoring the rather clear language of the constitutional provision.

^{2/} While generally giving § 19 a broad reading, see Opinion of the Justices, 155 Me. 125, 139 (1959), the Law Court has construed it as limited to taxes "imposed on highway users." Portland Pipe Line Corp. v. Environmental Imp. Com'n., *supra*, at 13. Since the burden of the sales and use tax, as applied to motor vehicle fuels, would fall on highway users, the tax satisfies the criterion articulated in Portland Pipe Line.

For the reasons stated above, then, it is our opinion that the portion of the sales and use tax proceeds derived from the sale and use of fuels used for the propulsion of vehicles on the public highways must be expended in accordance with art. IX, § 19 of the Maine Constitution.

Sincerely,

Stephen L. Diamond

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Deputy Attorney General

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