

MAINE STATE LEGISLATURE

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

January 20, 1982

Honorable Joseph E. Brennan
Governor of Maine
State House
Augusta, Maine 04333

Dear Governor Brennan:

I am writing in response to the questions you raised with respect to L.D. 709, An Act to Increase Eligibility Levels for the Elderly Householders Tax and Rend Refund Act. Your questions may be stated as follows:

1. Since L.D. 709 appropriates \$100,000 to the Elderly Low Cost Drug Program for fiscal year 1981-1982, are program benefits retroactive and, if so, to what date?
2. May the Bureau of Taxation establish an application period for this new class of applicants prior to the effective date of L.D. 709?

Briefly stated, it is our opinion that L.D. 709^{1/} does not operate retroactively for purposes of the Elderly Low Cost Drug Program. Thus, the new class of eligible participants established by L.D. 709 will be reimbursed only for those drug expenses incurred after they have been certified to participate in the program, and such certification may not take effect until March 10, 1982, the effective date of the bill. Finally, we are of the opinion that the State Tax Assessor may establish an

1/ L.D. 709 was enacted as P.L. 1981, c. 535 at the Third Special Session of the 110th Legislature. For purposes of convenience, we shall refer to the measure by the legislative document number.

application period for this new class of applicants prior to March 10, 1982, even though the certification will not be operative prior to that date.

Discussion

L.D. 709 amends the Elderly Householders Tax and Rent Refund Act [36 M.R.S.A. §§ 6101-6119] by increasing the amount of household income that otherwise eligible persons may earn in order to qualify for tax or rent refunds. Since these income standards are statutorily required to be used to determine eligibility for the Low Cost Drug Program [36 M.R.S.A. §§ 6161-6164; 22 M.R.S.A. § 254], the effect of the act is to make both programs available to a greater number of Maine residents.

L.D. 709 amends the household income standards starting with income earned in calendar year 1980. As a result of the late effective date of the bill,^{2/} a question has arisen as to whether it ought to be interpreted as requiring the retroactive payment of benefits to those persons who are newly eligible to participate in the Elderly Low Cost Drug Program on the basis of their 1980 household income. The critical language appears in section 3 of L.D. 709: "This act is effective for refunds granted in 1981 for the 1980 calendar year." (emphasis supplied). While it is clear that section 3 applies to tax and rent refunds, the question is whether the Legislature intended that it also apply to the drug program.

We do not believe that the language of section 3 evidences a legislative intent to require the retroactive payment of drug benefits.^{3/} By its plain terms, section 3 deals with refunds

^{2/} Part of the difficulty lies with the fact that L.D. 709 was introduced during the First Regular Session of the 110th Legislature but was not enacted until the Third Special Session. As a result of its late enactment, program applications will not be submitted at the usual times.

^{3/} In considering any question of retroactivity, we must be guided by the principle of statutory construction that an enactment is presumed not to be retroactive unless there is a clear manifestation of legislative intent to the contrary expressed in or necessarily implied from the language of the statute. Coates v. Employment Security Commission, 406 A.2d 94 (Me. 1979); Opinion of the Justices, 370 A.2d 654 (Me. 1977).

granted in 1981 for expenditures made in 1980. This language clearly fits the Elderly Householders Tax and Rent Refund Act which is designed to give a refund for an expenditure made in the preceding year. By contrast, the Elderly Low Cost Drug Program is not a refund program. Rather, it is a subsidy program of an ongoing nature through which the State underwrites, in whole or in part, the cost of authorized drug purchases made by program participants during their period of eligibility. Thus, the language of section 3 simply does not fit the Elderly Low Cost Drug Program as that program is designed by statute to operate.

In reaching our conclusion, we are also influenced by the fact that to read section 3 as applicable to the drug program would appear to lead to an absurd result. Construed literally, section 3 would require the Department of Human Services to pay refunds for drug expenses incurred in 1980 by new program participants, but not for the same expenses incurred by the same individuals between January 1, 1981 and March 9, 1982.^{4/} We can discern no possible reason why the Legislature would authorize reimbursement for drug purchases made more than 15 months before the effective date of the act but deny it for more recent purchases. This, however, would be the result of section 3 were it applied to the drug program.

We think it also relevant to point out that applying section 3 to the Elderly Low Cost Drug Program would require the creation of a new and cumbersome administrative procedure. Since rebates would have to be made to drug program participants, applicants would have to submit to the Department of Human Services copies of all receipts for drug purchases made in 1980. The seller would have to remit the purchase price to the buyer and the Department would have to reimburse the seller.^{5/} This practice would represent a dramatic departure from the way the drug program has been administered since its inception. As we mentioned earlier, the program has been used to help defray current expenses. It has never been used to pay rebates and it is not designed to reimburse

4/ This stems from the fact that section 3 applies only to 1980 expenditures. Since the bill does not take effect until March 10, 1982, even if section 3 were applicable, there would be no authority to reimburse for purchases made after calendar year 1980 but before the bill's effective date. Without going into detail, we would note that because the Elderly Household Tax and Rent Refund Program operates in a totally different fashion, this problem does not arise when section 3 is applied to that program.

5/ Direct reimbursement to the buyer of the price paid would not be feasible because the drugs generally cost less when purchased through the program.

drug expenses incurred prior to the time the participants were certified as eligible. The substantial administrative machinery which would be required if section 3 were applied to the drug program serves to reinforce our conclusion that L.D. 709 was not intended to authorize the retroactive payment of drug benefits.

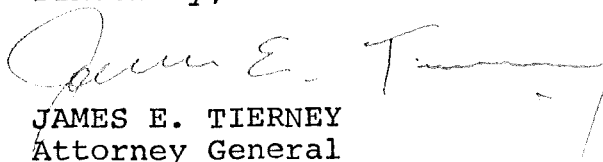
Finally, we recognize that section 2 of the bill provides an appropriation for both programs for fiscal year 1981-1982, and, thus, it could be argued that the inclusion of this appropriation indicates an intent to provide for retroactive payment of drug benefits. We do not find this argument persuasive. Based upon our inquiries, it is by no means clear that the drug appropriation of \$100,000 would be sufficient to cover all retroactive drug expenses. Accordingly, it is possible that the additional appropriation for fiscal year 1981-82 is designed to cover the additional costs which will be incurred by the newly eligible participants between March 10, 1982 and June 30, 1982. Since there is no statement as to the purpose of the appropriation, we do not believe it can be viewed as indicating the clear legislative intent necessary to construe L.D. 709 as making the drug program benefits available retroactively.

In light of the foregoing, it is our opinion that the newly eligible drug program beneficiaries may participate in the program on March 10, 1982, or as soon thereafter as their applications are approved. Their eligibility for benefits will run from that date until the end of their period of entitlement.

Turning to your second question, we know of no reason why the Bureau of Taxation may not establish an application period for the new class of applicants, prior to March 10, 1982. We reiterate, however, that these applicants may not participate in the drug program until that date.

I hope this is of assistance to you.

Sincerely,


JAMES E. TIERNEY
Attorney General

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