

# MAINE STATE LEGISLATURE

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THE MAINE STATE  
SALES AND USE TAX LAW

A Comprehensive Analysis And Discussion Of The Principal Provisions Of The Act And Of Questions Arising Out Of Early Administrative Rulings Announced By The Bureau Of Taxation In Behalf Of The State Tax Assessor

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# THE MAINE SALES AND USE TAX LAW

## A GENERAL DISCUSSION OF ITS PURPOSE, PROVISIONS, ADMINISTRATION AND PROBABLE EFFECTS ON THE COMMERCIAL, INDUSTRIAL AND PROFESSIONAL ECONOMY OF THE STATE

### INTRODUCTION

WITH PASSAGE OF THE ACT HERE DISCUSSED, THE STATE OF MAINE EMBARKED ON A METHOD OF REVENUE RAISING WHICH HAS BEEN UTILIZED BY MANY OF THE OTHER STATES, GENERALLY WITH SATISFACTORY RESULTS.

THE INITIAL PERIOD, INVOLVING THE ADMINISTRATION OF A NEW TAX MEASURE, USUALLY INVOLVES SOME DIFFICULTIES. TO SOME EXTENT THESE DIFFICULTIES WILL DEPEND ON THE CLARITY OR LACK OF CLARITY OF THE LANGUAGE USED IN THE ACT. IN THIS CASE THERE ARE SOME EVIDENCES OF CONFUSION, DOUBTLESS TO BE CHARGED AGAINST THE SHARP DIVISION BETWEEN PRO AND CON GROUPS WHICH PERSISTED UP TO THE DAY THIS MEASURE FINALLY PASSED. MANY AMENDMENTS WERE OFFERED AND SOME APPROVED. THE LEGISLATIVE SESSION HAD BEEN PROLONGED CONSIDERABLY. BUT IN SPITE OF THESE BACKGROUND FACTS THE MEASURE SHOULD SERVE ITS PURPOSE REASONABLY WELL IF ITS ADMINISTRATION IS CHARACTERIZED BY REASONABLE SKILL.

FORTUNATELY, THE MAN WHO WILL PRESIDE OVER ADMINISTRATION, ERNEST H. JOHNSON, STATE TAX ASSESSOR, IS THE TYPE OF OFFICIAL WHO BELIEVES IN REASONABLE ADMINISTRATION AND COURTEOUS HANDLING OF THE PEOPLE AND PROBLEMS INVOLVED. HIS ATTITUDE MAY BE COUNTED ON TO HELP WITH THE NECESSARY ADJUSTMENTS.

THE PROPOSAL FOR A SALES TAX, AS WAS TO BE EXPECTED, AROUSED EMPHATIC OPPOSITION BY MANY RETAIL MERCHANTS AND BY SOME SELLERS WHO ARE "RETAILERS" ONLY BY STATUTORY DEFINITION. A SMALL PART OF THE BUYING PUBLIC, SPURRED BY AN ACTIVE CAMPAIGN, ALSO VOICED ITS OPPOSITION. ON THE SCORE OF THE EXPERIENCE OF OTHER STATES, HOWEVER, MOST OF THE OBJECTIONS RAISED WERE OF RELATIVELY LITTLE FORCE AS COMPARED WITH THE FAR MORE POTENT OBJECTIONS WHICH COULD BE OFFERED AGAINST A STATE INCOME TAX, WHICH WAS THE MOST PROBABLE OF VARIOUS TAX SYSTEMS THAT MIGHT HAVE BEEN ADOPTED TO MEET THE VITALLY URGENT REQUIREMENTS OF THE STATE OF MAINE IF IT WAS NOT TO SUSPEND MANY OF ITS NORMAL GOVERNMENTAL FUNCTIONS.

THE SALES TAX, AS ADOPTED HERE, IS LARGELY A "VOLUNTARY" TAX. THE LIBERAL EXEMPTIONS COVERING FOOD AND DOMESTIC FUEL SALES SHOULD MAKE IT POSSIBLE FOR THE AVERAGE LOW-INCOME FAMILY TO MAINTAIN ITS PREVIOUS LIVING STANDARDS WITH LITTLE, IF ANY, IMPAIRMENT.

THE USE TAX, IF SUSTAINED, WILL AFFORD INVALUABLE PROTECTION TO MAINE MERCHANTS WHO IN PAST YEARS HAVE LOST MANY MILLIONS OF DOLLARS' WORTH OF DESIRABLE BUSINESS TO OUT-OF-STATE SELLERS. INEVITABLY, IN A HIGHLY COMPETITIVE RETAIL MARKET SUCH AS EXISTS HERE, THIS TENDS TOWARD GENERAL IMPROVEMENT IN THE VOLUME AND QUALITY OF THE STATE'S RETAIL ACTIVITIES. THE MAINE CONSUMER SHOULD GET BETTER SERVICE AT HOME AND ON THIS BASIS IS NOT APT TO HAVE ANY REASONABLE CAUSE FOR COMPLAINT.

IN MOST RESPECTS THE LAW APPEARS BASICALLY SOUND AS A REVENUE MEASURE. THE MOST SERIOUS OBJECTION TO ITS PROVISIONS ARISES IN CONNECTION WITH THE LEVY IT IMPOSES ON PURCHASES OF INDUSTRIAL MACHINERY, EQUIPMENT AND MAINTENANCE MATERIALS. MOST STUDENTS OF MAINE'S ECONOMY SEEM TO AGREE THAT THE STATE'S MOST URGENT NEED TODAY IS A LIBERAL ENLARGEMENT OF ITS AGGREGATE INDUSTRIAL OPERATIONS. "PAYROLLS ARE COMMUNITY WEALTH IN ACTION". THE STATE'S MOST PROSPEROUS AREAS ARE THOSE WHICH ENJOY A BACKLOG OF PAYROLLS BASED ON INDUSTRIAL EMPLOYMENT. IT IS NOT UNLIKELY THAT MANY MANUFACTURERS MAY REGARD A 2 PER CENT TAX ON THEIR NECESSARY PURCHASES OF PRODUCTION EQUIPMENT AS AN UNREASONABLE BURDEN AND THAT THE RESULT MAY BE TO CHECK INDUSTRIAL EXPANSION AND CURTAIL PAYROLLS. IF THIS OCCURS SUITABLE AMENDMENT OF THE LAW MAY BE EXPECTED.

THE FIRST VERSION OF ANY LAW IS APT TO CALL FOR REVISION. FORTUNATELY, THE AMERICAN SYSTEM MAKES FULL PROVISION FOR CHANGE WHEN EXPERIENCE SHOWS THE NEED FOR IT. THIS LAW IS IN MOST RESPECTS REASONABLE AND FAIR. IT MERITS THE WHOLESOME AND VOLUNTARY SUPPORT OF THE BUSINESS PEOPLE OF MAINE WHO ARE GENUINELY INTERESTED IN THE GENERAL WELFARE OF THE STATE AND ITS PEOPLE.

NOTE: ADDITIONAL COPIES OF THIS AND THE REMAINING PAGES OF THE ACTIVATOR WILL BE AVAILABLE FOR USE BY MEMBERS UP TO THE LIMIT OF THE EDITION. AS THE SUPPLY WILL BE LIMITED, REQUESTS SHOULD BE FORWARDED PROMPTLY.



## THE MAINE SALES AND USE TAX LAW

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A COMPREHENSIVE ANALYSIS OF ITS PROVISIONS AND THE REQUIREMENTS FOR COMPLIANCE, WITH A BRIEF REVIEW OF SOME POINTS NEEDING CONSTRUCTION

THIS ACT WAS PASSED BY THE MAINE LEGISLATURE AT ITS 1951 SESSION. ENACTED AS AN "EMERGENCY" MEASURE, IT BECAME EFFECTIVE AS OF MAY 3, 1951, THE DATE ON WHICH IT WAS APPROVED BY THE GOVERNOR.

THE REQUISITE EMERGENCY CLAUSE APPEARS IN THE PREAMBLE OF THE ACT.

THE ACT CONSTITUTES CHAPTER 250 OF THE PUBLIC LAWS OF 1951. IT IS IDENTIFIED AS CHAPTER 14-A OF THE REVISED STATUTES OF MAINE. IT MAY BE FORMALLY CITED AS THE "SALES AND USE TAX LAW". (SEC. 1).

IT ESTABLISHES TWO NEW TAXES, EFFECTIVE AS OF JULY 1, 1951. ONE, IDENTIFIED AS THE "SALES TAX", LEVIES A CHARGE ON ALL TRANSACTIONS INVOLVING THE SALE AT RETAIL OF ALL "TANGIBLE PERSONAL PROPERTY", SUBJECT TO EXCEPTIONS SPECIFIED. THE OTHER, CALLED THE "USE TAX", EFFECTS A LEVY ON THE "USE" WITHIN THE STATE OF MAINE, OF SUCH PROPERTY ON WHICH NO SALES TAX HAS BEEN PAID ALTHOUGH, IF BOUGHT IN MAINE AFTER JUNE 30, 1951, IT WOULD HAVE BEEN SUBJECT TO THE SALES TAX. (THIS PART OF THE LAW IS DESIGNED TO COVER OUT-OF-STATE PURCHASES, BUT ALSO AFFORDS THE STATE A MEANS OF COLLECTING FROM THE USER IN CASES WHERE THE SELLER IN MAINE HAS FAILED TO COMPLY WITH THE LAW.)

IT APPEARS THAT THE STATE CAN DEMAND PAYMENT OF THE USE TAX FROM A BUYER WHO, ALTHOUGH HE DEALT WITH A MAINE SELLER, HAS FAILED TO OBTAIN A RECEIPT OR OTHER SATISFACTORY EVIDENCE SHOWING PAYMENT OF THE SALES TAX, IF ANY WAS DUE ON THE TRANSACTION.

THESE TWO TAXES ARE MUTUALLY EXCLUSIVE. ON PROOF OF THE PAYMENT OF EITHER ON ANY TRANSACTION DEEMED TAXABLE, THE STATE HAS NO BASIS FOR DEMANDING PAYMENT OF THE OTHER.

RESPONSIBILITY FOR COLLECTING THE SALES TAX RESTS ON THE RETAIL SELLER. LIABILITY FOR PAYMENT OF THE USE TAX RESTS ON THE USER OF THE TANGIBLE PERSONAL PROPERTY INVOLVED. IN MOST CASES THIS LIABILITY WILL ARISE IN CONNECTION WITH SALES TO MAINE BUYERS MADE BY SELLERS OUTSIDE THE STATE.

APPLICATION OF THE USE TAX WILL BE MOST COMMON AND EFFECTIVE IN CONNECTION WITH LARGE SALES, PARTICULARLY LARGE ITEMS SUCH AS AUTOMOBILES, MOTOR TRUCKS, HEAVY-DUTY AGRICULTURAL AND HIGHWAY EQUIPMENT, DOMESTIC APPLIANCES, ETC. IT IS LIKELY TO INCREASE IN-STATE BUYING, WITH DIRECT BENEFIT TO THE RETAILERS OF MAINE.

DEFINITIONS. THE TERM "RETAIL SALE" AS USED IN THE ACT MEANS ANY SALE OF TANGIBLE PERSONAL PROPERTY MADE IN THE ORDINARY COURSE OF BUSINESS, FOR CONSUMPTION OR USE OR FOR ANY PURPOSE OTHER THAN FOR RESALE IN THE FORM OF TANGIBLE PERSONAL PROPERTY. INSTALLMENT SALES, CONDITIONAL SALES, INSTALLMENT-LEASE SALES, ETC., ARE INCLUDED. ISOLATED SALES, NOT MADE IN THE USUAL COURSE OF THE SELLER'S USUAL BUSINESS, ARE EXCLUDED. SALES OF MATERIALS, PARTS, COMPONENTS, ETC., WHICH ARE TO BE USED IN MANUFACTURING OTHER TANGIBLE PERSONAL PROPERTY WHICH WILL BE TAXED ON SALE ARE EXCLUDED. SO ARE SALES OF CONTAINERS AND PACKAGING MATERIALS FOR USE IN PACKING, PACKAGING OR SHIPPING TANGIBLE PERSONAL PROPERTY PRODUCED OR SOLD BY THE PURCHASERS OF SUCH ITEMS.

THE TERM "USE" MEANS ACTUAL USE OR CONSUMPTION OR STORAGE OF TANGIBLE PERSONAL PROPERTY WITHIN THE STATE OF MAINE IF SUCH PROPERTY'S SALE WOULD HAVE BEEN TAXABLE IF IT HAD OCCURRED IN MAINE AND IF, IN THE CASE OF STORAGE, THE PROPERTY IS NOT BEING HELD WAITING ON SHIPMENT TO SOME POINT OUTSIDE OF MAINE.

NOTE 1. THE LAW PROVIDES NO BASIS FOR THE COLLECTION OF BOTH TAXES ON ONE AND THE SAME TRANSACTION.

NOTE 2. NEITHER TAX IS LEVIED ON THE TANGIBLE PERSONAL PROPERTY INVOLVED. THE SALES TAX IS LEVIED ON THE TRANSACTION INVOLVED IN MAKING A RETAIL SALE OF SUCH PROPERTY, WHEN SUCH SALE IS NOT EXEMPTED BY PROVISION OF THE LAW. THE USE TAX IS LEVIED ON THE USE, CONSUMPTION OR STORAGE OF SUCH PROPERTY UNDER THE CIRCUMSTANCES OUTLINED IN SEC. 4 OF THE ACT. THE LAW DOES NOT GIVE THE STATE A LIEN ON THE PROPERTY IN EITHER CASE.

NOTE 3. SERVICE, IN ITSELF, IS NOT TAXABLE. MANY VARIETIES OF SERVICE, HOWEVER, INVOLVE DELIVERY TO THE CUSTOMER OF TANGIBLE PERSONAL PROPERTY IN SOME FORM. IN SOME CASES THE VALUE OF SUCH PROPERTY MAY BE GREATER THAN THE CHARGE FOR SERVICE RENDERED. IN OTHER CASES THE VALUE OF THE PROPERTY WILL BE NOMINAL. THIS WILL INVOLVE NO COMPLICATIONS IN TRANSACTIONS THAT PERMIT OF SEPARATE AND DISTINCT PRICES BEING PUT ON THE TWO FACTORS. IN CASES WHERE ESTABLISHED CUSTOM REQUIRES THAT A SINGLE PRICE BE PUT ON THE COMBINATION OF PROPERTY AND SERVICE DETERMINATION OF THE TAXABLE PRICE (IF ANY) WILL DEPEND ON ADMINISTRATIVE OR JUDICIAL CONSTRUCTION OF THE LAW.

#### WHAT IS A "RETAIL SALE"?

THE SIZE OF A TRANSACTION IS NOT A FACTOR IN DETERMINING WHETHER IT IS OR IS NOT IN LAW A RETAIL SALE. IF MERCHANDISE IS BOUGHT FOR RESALE THE SALE IS NOT A TAXABLE RETAIL TRANSACTION; BUT THE BURDEN OF PROVING THAT ANY SALE WAS NOT A RETAIL TRANSACTION RESTS ON THE SELLER. IN ORDINARY LANGUAGE, THE LAW VIEWS ANY SALE WHICH IS MADE TO AN ULTIMATE USER OR CONSUMER AS A RETAIL SALE UNLESS IT IS EXEMPTED BY THE SPECIFIC PROVISIONS OF THE ACT. THE CONSIDERATION FOR THE SALE MAY BE MONEY, BAR-TER, EXCHANGE OR TRANSFER OF TITLE BY ANY OTHER MEANS. (SEE SEC. 2).

#### MEANING OF "SALE PRICE".

"SALE PRICE" IS DEFINED AS "THE TOTAL AMOUNT OF THE SALE OR LEASE OR RENTAL PRICE, AS THE CASE MAY BE, OF A RETAIL SALE, INCLUDING ANY SERVICES THAT ARE A PART OF SUCH SALE, VALUED IN MONEY, WHETHER RECEIVED IN MONEY OR OTHERWISE, INCLUDING ALL RECEIPTS, CASH, CREDITS AND PROPERTY OF ANY KIND OR NATURE, AND ALSO ANY AMOUNT FOR WHICH CREDIT IS ALLOWED BY THE SELLER TO THE PURCHASER, WITHOUT ANY DEDUCTION THEREFROM ON ACCOUNT OF THE COST OF THE PROPERTY SOLD, THE COST OF THE MATERIALS USED, LABOR OR SERVICE COST, INTEREST PAID, LOSSES OR ANY OTHER EXPENSES WHATSOEVER; PROVIDED, HOWEVER THAT DISCOUNTS ALLOWED AND TAKEN ON SALES SHALL NOT BE INCLUDED, AND 'SALE PRICE' SHALL NOT INCLUDE ALLOWANCES \*\*\*\*\* , OR THE PRICE OF PROPERTY RETURNED BY CUSTOMERS WHEN THE FULL PRICE THEREOF IS REFUNDED EITHER IN CASH OR BY CREDIT, NOR SHALL 'SALE PRICE' INCLUDE THE PRICE RECEIVED FOR LABOR OR SERVICES USED IN INSTALLING OR APPLYING OR REPAIRING THE PROPERTY SOLD, IF SEPARATELY CHARGED OR STATED. 'SALE PRICE' SHALL ALSO NOT INCLUDE THE AMOUNT OF ANY TAX IMPOSED BY THE UNITED STATES UPON AND WITH RESPECT TO RETAIL SALES WHETHER IMPOSED UPON THE RETAILER OR ON THE CONSUMER, EXCEPTING ANY MANUFACTURERS' OR IMPORTERS' EXCISE TAX; AND SHALL NOT INCLUDE TRANSPORTATION CHARGES SEPARATELY STATED, IF THE TRANSPORTATION OCCURS AFTER THE PURCHASE OF THE PROPERTY IS MADE."

NOTE 4. IN SOME RESPECTS THIS LANGUAGE IS DECIDEDLY OBSCURE. PROBABLY ITS MOST IMPORTANT ASPECT IS TO BE FOUND IN THE FACT THAT IN CONNECTION WITH RETAIL SALES OF AUTOMOBILES, TRUCKS, MANUFACTURING MACHINERY AND MANY OTHER TYPES OF EQUIPMENT, THE TAX ON RETAIL SALES MUST BE BASED ON THE FULL RETAIL PRICE OF THE ITEMS SOLD, WITHOUT ANY DEDUCTION FOR TRADE-INS, ETC. THE SAME PRINCIPLE APPLIES TO OTHER TYPES OF MERCHAN-

DISE ON WHICH TRADE-IN ALLOWANCES ARE CUSTOMARY. IT SHOULD NOT BE HELD APPLICABLE TO SALES OF "REPLACEMENT" OR "EXCHANGE" PARTS OR DEVICES IN CASES WHERE THE BUYER IS REQUIRED TO TURN IN A USED UNIT OF THE SAME TYPE FOR REBUILDING OR RECONDITIONING AND WHERE THE EXCHANGE UNIT CARRIES A DEFINITE ESTABLISHED PRICE. THIS, HOWEVER, IS A QUESTION FOR FORMAL CONSTRUCTION BY THE STATE.

THE QUESTION MAY ARISE AS TO WHETHER THE LEGISLATURE, BY STATUTORY DEFINITION, HAS THE POWER TO ABOLISH OR DISTORT COMMONLY ACCEPTED FACTS OR FACTS WHICH CONFORM WITH LONG-ESTABLISHED TRADE USAGE OR CUSTOM. IF A RETAIL SELLER CHOOSES TO SELL SOMETHING AT A LOSS BECAUSE THE ITEM IS SLOW-MOVING AND IF HE CAN ACCOMPLISH HIS OBJECTIVE BY OFFERING A HIGH TRADE-IN ALLOWANCE AND BILLING THE SALE AT ITS FULL NORMAL PRICE THE TAX WILL BE HIGHER THAN IT WOULD HAVE BEEN IF HE HAD SUBSTANTIALLY REDUCED THE SELLING PRICE (WHICH IN MOST CASES HE IS PRIVILEGED TO DO), KEEPING THE TRADE-IN ALLOWANCE AT A MINIMUM FIGURE.

NOTE 5. IN TRANSACTIONS INVOLVING SUCH ITEMS AS MACHINERY USED IN THE PRODUCTION OF SHOES, WIRE-BOUND BOXES, ETC., WHERE THE "BUYER" TAKES A LEASE GRANTING THE "RIGHT OF POSSESSION" AND AGREES TO PAY A PERIODIC RENTAL CHARGE AND/OR A ROYALTY ON PRODUCTION OR ON SALES OF WHATEVER IS PRODUCED UNDER SUCH LEASE, THE RENTALS, ROYALTIES, ETC. SO PAID ARE THE "PRICE" ON WHICH SALES TAX OR USE TAX MUST BE PAID, SUBJECT TO THE CONDITION THAT THERE FIRST MUST BE A RULING BY THE STATE TAX ASSESSOR TO THE EFFECT THAT THE LEASE OR CONTRACT INVOLVED IS DEEMED TO BE IN LIEU OF PURCHASE. (SEE SEC. 2, PARAGRAPH B).

#### SALES TAX - RATE APPLIED.

THE SALES TAX IS FIXED AT 2 PER CENT ON THE VALUE OF ALL TANGIBLE PERSONAL PROPERTY SOLD IN THE STATE OF MAINE AFTER THE EFFECTIVE DATE OF THE ACT. THE VALUE, FOR THE PURPOSE OF THE ACT, IS MEASURED BY THE ACTUAL SALE PRICE, SUBJECT TO CERTAIN SPECIFIED EXEMPTIONS. THE PRICE INCLUDES "ALL RECEIPTS, CASH, CREDITS AND PROPERTY OF ANY KIND ORNATURE", (SEC. 2) BUT DISCOUNTS ALLOWED AND TAKEN ON SALES ARE NOT INCLUDED. IT DOES NOT INCLUDE THE AMOUNT OF ANY RETAIL SALES TAX WHICH MAY BE IMPOSED BY THE UNITED STATES. IT DOES INCLUDE THE AMOUNT OF ANY FEDERAL EXCISE TAX IMPOSED ON MANUFACTURERS OR IMPORTERS.

TANGIBLE PERSONAL PROPERTY IS DEFINED AS "PERSONAL PROPERTY WHICH MAY BE SEEN, WEIGHED, MEASURED, FELT, TOUCHED, OR IN ANY OTHER MANNER PERCEIVED BY THE SENSES." BUT "RIGHTS AND CREDITS, INSURANCE POLICIES, BILLS OF EXCHANGE, STOCKS AND BONDS AND SIMILAR EVIDENCES OF INDEBTEDNESS OR OWNERSHIP" ARE NOT INCLUDED. (SEC. 2).

NOTE 6. WHILE A DOCUMENT WHICH CERTIFIES AN INDEBTEDNESS DOES NOT COME WITHIN THE DEFINITION, THE SALE OF A DOCUMENT WHICH TRANSFERS TITLE OR THE RIGHT TO POSSESS TANGIBLE PERSONAL PROPERTY WOULD BE EQUIVALENT TO THE SALE OF THE PROPERTY ITSELF.

NOTE 7. IT SHOULD BE NOTED THAT THE RETAILER MUST COLLECT THE TAX ON ALL TAXABLE SALES. NEITHER THE RETAILER NOR THE STATE WILL COLLECT A TAX ON EXEMPT SALES. ALSO, IT SHOULD BE NOTED THAT THE RETAIL DEALER, IN COLLECTING THE TAX ON HIS SALES, IS ACTING AS AN IMPLIED AGENT OF THE STATE OF MAINE. THE MONEY SO COLLECTED BELONGS TO THE STATE FROM THE TIME IT IS COLLECTED AND SHOULD BE TREATED AS A TRUST FUND.

NOTE 8. NON-RESIDENT SELLERS WHO SELL TO CONSUMERS IN MAINE ARE NOT AFFECTED BY THIS ACT. IF, HOWEVER, THEY WISH TO DO SO FOR THE CONVENIENCE OF THEIR CUSTOMERS, THEY MAY REGISTER AND GIVE SUCH BOND AS THE STATE TAX ASSESSOR MAY REQUIRE, IN WHICH CASE THEY MAY COLLECT THE SALES TAX. SEC. 7 OF THE LAW SAYS: "EVERY NON-RESIDENT SELLER OF TANGIBLE PERSONAL PROPERTY WHO MAKES SALES AT RETAIL IN THIS STATE SHALL REGISTER AS PROVIDED IN SECTION 6 \*\*\*\*", BUT INASMUCH AS THE



REQUIREMENT CLEARLY IS AN INVASION OF THE CONSTITUTIONAL RIGHTS OF MERCHANTS IN OTHER STATES THERE IS LITTLE PROSPECT OF ANY ATTEMPT TO ENFORCE IT.

WHAT IS A TAXABLE SALE? TO CREATE LIABILITY FOR THE SALES TAX THERE MUST BE AN ACTUAL SALE "AT RETAIL." THE THING SOLD MUST BE TANGIBLE; ALSO IT MUST BE PERSONAL PROPERTY, AS DISTINGUISHED FROM REAL PROPERTY, COMMONLY KNOWN AS "REAL ESTATE." IN MANY CASES THE DETERMINING FACTOR WILL BE THE LEGAL STATUS OF THE ITEM SOLD AS OF THE TIME OF THE SALE. MUCH TANGIBLE PERSONAL PROPERTY MERGES WITH AND BECOMES REAL PROPERTY. THE MATERIALS WHICH GO INTO THE CONSTRUCTION OF A DWELLING HOUSE ARE TANGIBLE PERSONAL PROPERTY AT THE TIME WHEN THEY ARE SOLD FOR USE IN THE BUILDING OPERATION. THEY BECOME REAL PROPERTY AS THEY ARE USED. IF THE HOUSE IS BEING BUILT FOR SALE, THE MATERIALS CLEARLY WERE BOUGHT FOR ULTIMATE RESALE IN THE FORM OF A HOUSE. BUT THEY WILL NOT BE-RESOLD UNTIL AFTER THEY HAVE LOST THEIR STATUS AS TANGIBLE PERSONAL PROPERTY. CONSEQUENTLY THEIR SALE IS NOT FOR PURPOSE OF RESALE UNDER THIS LAW, AND, THEREFORE, IS TAXABLE.

A CONTRACT TO SELL AT SOME FUTURE TIME IS NOT A SALE. SUCH CONTRACTS MADE BEFORE JULY 1, 1951, THE EFFECTIVE DATE OF THE SALES TAX, PROVIDED NO EXEMPTION FROM THE TAX WHERE SUCH SALES WERE COMPLETED AFTER THAT DATE.

SERVICE SALES ARE NOT TAXABLE WHERE THEY INVOLVE NOTHING MORE THAN PERSONAL EFFORT. TRANSACTIONS SOMETIMES DESIGNATED AS "SALES", IN WHICH ONE DEPARTMENT OF A CORPORATE ENTERPRISE DELIVERS PROPERTY TO ANOTHER DEPARTMENT OF THE SAME ENTERPRISE, ARE NOT SALES, BUT WHERE THE "SELLER" AND THE "BUYER" ARE SEPARATE CORPORATIONS, ALTHOUGH SUBSIDIARIES WHOLLY OWNED BY A THIRD CORPORATION, THERE IS A REAL CHANGE OF OWNERSHIP AND THE TRANSACTION MAY BE TAXABLE.

A SO-CALLED "CREDIT" SALE, EVIDENCED BY SUITABLE ENTRY ON THE BOOKS OF THE SELLER AND ACCOMPANIED BY DELIVERY OF THE PROPERTY TO THE BUYER OR THE STORAGE OF THE PROPERTY FOR ACCOUNT OF THE BUYER IS A COMPLETED SALE FOR TAX PURPOSES, REGARDLESS OF THE FACT THAT THE BILL MAY NEVER BE PAID.

THE SALE OF MACHINERY, EQUIPMENT, DEVICES, ETC., FOR USE IN MANUFACTURING OPERATIONS OR OF MAINTENANCE MATERIALS THEREFOR IS TAXABLE. THE SALE OF MATERIALS OF MANUFACTURE, WHICH ARE TO BE USED IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY, IS NOT A TAXABLE TRANSACTION, NOR IS THE SALE OF COMPONENTS WHICH ARE TO BE INCORPORATED IN TANGIBLE PERSONAL PROPERTY FOR RESALE.

INTERSTATE AND FOREIGN SALES WHICH ENJOY THE PROTECTION OF THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION ARE NOT SUBJECT TO ANY STATE TAX. BUT TANGIBLE PERSONAL PROPERTY COMING INTO THE STATE IN INTERSTATE OR FOREIGN COMMERCE, IF NOT SPECIFICALLY EXEMPTED, ESTABLISHES LIABILITY FOR THE USE TAX.

NOTE 9. IN THE CASE OF A LARGE INSTITUTION MAKING EXTENSIVELY VARIED SALES, THE TAX-PAYER'S LIABILITY IS APT TO BE AFFECTED TO A CONSIDERABLE EXTENT BY THE CARE WITH WHICH THE ACCOUNTING JOB IS DONE, PARTICULARLY IN CONNECTION WITH LARGE SALES. AS IS TRUE WITH MOST TAXES ON BUSINESS THE DETAILS OF LARGE TRANSACTIONS ARE APT TO BE INADEQUATE TO SUPPORT THE TAX REPORTS UNLESS ACCOUNTING DEPARTMENTS ARE ADVISED TO STUDY THE SPECIAL REQUIREMENTS CREATED BY THE LAW.

TAX BECOMES A PART OF THE PRICE.

THE SALES TAX, WHEN DETERMINED ON EACH TRANSACTION, BECOMES A PART OF THE PRICE TO THE BUYER. IT CONSTITUTES A SEPARATE ITEM, HOWEVER, ON THE BOOKS AND RECORDS OF THE SELLER. IN AN ACTION TO RECOVER THE AMOUNT OF THE SALE THE TAX SHOULD BE INCLUDED.

PRICE ON MULTIPLE-UNIT SALES.

WHERE SEVERAL ITEMS ARE SOLD TOGETHER IN A SINGLE TRANSACTION THE TAX MAY BE COMPUTED ON THE AGGREGATE AMOUNT OF THE SALE. IT WILL NOT BE PERMISSIBLE, HOWEVER, TO MERGE TWO ACTUALLY SEPARATE SALES FOR THE PURPOSE OF COMPUTING THE TAX.

## BREAKDOWN OF THE PRICE FOR TAX DETERMINATION.

THE FOLLOWING SCHEDULE APPLIES TO THE SALES TAX ONLY:

| <u>AMOUNT OF SALE PRICE</u>                                                                | <u>AMOUNT OF TAX</u> |
|--------------------------------------------------------------------------------------------|----------------------|
| \$ 0.01 TO \$ 0.24                                                                         | NO TAX               |
| .25 TO .74                                                                                 | 1 CENT               |
| .75 TO 1.24                                                                                | 2 CENTS              |
| ADD 1 CENT TAX PLUS THE ABOVE RATE FOR EACH 50 CENTS OR FRACTION THEREOF EXCEEDING \$1.24. |                      |

THE USE TAX IS COMPUTED AT 2 PER CENT OF THE TOTAL AMOUNT OF THE TRANSACTION.

THE "BREAKAGE" RESULTING FROM APPLICATION OF THE ABOVE TABLE IS TO BE RETAINED BY THE RETAIL SELLER AS COMPENSATION FOR MAKING THE TAX COLLECTION, REPORTING IT AND PAYING THE MONEY TO THE STATE. (SEE APPENDIX A).

## REGISTRATION OF SELLERS.

ALL SELLERS OF TANGIBLE PERSONAL PROPERTY (WHETHER MANUFACTURERS, WHOLESALERS, RETAILERS, COMMISSION MERCHANTS OR OTHERWISE) ARE REQUIRED TO REGISTER WITH THE STATE TAX ASSESSOR AND TO PAY A FEE OF ONE DOLLAR FOR EACH PLACE OF BUSINESS MAINTAINED WITHIN THE STATE. ON RECEIPT OF APPLICATION AND THE REQUIRED FEE THE STATE TAX ASSESSOR IS REQUIRED TO ISSUE TO THE APPLICANT A CERTIFICATE OF REGISTRATION FOR EACH SUCH ESTABLISHMENT. THIS CERTIFICATE MUST BE CONSPICUOUSLY DISPLAYED IN THE ESTABLISHMENT FOR WHICH IT HAS BEEN ISSUED.

## BURDEN OF PROOF.

THE BURDEN OF PROOF THAT ANY SALE WAS NOT A SALE AT RETAIL IS PLACED ON "THE PERSON WHO MADE IT" UNDER THE LANGUAGE OF THE ACT, BUT IT SEEMS THAT THE RETAIL SELLER IS ADEQUATELY PROTECTED IN ANY CASE WHERE, ACTING IN GOOD FAITH, HE ACCEPTS A SUITABLE CERTIFICATE FROM THE BUYER THAT THE PURCHASE IS BEING OR HAS BEEN MADE FOR RESALE.

## EXEMPTIONS FROM TAX.

THE ACT PROVIDES THAT NO TAX ON SALES, STORAGE OR USE SHALL BE COLLECTED IN CONNECTION WITH:

1. EXEMPTIONS BY CONSTITUTIONAL PROVISIONS. THIS LANGUAGE RELATES TO SALES WHICH CLASSIFY WITHIN THE SCOPE OF INTERSTATE COMMERCE, AND TO ANY SALES WHICH THE STATE IS PROHIBITED FROM TAXING BY LAWS OF THE UNITED STATES OR THE CONSTITUTION OF MAINE.
2. SALES TO THE STATE, TO ANY OF ITS POLITICAL SUBDIVISIONS, OR TO THE FEDERAL GOVERNMENT, OR TO ANY AGENCY OF EITHER.
3. FOOD PRODUCTS FOR HUMAN CONSUMPTION. FOOD PRODUCTS EXEMPTED ARE: CEREALS AND CEREAL PRODUCTS; MILK AND MILK PRODUCTS, OTHER THAN CANDY AND CONFECTIONERY, BUT INCLUDING ICE CREAM; OLEOMARGARINE; MEAT AND MEAT PRODUCTS; VEGETABLES AND VEGETABLE PRODUCTS; FISH AND FISH PRODUCTS; EGGS AND EGG PRODUCTS; FRUIT AND FRUIT PRODUCTS, INCLUDING PURE FRUIT JUICES; SPICES, CONDIMENTS AND SALT; SUGAR AND SUGAR PRODUCTS OTHER THAN CANDY AND CONFECTIONERY; COFFEE AND COFFEE SUBSTITUTES; TEA, COCOA AND COCOA PRODUCTS, OTHER THAN CANDY AND CONFECTIONERY.

NOT EXEMPTED ARE: SPIRITUOUS, MALT OR VINOUS LIQUORS; (BUT SALES OF SPIRITUOUS OR VINOUS LIQUORS MADE BY STATE STORES ARE EXEMPT); SOFT DRINKS, SODAS OR BEVERAGES THAT ARE ORDINARILY DISPENSED AT BARS OR SODA FOUNTAINS OR IN CONNECTION THEREWITH; MEDICINES, TONICS, VITAMINS AND PREPARATIONS IN LIQUID, POWDERED, GRANULAR, TABLET, CAPSULE, LOZENGE OR PILL FORM, SOLD AS DIETARY SUPPLEMENTS OR ADJUNCTS, EXCEPT ON A PHYSICIAN'S PRESCRIPTION; WATER, INCLUDING MINERAL BOTTLED AND CARBONATED WATERS AND ICE. ALSO, BEANS SERVED ON OR OFF THE PREMISES OF THE RETAILER; OR DRINKS OR FOOD, FURNISHED, PREPARED OR SERVED FOR CONSUMPTION AT TABLES, CHAIRS OR COUNTERS, OR FROM TRAYS, GLASSES, DISHES OR OTHER TABLEWARE PRO-

VIDED BY THE RETAILER. THE PRESUMPTION IS ESTABLISHED THAT THE SALE OF FOOD PRODUCTS ORDINARILY SOLD FOR IMMEDIATE CONSUMPTION ON OR NEAR THE PREMISES OF THE RETAILER IS A TAXABLE SALE UNLESS SUCH PRODUCTS ARE SOLD ON A "TAKE OUT" OR "TO GO" ORDER AND ARE ACTUALLY PACKAGED OR WRAPPED AND TAKEN FROM THE PREMISES.

4. MEDICINES. SALES ON A DOCTOR'S PRESCRIPTION ARE EXEMPT. OTHER SALES ARE NOT.
5. SALES OF MEALS IN SCHOOLS. WHETHER SERVED BY PUBLIC OR PRIVATE SCHOOLS, SCHOOL DISTRICTS, STUDENT ORGANIZATIONS OR PARENT-TEACHER ASSOCIATIONS AND WHETHER SOLD TO STUDENTS OR TEACHERS, ARE EXEMPT.
6. SEED, FEED AND FERTILIZER. SALES OF SEED, FEED AND FERTILIZER FOR USE IN AGRICULTURAL PRODUCTION ARE EXEMPT. SALES OF BAIT TO COMMERCIAL FISHERMEN ARE EXEMPT. SALES OF ANIMAL FEED TO BE USED FOR NON-AGRICULTURAL PURPOSES ARE TAXABLE AS ARE SALES OF BAIT FOR SPORT FISHING.
7. MOTOR VEHICLE FUEL. NOT TAXABLE. BUT AS TO ANY SUCH MATERIAL NOT USED ON THE HIGHWAYS, THE AMOUNT OF THE TAX SHALL BE DEDUCTED FROM ANY REFUND GRANTED.
- 7A. COAL, OIL, WOOD AND ALL OTHER FUELS EXCEPT GAS AND ELECTRICITY. SALES ARE EXEMPT FROM TAX WHEN USED FOR COOKING OR HEATING FOR DOMESTIC PURPOSES; OTHERWISE TAXABLE.
8. ALL CIGARS, TOBACCO AND CIGARETTES. SALES SUBJECT TO OTHER TAXES IMPOSED BY CH. 14 ARE EXEMPT.
9. SALES OF LIQUOR. SALES OF SPIRITUOUS AND VINOUS LIQUORS MADE BY STATE STORES ARE EXEMPT.
10. SALES OF RETURNABLE CONTAINERS. WHEN SOLD WITH CONTENTS OR WHEN RESOLD FOR REFILLING THE TRANSACTIONS ARE EXEMPT.
11. BIBLES AND OTHER BOOKS, LITERATURE AND UTENSILS OF WORSHIP, WHEN SOLD TO AND USED IN AND BY ESTABLISHED CHURCHES FOR PURPOSES OF RELIGIOUS INSTRUCTION AND PRAYER ARE EXEMPT.
12. PUBLICATIONS. SALES OF ANY PUBLICATION REGULARLY ISSUED AT AVERAGE INTERVALS OF NOT EXCEEDING THREE MONTHS ARE EXEMPT.
13. SALES TO HOSPITALS AND REGULARLY ORGANIZED CHURCHES OR HOUSES OF RELIGIOUS WORSHIP ARE EXEMPT, EXCEPT SUCH AS ARE MAINLY COMMERCIAL IN CHARACTER. THE SAME RULE APPLIES TO THE USE TAX.

NOTE 10. IN THE CASE OF FOOD PRODUCTS, IT SHOULD BE NOTED THAT ICE CREAM AND PURE FRUIT JUICES ARE NOT TAXABLE. WHETHER THE STATE WILL CONSTRUCT SHERBETS, ICES, ETC., AS EXEMPT ITEMS REMAINS TO BE DETERMINED. ALTHOUGH THEY ARE PRODUCED AND DISTRIBUTED THROUGH "ICE CREAM" CHANNELS, BUT THEY ARE NOT LITERALLY FORMS OF ICE CREAM. MANY FRUIT JUICES ON THE MARKET CONTAIN PRESERVATIVES WHICH REQUIRE SPECIAL LABELING. IN SUCH CASES THEY ARE NOT "PURE" UNDER THE FEDERAL LAW.

NOTE 11. THE SALE OF CONTAINERS, BOXES, CRATES, BAGS, CORES, TWINES, TAPES, BINDINGS, WRAPPINGS, LABELS AND OTHER PACKAGING AND PACKING MATERIALS WHEN SOLD TO PERSONS FOR USE IN PACKING, PACKAGING OR SHIPPING TANGIBLE PERSONAL PROPERTY PRODUCED OR SOLD BY THEM IS COVERED BY DEFINITION IN SEC. 2, PARAGRAPH 7 WHERE, BY DEFINITION, THE ACT SAYS THAT SUCH SALES ARE NOT SALES AT RETAIL. UNDER THE SPECIFIED CONDITION, THEREFORE, THESE SALES ARE EXEMPT. THIS, HOWEVER, DOES NOT EXEMPT FROM TAX SALES OF THE SPECIFIED ARTICLES WHEN THEY ARE SOLD FOR USE IN CONNECTION WITH REPAIR WORK ON REAL PROPERTY OR FOR USE BY THE CONSUMER WHO IS NOT A PRODUCER OR SELLER OF TANGIBLE PERSONAL PROPERTY.

NOTE 12. AUTHORITATIVE CONSTRUCTION OF THE PROVISION DEALING WITH "FUEL FOR

COOKING OR HEATING FOR DOMESTIC PURPOSES". THIS LANGUAGE CALLS FOR OFFICIAL CONSTRUCTION IN THE CASES OF RESIDENTIAL AND TRANSIENT HOTELS, APARTMENT HOUSES WHERE HEAT IS SUPPLIED, ETC., TO ASCERTAIN THE LEGISLATIVE INTENT IN USING THE EXPRESSION "FOR DOMESTIC PURPOSES".

NOTE 13. IN VIEW OF THE COMPLEX CHARACTER OF THIS ACT IT IS OBVIOUS THAT MANY NOW UNPREDICTABLE QUESTIONS WILL ARISE INVOLVING THE QUESTION OF THE TAXABILITY OF PARTICULAR TYPES OF TRANSACTIONS. MOST OF THESE QUESTIONS ARE APT TO ARISE OUT LARGE TRANSACTIONS WHERE THE AMOUNT OF POSSIBLE TAX INVOLVED IS SUCH AS TO LEAD TO ACTIVE DISPUTES. UNTIL MANY QUESTIONS ARE SETTLED BY FORMAL CONSTRUCTION IT SHOULD BE THE POLICY OF RETAIL MERCHANTS, WHEN IN DOUBT, TO COLLECT THE TAX, GIVE THE BUYER A RECEIPT AND SUBMIT THE PROBLEM TO THE STATE TAX ASSESSOR (ACTUALLY THE BUREAU OF TAXATION, STATE HOUSE, AUGUSTA, MAINE). TAX MONEY SO COLLECTED MAY THEN BE REFUNDED TO THE BUYER IN THE EVENT THE STATE HOLDS THAT NO TAX SHOULD HAVE BEEN COLLECTED. IN OTHER WORDS, INASMUCH AS THE LAW FIXES RESPONSIBILITY ON THE RETAIL SELLER, THE POLICY SHOULD BE TO GIVE THE STATE THE BENEFIT OF ANY DOUBT WHERE THERE IS NO DEFINITE ANSWER IN THE ACT OR THE EXISTING RULINGS.

#### COLLECTION OF THE SALES TAX.

(A) FROM THE RETAIL BUYER. ANY PERSON WHO BUYS TANGIBLE PERSONAL PROPERTY, THE SALE OF WHICH IS TAXABLE, IS REQUIRED TO PAY THE APPLICABLE TAX TO THE REGISTERED RETAIL DEALER WHO MAKES THE SALE. IF THE TRANSACTION IS FOR CASH THE TAX IS TO BE PAID AT THE TIME THE SALE IS MADE. IF CREDIT IS BEING EXTENDED, THE RETAILER IS PRIVILEGED TO ADD THE TAX TO THE ORIGINAL PRICE OF THE MERCHANDISE AND BILL THE TOTAL AMOUNT IN THE USUAL WAY. NO PURCHASER, HOWEVER, MAY BE REQUIRED TO PAY THE TAX TO ANY RETAIL SELLER WHO IS NOT REGISTERED, NOR HAS SUCH SELLER ANY RIGHT TO COLLECT THE TAX.

(B) FROM THE REGISTERED RETAIL DEALER. THE RETAILER IS REQUIRED TO FILE A REPORT WITH THE STATE TAX ASSESSOR (ACTUALLY THE BUREAU OF TAXATION, STATE HOUSE, AUGUSTA, MAINE) ON OR BEFORE THE FIFTEENTH DAY OF EACH MONTH, BEGINNING AUGUST, 1954, COVERING ALL SALES DURING THE PRECEDING CALENDAR MONTH OF TANGIBLE PERSONAL PROPERTY. THIS REPORT WILL BE MADE ON A TAX FORM PROVIDED BY THE BUREAU OF TAXATION. ON THE BASIS OF THIS REPORT THE AMOUNT OF TAX DUE TO THE STATE WILL BE DETERMINED, SUBJECT TO SUBSEQUENT AUDIT.

#### THE SUBSTANCE OF THE REPORT FORM IS AS FOLLOWS:

##### 1. AMOUNT OF GROSS SALES.

THIS ITEM IS TO INCLUDE ALL SALES, CASH OR CREDIT, OF TANGIBLE PERSONAL PROPERTY DURING THE PERIOD COVERED BY THE TAX RETURN. (THIS INCLUDES SALES FOR RESALE, SALES OF TAX-EXEMPT COMMODITIES AND SALES TO AGENCIES OR ORGANIZATIONS WHOSE PURCHASES ARE EXEMPT. IT DOES NOT INCLUDE SEPARATELY STATED CHARGES FOR LABOR OR SERVICE UTILIZED IN APPLYING OR INSTALLING GOODS SOLD. ALSO, IT DOES NOT INCLUDE THE FEDERAL TAX OF 20 PER CENT ON SALES OF FURS, LUGGAGE, COSMETICS AND JEWELRY. MONEY RECEIVED FOR PERSONAL SERVICES, RENTALS, SALES OF REAL ESTATE AND COLLECTIONS OF SALES TAX ARE NOT TO BE INCLUDED IN GROSS SALES. SALES UNDER 25 CENTS MUST BE INCLUDED.)

##### 2. AMOUNT OF SALES OF TAX-EXEMPT COMMODITIES.

##### 3. AMOUNT OF SALES FOR RESALE.

##### 4. AMOUNT OF SALES TO INSTITUTIONS OR AGENCIES EXEMPT FROM THE TAX.

##### 5. OTHER EXEMPTIONS AND ADJUSTMENTS.

##### 6. TOTAL OF DEDUCTIONS (ITEMS 2 TO 5 INCLUSIVE).

##### 7. BALANCE SUBJECT TO SALES TAX (LINE 1 LESS LINE 6.

8. AMOUNT OF SALES TAX (2 PER CENT OF LINE 7)

9. TOTAL OF PURCHASE PRICE OF ALL TANGIBLE PERSONAL PROPERTY NOT EXEMPT FROM TAX, PURCHASED DURING THE MONTH WITHOUT PAYMENT OF SALES TAX OR USE TAX WHEN SUCH PROPERTY WAS USED OR CONSUMED RATHER THAN RESOLD, OR DESTROYED IN THE PROCESS OF MANUFACTURE, OR USED AS A COMPONENT PART OF MANUFACTURED PERSONAL PROPERTY.

10. AMOUNT OF USE TAX (2 PER CENT OF LINE 9)

11. AMOUNT DUE TO BE REMITTED WITH THIS RETURN (TOTAL OF LINES 8 AND 10.)

FROM THIS FORM IT IS OBVIOUS THAT THE BUREAU OF TAXATION HOLDS THE RETAIL MERCHANT LIABLE FOR THE 2 PER CENT SALES TAX ON THE GROSS AMOUNT OF SALES WHICH ARE NOT SPECIFICALLY DESIGNATED AS EXEMPT BY THE LANGUAGE OF THE ACT.

WITH THIS VIEW THE MAINE STATE CHAMBER OF COMMERCE IS NOT IN AGREEMENT. THE CHAMBER HAS MADE A CAREFUL ANALYSIS OF THE RESULTS ACCRUING FROM APPLICATION OF THIS ADMINISTRATIVE THEORY. IT IS FORCED TO THE CONCLUSION THAT WHILE THE ACT AUTHORIZES THE RETAILER TO RETAIN THE "BREAKAGE" RESULTING FROM THE APPLICATION OF THE TAX SCHEDULE WHICH APPEARS IN SEC. 5 THE ACTUAL BREAKAGE, UNDER THE BUREAU'S INTERPRETATION, WOULD BE GENERALLY IN FAVOR OF THE STATE, AND PARTICULARLY SO IN THE CASE OF BUSINESS ENTERPRISES WHOSE SALES ARE CHIEFLY IN THE RANGE \$0.01 TO \$1.24. RETAILERS WHO WISH TO PROTECT THEIR OWN INTERESTS IN THIS RESPECT WILL HAVE TO MAKE THEIR TAX PAYMENTS UNDER FORMAL PROTEST UNTIL THIS QUESTION IS FINALLY DECIDED.

EFFECT OF THE USE TAX ON THE MAINE RETAILER

AS INDICATED BY THE FORM ALREADY SUMMARIZED, THE REGISTERED RETAILER IS REQUIRED TO REPORT ANY LIABILITY INCURRED FOR THE USE TAX. FOR CONVENIENCE A COMBINED FORM HAS BEEN SUPPLIED, ELIMINATING THE NECESSITY FOR TWO SEPARATE REPORTS. HOWEVER, INASMUCH AS THE NORMAL COURSE OF A RETAIL BUSINESS WILL BE SUCH THAT MOST PURCHASES WILL BE MADE ON A "FOR RESALE" BASIS, WITH THE TAX DULY COLLECTED ON THE GOODS AS TAXABLE SALES ARE MADE, THIS PART OF THE REPORT WILL BE BLANK IN MOST RETAIL RETURNS, EXCEPT IN CASES WHERE THE RETAILER ALSO IS ENGAGED IN OTHER ACTIVITIES WHICH INVOLVE TAXABLE USE, CONSUMPTION OR STORAGE OF TANGIBLE PERSONAL PROPERTY.

EFFECT OF RULINGS AND CONSTRUCTIONS BY THE STATE TAX ASSESSOR

THE ASSESSOR, ACTING THROUGH THE BUREAU OF TAXATION, IS EMPOWERED TO MAKE REASONABLE INTERPRETATIONS, RULES AND REGULATIONS HAVING TO DO WITH THE ENFORCEMENT OF THE LAW. HE DOES NOT HAVE ANY LEGISLATIVE POWER, HOWEVER. HE CAN NEITHER ADD TO THE LAW OR TAKE FROM IT.

IT IS A GENERAL PRINCIPLE OF STATUTORY CONSTRUCTION, HOWEVER, THAT WHERE THERE IS SUBSTANTIAL DOUBT AS TO THE MEANING OF THE LANGUAGE IN A TAXING ACT THE COURTS WILL ENDEAVOR TO DETERMINE THE INTENT OF THE LEGISLATIVE BODY WHICH ENACTED IT. HOWEVER, IF THE DOUBT CAN NOT REASONABLY BE RESOLVED OTHERWISE IT SHOULD BE RESOLVED IN FAVOR OF THE TAX-PAYER.

THE ACT PROVIDES FOR APPEAL FROM THE DECISIONS OF THE STATE TAX ASSESSOR. ALSO, IF ANY PART OF THE ACT INVOLVES AN INFRINGEMENT OF RIGHTS THAT EXIST UNDER THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION OF THE STATE OF MAINE THE APPROPRIATE COURTS WILL GIVE DUE CONSIDERATION TO CASES BROUGHT ON ALLEGATIONS OF INFRINGEMENT.

SALES OF RETAIL BUSINESSES - LIABILITY OF SELLERS AND BUYERS

IN THE CASE OF A SALE OF A REGISTERED RETAIL ENTERPRISE, THE RETIRING OWNER IS REQUIRED TO MAKE A RETURN AND PAY ANY TAX DUE WITHIN FIFTEEN DAYS AFTER THE SALE. THE SUCCESSOR IS REQUIRED TO WITHHOLD SUFFICIENT OF THE PURCHASE MONEY TO COVER THE TAX DEBT TO THE STATE UNTIL SUCH TIME AS THE FORMER OWNER SHALL PROVE PAYMENT. FAILING THIS, THE SUCCESSOR BECOMES "PERSONALLY LIABLE" FOR THE TAX UNPAID.

NOTE 14. THIS STATUTORY EFFORT TO CREATE "PERSONAL" LIABILITY IN SUCH CASES IS SOMEWHAT DUBIOUS. IF THE BUYER IS A CORPORATION THE EFFORT TO FASTEN PERSONAL

LIABILITY ON ANY OF ITS OFFICERS, DIRECTORS OR STOCKHOLDERS PROBABLY WOULD FAIL. THE PROVISION, THEREFORE, SEEMS TO HAVE REAL EFFECT ONLY IN CASES OF INDIVIDUAL OR CO-PARTNERSHIP OWNERS.

#### ENFORCEMENT PROVISIONS.

THE STATE TAX ASSESSOR IS AUTHORIZED TO ADMINISTER AND EMPOWERED TO CARRY INTO EFFECT THE PROVISIONS OF THE ACT AND TO ENFORCE SUCH REASONABLE RULES AND REGULATIONS CONSISTENT WITH THE LAW AS HE MAY DEEM NECESSARY. (SEC. 20).

HE IS AUTHORIZED TO EMPLOY (SUBJECT TO THE PROVISIONS OF THE PERSONNEL LAW) SUCH ASSISTANTS AS MAY BE NECESSARY. (SEC. 21)

HE IS AUTHORIZED TO MAKE OR CAUSE TO BE MADE "AN EXAMINATION OF THE PLACE OF BUSINESS, THE TANGIBLE PERSONAL PROPERTY, AND THE BOOKS, RECORDS, PAPERS, VOUCHERS, ACCOUNTS AND DOCUMENTS OF ANY RETAILER;" ALSO TO TAKE THE OATH OF ANY PERSON SIGNING ANY APPLICATION, DEPOSITION, STATEMENT OR REPORT REQUIRED BY HIM. HIS POWERS, IN THIS AND OTHER ADMINISTRATIVE RESPECTS MAY BE DELEGATED TO ANY OF HIS EMPLOYEES ASSIGNED TO ADMINISTRATIVE DUTIES. THESE POWERS ARE NOT LIMITED TO ACTION AGAINST RETAILERS, BUT MAY BE USED AGAINST "ANY PERSON WHO, THE ASSESSOR HAS REASON TO BELIEVE IS LIABLE TO THE PAYMENT OF A TAX UNDER THIS CHAPTER." SEC. 22.

HE IS EMPOWERED TO CONDUCT HEARINGS, TO EXAMINE UNDER OATH ANY SELLER, AND THE DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES OF ANY SELLER, AS WELL AS ANY OTHER PERSON, RELATIVE TO THE BUSINESS OF SUCH SELLER IN RESPECT TO ANY MATTER INCIDENT TO THE ADMINISTRATION OF THE LAW. SEC. 23.

HE HAS POWER TO COMPEL THE ATTENDANCE OF WITNESSES (AS MAY ANY OF HIS DESIGNATED AGENTS OR EMPLOYEES) AND THE PRODUCTION OF THE BOOKS, PAPERS, RECORDS AND DOCUMENTS OF ANY PERSON WHO, HE HAS REASON TO BELIEVE, IS LIABLE FOR THE PAYMENT OF A TAX UNDER THIS LAW. FALSE SWEARING IN ANY EXAMINATION WHICH IS REDUCED TO WRITING IS PERJURY AND PUNISHABLE AS SUCH. SEC. 24.

NOTICES REQUIRED TO BE GIVEN BY THE STATE TAX ASSESSOR IN THE COURSE OF ADMINISTRATION OF THE LAW MAY BE SERVED PERSONALLY OR SENT BY REGISTERED MAIL. THE ADDRESS TO BE USED IN NOTICES SENT BY MAIL IS (1) THE ADDRESS SHOWN ON THE LAST SALES REPORT FILED, OR (2) THE ADDRESS OF AN INDIVIDUAL'S LAST KNOWN ABODE, OR (3) IF OTHER THAN AN INDIVIDUAL THE LAST KNOWN BUSINESS LOCATION. SEC. 25.

RETAILERS ARE REQUIRED TO KEEP RECORDS OF SALES, THE KIND AND FORM OF WHICH MUST BE ADEQUATE TO ENABLE THE ASSESSOR TO DETERMINE TAX LIABILITY. SUCH RECORDS MUST BE PRESERVED FOR THREE YEARS IN SUCH MANNER AS TO INSURE THEIR SECURITY AND ACCESSIBILITY FOR INSPECTION. SEC. 26.

NO CORPORATION MAY BE DISSOLVED BY THE ACTION OF STOCKHOLDERS OR BY COURT DECREE UNTIL ALL TAXES DUE UNDER THE LAW SHALL HAVE BEEN PAID IN FULL, SUCH PAYMENT BEING EVIDENCED BY THE CERTIFICATE OF THE ASSESSOR. SEC. 29.

THE ASSESSOR IS EMPOWERED TO MAKE AN ARBITRARY ASSESSMENT AGAINST ANY SELLER WHO HAS FAILED TO MAKE A REQUIRED REPORT BASED ON AN ESTIMATE OF THE TAX LIABILITY OF SUCH SELLER. THE ASSESSMENT MAY INCLUDE A CHARGE FOR INTEREST. SEC. 17.

IN ANY CASE WHERE EXAMINATION OF A RETURN INDICATES A DEFICIENCY, THE ASSESSOR MAY LEVY A DEFICIENCY ASSESSMENT TO COVER THE SHORTAGE, INCLUDING ANY INTEREST DUE ON DELAYED PAYMENTS. SEC. 18.

JEOPARDY ASSESSMENTS MAY BE LEVIED BY THE ASSESSOR IN CASES WHERE HE HAS REASON TO BELIEVE THAT TAXPAYERS ARE ABOUT TO GO OUT OF BUSINESS OR LEAVE THE STATE OR OTHERWISE TO EVADE PROCEEDINGS FOR THE COLLECTION OF TAXES UNDER THE ACT. SEC. 19.

WHERE TANGIBLE PERSONAL PROPERTY WHICH REQUIRES REGISTRATION WITH THE STATE OF MAINE IS ACQUIRED WITHOUT PAYMENT OF THE SALES TAX REGISTRATION OF SUCH PROPERTY (AUTOMOBILES, MOTOR TRUCKS ETC.) WILL BE DENIED UNLESS THE APPLICANT SHOWS A RECEIPT FOR SALES OR USE TAX. SEC. 4.

PENALTIES ARE PROVIDED FOR VIOLATIONS OF THE LAW, AS FOLLOWS: FOR MAKING A FALSE OR FRAUDULENT RETURN WITH INTENT TO DEFEAT OR EVADE ASSESSMENT REQUIRED BY LAW, A FINE OF NOT LESS THAN \$20 NOR MORE THAN \$500, OR IMPRISONMENT FOR NOT MORE THAN 60 DAYS, OR BOTH SUCH FINE AND IMPRISONMENT. EACH SUCH FALSE OR FRAUDULENT RETURN MAY BE TREATED AS A SEPARATE OFFENSE. (SEC. 32) FALSE SWEARING IN TESTIMONY REDUCED TO WRITING WHEN TAKEN OR THE EXECUTION OF A FALSE TAX RETURN MAY BE PUNISHED AS PERJURY. VIOLATION OF ANY PROVISION OF THE SALES AND USE TAX LAW, INCLUDING OPERATION OF BUSINESS AS A SELLER (OF ANY KIND) WITHOUT REGISTRATION AS SUCH, THE OPERATION EXTENDING OVER A PERIOD OF ONE CALENDAR WEEK OR MORE WITHOUT A REGISTRATION CERTIFICATE, IS PUNISHABLE BY FINE OF NOT LESS THAN \$20 OR MORE THAN \$50, OR BY IMPRISONMENT FOR NOT TO EXCEED 14 MONTHS, OR BY BOTH. EACH CALENDAR WEEK OF THE PERIOD WITHIN WHICH A BUSINESS IS OPERATED WITHOUT REGISTRATION MAY BE TREATED AS A SEPARATE OFFENSE. (SEC. 33) ADVERTISING OR HOLDING OUT OR REPRESENTING TO A BUYER THAT ANY TAX DUE TO BE PAID BY THE BUYER IS BEING PAID OR ABSORBED BY THE SELLER IS A MISDEMEANOR AND PUNISHABLE AS SUCH.

#### REPORTS OF SALES

THE STATE TAX ASSESSOR IS AUTHORIZED TO PRESCRIBE THE FORM OF REPORT OR "RETURN" ON WHICH THE RETAILER MUST SHOW THE RECORD OF HIS SALES FOR A PRESCRIBED PERIOD. AT THE START THE PERIOD IS ONE MONTH AND THE REPORT IS DUE ON THE FIFTEENTH DAY OF THE MONTH NEXT FOLLOWING THE MONTH IN WHICH THE SALES HAVE BEEN MADE. THE ASSESSOR IS EMPOWERED, HOWEVER, TO AUTHORIZE THE MAKING OF REPORTS AT THREE-MONTH INTERVALS. HE ALSO MAY WAIVE, BY REGULATION, THE REPORTING OF NON-TAXABLE SALES. AND FOR GOOD CAUSE SHOWN HE MAY GRANT AN EXTENSION OF TIME NOT EXCEEDING 30 DAYS FOR THE FILING OF A REPORT.

UPON FILING OF AN APPLICATION BY A RETAILER, THE ASSESSOR IS REQUIRED TO ISSUE A "CLASSIFIED PERMIT" ESTABLISHING THE PERCENTAGE OF THE RETAILER'S EXEMPT SALES. SEC. 12.

NOTE 15. THE ACT DOES NOT CONTAIN ANY RECITAL AS TO HOW THIS "CLASSIFIED PERMIT" IS TO BE USED. IT APPEARS OBVIOUS, HOWEVER, THAT ITS PURPOSE IS TO ENABLE THE RETAILER TO DETERMINE HIS TAX LIABILITY ON A CONTINUING PERCENTAGE BASIS, UNTIL SUCH TIME AS THE PERCENTAGE IS FOUND TO BE ERRONEOUS. THIS WOULD GREATLY SIMPLIFY THE PROCESS OF REPORTING SALES AND THEREBY EASE THE RETAILER'S BURDEN PROVIDING THE ASSESSOR CHOSE TO ELIMINATE THE REPORTING OF TAX-EXEMPT SALES, BUT THIS IS A MATTER WITHIN HIS DISCRETIONARY POWER. ALSO, IF HE IS GOING TO ISSUE A CLASSIFIED PERMIT TO ANY RETAILER HE WILL BE ABLE TO DO ONLY AFTER HE HAS HAD A REASONABLE OPPORTUNITY TO DETERMINE THE PERCENTAGE ON SOME SORT OF AVERAGE BASIS.

#### OVERPAYMENTS AND REFUNDS.

OVERPAYMENTS, DUPLICATE PAYMENTS, AMOUNTS PAID WHERE NO LIABILITY EXISTS, ETC., MUST BE REFUNDED OR ADJUSTED BY THE ASSESSOR. WHERE THERE IS BASIS FOR A REFUND, ANY AMOUNT OF TAX DUE FROM THE TAXPAYER AS OF THE DATE OF REFUND IS FIRST TO BE DEDUCTED. CLAIMS FOR REFUND OF TAX ARE BARRED AFTER THREE YEARS FROM THE DATE OF OVERPAYMENT. SEC. 16.

#### PAYMENT OF TAX - INTEREST ON DELAYED PAYMENTS

THE TAXES IMPOSED ARE DECLARED TO BE "DUE AND PAYABLE AT THE TIME OF THE SALE." THE ASSESSOR IS EMPOWERED TO PERMIT POSTPONEMENT OF PAYMENT TO A DATE NOT LATER THAN THE FIFTEENTH DAY OF THE THIRD MONTH NEXT FOLLOWING THE MONTH IN WHICH THE TAXABLE SALES WERE MADE. PAYMENTS GENERALLY WILL BE DUE WITH THE REQUIRED REPORTS OF SALES AND WILL BE MADE MONTHLY UNTIL THE ASSESSOR ORDERS OTHERWISE. PAYMENTS OF AMOUNTS IN ARREARS WILL CARRY INTEREST AT THE RATE OF 1 PER CENT PER MONTH FOR EACH MONTH OR FRACTION OF A MONTH OF DELAY. SEC. 13.

#### CONFIDENTIAL CHARACTER OF ASSESSOR'S RECORDS.

AMPLE PROVISION IS MADE TO PROTECT AGAINST LEAKS OF INFORMATION IN THE ASSESSOR'S RECORDS AND FILES. THEY ARE DECLARED TO BE CONFIDENTIAL AND PRIVILEGED AND MAY NOT BE RELEASED TO OR INSPECTED BY ANY OUTSIDE PERSON, NOR MAY THEY BE UTILIZED AS EVIDENCE IN THE COURTS EXCEPT IN TAX CASES ARISING OUT OF THIS LAW. SEC. 27.

#### RECONSIDERATION OF ASSESSMENTS AND APPEALS

AN APPLICATION FOR RECONSIDERATION OF ANY ASSESSMENT MAY BE MADE AT ANY TIME WITHIN FIFTEEN DAYS AFTER RECEIPT OF NOTICE THEREOF. IF THE PETITION IS NOT FILED WITHIN THIS TIME

THE ASSESSMENT BECOMES FINAL. IF THE PETITION IS FILED WITHIN THE REQUIRES TIME THE ASSESSOR IS COMPELLED TO RECONSIDER THE ASSESSMENT. IF THE PETITION ASKS FOR IT AN ORAL HEARING MUST BE GRANTED. IN SUCH CASE THE PETITIONER IS ENTITLED TO 10 DAYS' NOTICE OF THE TIME AND PLACE OF SUCH HEARING. FOR CAUSE SHOWN THE ASSESSOR MAY GRANT AN EXTENSION BEYOND THE 15 DAYS ALLOWED FOR FILING THE REHEARING PETITION, BUT THIS IS NOT MANDATORY. (SEC. 29.

ANY TAXPAYER WHO IS DISSATISFIED WITH THE DECISION ON SUCH A REHEARING MAY APPEAL TO THE NEXT TERM OF THE SUPERIOR COURT WHICH IS TO BE BEGUN AND HELD MORE THAN 30 DAYS AFTER NOTICE HAS BEEN GIVEN OF THE DECISION ON THE REHEARING. THE APPEAL MAY BE PROSECUTED IN ANY COUNTY WHERE THE PETITIONER HAS A PLACE OF BUSINESS. IF, HOWEVER, THE PETITIONER MAINTAINS NO PLACE OF BUSINESS IN THE STATE THE APPEAL WILL GO TO THE SUPERIOR COURT OF KENNEBEC COUNTY. ON OR BEFORE THE THIRD DAY OF THE TERM OF COURT TO WHICH THE APPEAL IS TAKEN, THE APPELLANT IS REQUIRED TO FILE AN AFFIDAVIT SETTING FORTH THE REASONS ON WHICH THE APPEAL IS BASED AND TO SERVE A COPY OF SUCH AFFIDAVIT ON THE ASSESSOR. ON HEARING OF THE APPEAL THE APPELLANT IS CONFINED TO SUCH REASONS AS HAVE BEEN STATED IN THE AFFIDAVIT FILED. HEARINGS MAY BE HAD BEFORE THE COURT IN TERM TIME OR BEFORE ANY JUSTICE IN THE VACATION PERIOD AND THE FINDINGS OF FACT OF THE COURT OR THE JUSTICE PRESIDING OVER OVER A HEARING ARE FINAL. THE DECISION MUST BE CERTIFIED TO THE ASSESSOR. SEC. 30.

NOTE 16. UNDER A FAMILIAR PRINCIPLE OF LAW, WHERE, AS IN THIS CASE, STATUTORY REQUIREMENTS HAVE BEEN SET UP PROVIDING FOR ADMINISTRATIVE HANDLING OF GRIEVANCES ARISING OUT OF LAW ENFORCEMENT, THE AGGRIEVED PERSON MUST FOLLOW THE STATUTORY FORMULA, FIRST EXHAUSTING HIS REMEDIES PROVIDED BY THE LAW BEFORE ATTEMPTING TO AVAIL HIMSELF OF OTHER REMEDIES IN THE COURTS.

#### SALES IN INTERSTATE AND FOREIGN COMMERCE.

THE CONTROL OF THE FEDERAL GOVERNMENT OVER INTERSTATE COMMERCE (AND FOREIGN COMMERCE) IS EXCLUSIVE. THE STATE, THEREFORE, LACKS POWER TO LEVY ANY TAX OR OTHER BURDEN ON SUCH COMMERCE. ONLY IN THE ABSENCE OF FEDERAL REGULATION DOES THE STATE HAVE A LIMITED POWER.

IT IS PROBABLE, THEREFORE, THAT MANY QUESTIONS WILL ARISE IN CONNECTION WITH THE OPERATION OF THIS LAW, THE ANSWERS TO WHICH WILL DEPEND ON A CORRECT DETERMINATION OF THE TRUE STATUS OF TRANSACTIONS WHICH APPEAR TO INVOLVE INTERSTATE OR FOREIGN COMMERCE. THIS OFTEN IS AN INTRICATE QUESTION.

FOR EXAMPLE WE MAY TAKE THE CASE OF A SHIP WHICH IS OPERATED UNDER FOREIGN REGISTRY AND OWNED BY SUBJECTS OF A FOREIGN COUNTRY. IN MANY RESPECTS THIS SHIP, WHEN IT COMES INTO A HARBOR IN THE UNITED STATES, IS SUBJECT TO FEDERAL LAW. IN MANY OTHER RESPECTS IT MUST BE REGARDED AS EQUIVALENT TO THE FOREIGN COUNTRY WHOSE FLAG IT FLIES. IF THIS SHIP DOCKS IN PORTLAND TO LOAD PAPER OR PLASTICS OR SHOES BEING SHIPPED BY A MAINE MANUFACTURER TO A BUYER IN OSLO, JOHANNESBURG, MELBOURNE OR ANY OTHER OVERSEAS AREA THE MATERIAL SO LOADED WILL BE IN FOREIGN COMMERCE AND THE SALE OR SALES OF THE MERCHANDISE WILL NOT BE TAXABLE BY THE STATE. BUT IF, WHILE LOADING CARGO IN PORTLAND, THE SHIP TAKES ON A QUANTITY OF FUEL OIL OR BUNKER COAL, SOME PART OF WHICH ACTUALLY IS USED BEFORE THE SHIP LEAVES AMERICAN WATERS, A SOMEWHAT DIFFERENT QUESTION OF TAXABILITY ARISES.

IN THOSE MORE REMOTE QUESTIONS ON WHICH THE LAW IS VAGUE THE INITIAL DETERMINATION OF QUESTIONS OF TAXABILITY IS A RESPONSIBILITY OF THE STATE TAX ASSESSOR, WHO WILL FUNCTION THROUGH HIS OFFICE, KNOWN AS THE "BUREAU OF TAXATION".

AS HAS BEEN SHOWN, THE RULINGS OF THE STATE TAX ASSESSOR ARE SUBJECT TO MANDATORY RECONSIDERATION AND HIS DECISIONS ARE SUBJECT TO APPEAL. THEREFORE THEY CAN NOT BE REGARDED AS FINAL. IN FACT, NO DECISION OF A MAINE COURT MAY BE REGARDED AS FINAL, SINCE WHEREVER THE ELEMENT OF INTERSTATE OR FOREIGN COMMERCE IS CONCERNED THE ONLY DECISIONS WHICH MAY BE REGARDED AS FINALLY CONCLUSIVE WILL BE THOSE OF THE FEDERAL COURTS.

THIS SITUATION GIVES RISE TO THE QUERY, WHO IS JUSTIFIED IN CHALLENGING THE FINDINGS OF THE ASSESSOR OR OF THE MAINE COURTS?

THE PRACTICAL ANSWER IS THAT THE BURDENS OF CHALLENGING THE VALIDITY OF RULINGS BY MAINE AUTHORITIES GENERALLY SHOULD REST ON BUYERS WHO BELIEVE THEY ARE NOT LIABLE FOR PAYMENT OF THE TAX IN EITHER OF ITS FORMS. IT IS PROBABLE, HOWEVER, THAT CASES WILL ARISE IN WHICH RETAIL SELLERS WILL FEEL THAT THEY ARE BEING SUBJECTED TO UNDUE HARDSHIP THROUGH ACTUAL LOSS OF BUSINESS BECAUSE OF THE TAX. IN SUCH CASES THEIR OBVIOUS COURSE WILL BE TO COMPLY WITH THE LAW AS IT IS CONSTRUED BY THE STATE TAX ASSESSOR AND HIGHER STATE AUTHORITY; THEN TO GO TO FEDERAL JUDICIAL AUTHORITY IF THE NEED IS FOR CONSTRUCTION ON THE BASIS OF FEDERAL QUES-



TION. EVEN MORE IMPORTANT THAN THE COURSE TO BE PURSUED WITH RESPECT TO PROVISIONS WHICH INVOLVE UNDOUE HARSHSHIP OR EFFORTS BY THE STATE TO PURSUE ANY COURSE EXCEEDING ITS POWERS IS THE POLICY OF MAINTAINING RECORDS AND ACCUMULATING FACTS WHICH WILL CARRY WEIGHT WITH THE LEGISLATURE WHEN IT UNDERTAKES - AS IT PROBABLY WILL - TO REVIEW THE WORKINGS OF THE LAW. EXCEPT IN EMERGENCY SITUATIONS A MOVE TOWARD REVISION WILL BE PREFERABLE TO COSTLY AND PROLONGED LITIGATION WITH ITS MANY COMPLICATIONS AND EVENTUAL UNCERTAINTIES. THE EXPERIENCE OF OTHER STATES INDICATES THAT THE FIRST APPROVED DRAFT OF A SALES TAX LAW IS RARELY PERMANENT. ALSO, THERE IS SOME LIKELIHOOD THAT THE PRESENT ACT WILL YIELD AN AGGREGATE REVENUE CONSIDERABLY ABOVE THE ADVANCE ESTIMATES.

#### TAX EXEMPTION ON PROPERTY SOLD AT 10 CENTS OR LESS.

SECTION 3 OF THE ACT CONTAINS THE PROVISION: "NO TAX SHALL BE IMPOSED UPON SUCH PROPERTY SOLD AT RETAIL FOR 10 CENTS OR LESS, PROVIDED THE RETAILER IS PRIMARILY ENGAGED IN MAKING SUCH SALES AND KEEPS RECORDS SATISFACTORY TO THE STATE TAX ASSESSOR."

NOTE 17. THIS LANGUAGE APPEARS TO HAVE BEEN A LEGISLATIVE INADVERTANCE. SALES AND USE TAXES IN A LARGE NUMBER OF CASES HAVE BEEN SUSTAINED BY THE COURTS ON THE THEORY THAT THEY ARE EXCISE TAXES, OR, IN OTHER WORDS, THAT THEY ARE LEVIED NEITHER ON PERSONS NOR ON PROPERTY, BUT ON CERTAIN SPECIFIED ACTS, USUALLY THE ACT OF SELLING, THE ACT OF USING OR THE ACT OF STORING SUCH TYPES OF TANGIBLE PERSONAL PROPERTY AS THEY MAY DESCRIBE. IN THIS CASE, THE LEGISLATURE HAS SAID, "NO TAX SHALL BE IMPOSED ON SUCH PROPERTY \* \* \*", WHEREAS OTHER DECLARATIONS IN THE ACT RELATE TO SALES OF TANGIBLE PERSONAL PROPERTY OR ITS STORAGE OR USE. THE ATTITUDE OF THE COURTS WITH REGARD TO THE EFFECTS OF THE LANGUAGE QUOTED REMAINS TO BE DETERMINED. THEY ARE APT TO HOLD THAT THE LEGISLATIVE INTENT WAS CLEAR IN SPITE OF AN UNFORTUNATE REFERENCE.

#### STATE IS A PREFERRED CREDITOR

SECTION 14 OF THE ACT PROVIDES THAT TAXES AND INTEREST THEREON SHALL BE A "PERSONAL" DEBT OF THE RETAILER, AUTHORIZES THE STATE TO BRING AN ACTION AT LAW IN ANY COURT OF COMPETENT JURISDICTION TO RECOVER THE DEBT, REQUIRES THE PROCEEDS OF ANY SUCH SUIT SHALL BE PAID TO THE ASSESSOR AND PROVIDES THAT THE STATE'S CLAIM SHALL HAVE PREFERENCE IN ANY DISTRIBUTION OF THE ASSETS OF THE TAXPAYER, "WHETHER IN BANKRUPTCY, INSOLVENCY OR OTHERWISE." AN INTERESTING QUESTION MIGHT ARISE IN CONNECTION WITH THIS GRANT OF PREFERENCE IF IT SHOULD HAPPEN THAT A BANKRUPT TAXPAYER OWED A TAX DEBT TO THE FEDERAL GOVERNMENT.

NOTE 18. INASMUCH AS THE DISTRIBUTION OF THE ASSETS OF A BANKRUPT WOULD BE CONTROLLED BY A FEDERAL COURT IT IS NOT IMPROBABLE THAT THE PRIMARY PREFERENCE WOULD RUN IN FAVOR OF THE FEDERAL GOVERNMENT IF THE TAXPAYER HAD FAILED TO PAY FEDERAL EXCISE, INCOME OR OTHER TAXES. THE QUESTION OF PREFERENCE IS FURTHER COVERED IN SECTION 31 WHICH PROVIDES THAT IN ANY CASE WHERE THE PERSON LIABLE FOR A TAX IS INSOLVENT, MAKES A VOLUNTARY ASSIGNMENT OF ASSETS OR DIES THE STATE'S CLAIM FOR TAXES AND INTEREST SHALL HAVE PREFERENCE AS AGAINST OTHERS EXCEPT RECORDED LIENS WHICH ATTACHED PRIOR TO THE DATE WHEN THE TAX BECAME DUE. THE SAME RULE IS APPLIED TO DISTRIBUTION OF THE EFFECTS AND ESTATE OF ABSENT, CONCEALED OR ABDONDING PERSONS.

#### ELIMINATION OF STATE PROPERTY TAX.

SECTION 34 OF THE ACT, TITLED AS ABOVE, PROVIDES: "IN THE EVENT THAT THE PROVISIONS OF THIS CHAPTER BECOME EFFECTIVE FOR THE PURPOSE OF COLLECTING TAXES AS LEVIED HEREIN, THERE SHALL BE NO STATE PROPERTY TAX LEVIED FOR THE YEAR 1952 AND THEREAFTER."

NOTE 19. THE CONDITIONAL CHARACTER OF THIS SECTION OF THE ACT IS RATHER UNUSUAL, INASMUCH AS IT DOES NOT SERVE AS A REPEALER OF EXISTING LAW UNDER WHICH THE STATE PROPERTY TAX IS LEVIED EVEN IF THE CONDITION IS FACTUALLY MET, BUT MERELY SAYS THERE SHALL BE NO LEVY. PERHAPS THIS WAS INTENDED AS A SHORT-CUT TO QUICK AND EASY RESTORATION OF THE PROPERTY TAX IN THE EVENT THIS ACT SHOULD BE VOIDED BY THE COURTS. THIS SITUATION MIGHT BE REGARDED BY A REVIEWING COURT AS AN EXPRESSION OF DOUBT IN THE LEGISLATURE WITH REGARD TO THE CONSTITUTIONALITY OF THE ACT.

SUMMARY OF REQUIREMENTS  
OF THE  
MAINE SALES AND USE TAX LAW

1. IF YOU SELL ANY FORM OF TANGIBLE PERSONAL PROPERTY IN THE STATE OF MAINE (EXCEPT WHEN YOUR PLACE OF BUSINESS IS OUTSIDE MAINE) YOU MUST REGISTER WITH THE STATE TAX ASSESSOR. IT DOES NOT MATTER WHETHER YOU SELL AS A MANUFACTURER, WHOLESALER OR RETAILER. YOU DO NOT HAVE TO REGISTER, HOWEVER, IN ORDER TO MAKE AN ISOLATED SALE OF SOMETHING THAT IS NOT HANDLED IN THE USUAL AND NORMAL COURSE OF YOUR BUSINESS. THE FEE IS \$1.
2. ON RECEIPT OF YOUR CERTIFICATE OF REGISTRATION, YOU MUST DISPLAY IT CONSPICUOUSLY IN YOUR PLACE OF BUSINESS. IT IS YOUR AUTHORITY TO COLLECT SALES TAXES FOR THE STATE IF YOU MAKE ANY TAXABLE RETAIL SALES, AND TO CERTIFY TO YOUR SELLERS YOUR RIGHT TO BUY MERCHANDISE FOR RESALE.
3. IF YOU HAVE MORE THAN ONE PLACE OF BUSINESS YOU MUST REGISTER FOR EACH SUCH PLACE AND PAY THE REGISTRATION FEE FOR EACH.
4. IF YOU MAKE SALES TO RETAILERS OF TANGIBLE PERSONAL PROPERTY FOR RESALE, YOU MUST REQUIRE SUCH BUYERS TO CERTIFY TO YOU THAT THEIR PURCHASES ARE AND FUTURE PURCHASES WILL BE FOR RESALE. UNLESS YOU HOLD SUCH A CERTIFICATE YOU MUST COLLECT THE SALES TAX, IF SALE OF THE MERCHANDISE AT RETAIL IS TAXABLE.
5. YOU MUST ACQUAINT YOUR EMPLOYEES (FOR WHOSE CONDUCT YOU ARE RESPONSIBLE WHILE THEY ARE MAKING SALES IN YOUR ESTABLISHMENT) AND YOURSELF WITH THE TAX RATES AND EXEMPTION PROVISIONS CONTAINED IN THE LAW, TO INSURE COLLECTION OF THE RIGHT AMOUNT OF TAX ON ALL TAXABLE SALES. REMEMBER: THE BURDEN OF PROOF THAT ANY SALE IS NOT A RETAIL SALE RESTS ON THE PERSON WHO MAKES IT.
6. YOU MUST KEEP ACCURATE AND ADEQUATE RECORDS OF YOUR SALES, TAXABLE AND NON-TAXABLE. NO SPECIFIC FORM OR METHOD OF RECORDING SALES IS REQUIRED. A CASH REGISTER WHICH SHOWS TRANSACTIONS ON A TAPE OR A DUPLICATE OR TRIPPLICATE SALES BOOK WILL SERVE. BUT THERE MUST BE A RECORD.
7. YOU MUST SEE TO IT THAT THE REQUIRED TAX IS COLLECTED ON EVERY TAXABLE SALE AND PROPERLY RECORDED AS A PART OF THE PRICE, OR THAT SOME OTHER METHOD USED WILL SATISFY THE AUDIT REQUIREMENTS OF THE STATE TAX ASSESSOR.
8. YOU MUST PERMIT ANY DULY AUTHORIZED EMPLOYEE OF THE STATE TAX ASSESSOR TO EXAMINE YOUR BUSINESS PREMISES, MERCHANDISE STOCK, BOOKS OF ACCOUNT, GENERAL RECORDS, CORRESPONDENCE FILES, ETC., AT ANY TIME DURING BUSINESS HOURS. YOU HAVE THE RIGHT, HOWEVER, TO REQUIRE ANY SUCH PERSON TO SHOW SUITABLE CREDENTIALS AS EVIDENCE OF AUTHORITY.
9. IF YOU WISH TO AVOID INTEREST PENALTIES YOU MUST FILE YOUR RETURNS AND MAKE YOUR TAX PAYMENTS ON TIME, SENDING THEM TO THE BUREAU OF TAXATION, SALES TAX DIVISION, STATE HOUSE, AUGUSTA, MAINE, ON OR BEFORE MIDNIGHT OF THE FIFTEENTH DAY OF THE MONTH NEXT FOLLOWING THE MONTH IN WHICH THE REPORTED SALES WERE MADE. (THE ASSESSOR MAY PUT THESE REPORTS AND PAYMENTS ON A QUARTERLY BASIS AT SOME LATER DATE IF HE SO CHOOSES.) IF THERE IS A VALID REASON WHY YOU WILL NOT BE ABLE TO MAKE AND FILE A RETURN ON OR BEFORE THE REQUIRED TIME THE ASSESSOR MAY GRANT YOU AN EXTENSION OF NOT MORE THAN THIRTY DAYS. THIS, HOWEVER, IS NOT MANDATORY. CONSEQUENTLY, ANY APPLICATION FOR AN EXTENSION SHOULD BE MADE REASONABLY IN ADVANCE.
10. YOU MUST KEEP YOUR RECORDS OF SALES SAFELY AND WHERE THEY WILL BE ACCESSIBLE FOR AUDIT THROUGH A PERIOD OF THREE YEARS UNLESS YOU FIRST GET PERMISSION FROM THE ASSESSOR TO DESTROY THEM.
11. IF YOU SELL YOUR BUSINESS YOU MUST MAKE YOUR FINAL RETURN AND PAYMENT WITHIN 15 DAYS AFTER THE DATE OF SALE. (THE SAME RULE APPLIES IF YOU SELL OUT YOUR STOCK OR QUIT BUSINESS ALTOGETHER).

11. YOU MUST COMPLY WITH THE REASONABLE DIRECTIVES OF THE STATE TAX ASSESSOR OR OF ANY DULY AUTHORIZED EMPLOYEE OF THE BUREAU OF TAXATION ISSUED IN THE COURSE OF ENFORCE- OF THE LAW.

THESE ARE THE ESSENTIALS OF COMPLIANCE WITH THE LAW.

IN ADDITION TO THE "MUSTS" THERE IS ONE VERY IMPORTANT PROHIBITION IN THE ACT. IT IS A "MUST NOT". IT IS THE PROVISION WHICH MAKES IT A MISDEMEANOR TO ADVERTISE OR HOLD OUT OR REPRESENT TO YOUR CUSTOMERS THAT YOU ARE "ABSORBING" OR "PAYING" THE SALES TAX OR THAT YOU ARE FAILING TO CHARGE IT IN ANY CASE WHERE IT IS DUE.

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REGULATIONS, RULINGS AND INSTRUCTION BULLETINS

ON JUNE 1, 1951, THE STATE TAX ASSESSOR ISSUED IN PRINTED FORM REGULATIONS (TENTATIVE) 1 TO 4 INCLUSIVE, AS FOLLOWS:

- TENTATIVE REG. 1: TITLE, "SALES FOR RESALE." REFERS TO ~~SECTIONS~~ 2 AND 8 OF CHAPTER 14-A.
- TENTATIVE REG. 2: TITLE: "EXEMPT ORGANIZATIONS AND SALES THERETO." REFERS TO SEC. 10, CHAPTER 14-A
- TENTATIVE REG. 3: TITLE: "SALES TO INDUSTRIAL USERS". REFERS TO SEC. 2, CHAPTER 14-A.
- TENTATIVE REG. 4: TITLE: "REPORTS AND PAYMENT". REFERS TO SECTIONS 12 AND 13, CHAPTER 14-A.

UNDER DATE JUNE 5, 1951, THE ASSESSOR ISSUED TENTATIVE REG. 5, TITLED "RETAILERS' RECORDS" AND REFERRING TO SEC. 26 OF THE LAW.

TENTATIVE REGULATION NO. 1 PROVIDED THE PRESCRIBED FORM OF RESALE CERTIFICATE TO BE USED BY ALL PERSONS BUYING FOR RESALE. THIS CERTIFICATE FORM IS NOT PROVIDED BY THE STATE, BUT MAY BE PRINTED, MINEOGRAPHED OR OTHERWISE DUPLICATED. THE FORM MUST BE FOLLOWED. IT IS AS FOLLOWS:

"I HEREBY CERTIFY: THAT I HOLD VALID SELLER'S REGISTRATION CERTIFICATE No. \_\_\_\_\_ ISSUED PURSUANT TO THE SALES AND USE TAX LAW; THAT I AM ENGAGED IN THE BUSINESS OF SELLING \_\_\_\_\_; THAT THE TANGIBLE PERSONAL PROPERTY DESCRIBED HEREIN WHICH I SHALL PURCHASE FROM \_\_\_\_\_

WILL BE RESOLD BY ME IN THE FORM OF TANGIBLE PERSONAL PROPERTY; PROVIDED, HOWEVER, THAT IN THE EVENT ANY OF SUCH PROPERTY IS USED FOR ANY PURPOSE OTHER THAN RETENTION, DEMONSTRATION OR DISPLAY WHILE HOLDING IT FOR SALE IN THE REGULAR COURSE OF BUSINESS, IT IS UNDERSTOOD THAT I AM REQUIRED BY THE SALES AND USE TAX LAW TO REPORT AND PAY TAX, MEASURED BY THE PURCHASE PRICE OF SUCH PROPERTY.

DESCRIPTION OF THE PROPERTY TO BE PURCHASED:

PURCHASER \_\_\_\_\_

ADDRESS \_\_\_\_\_

DATE \_\_\_\_\_ 19 \_\_\_\_."

IF THIS CERTIFICATE IS TO BE USED TO COVER CONTINUING AND REGULAR PURCHASES IT SHOULD BE MARKED "BLANKET CERTIFICATE" IN WHICH CASE IT WILL BE ADEQUATE TO COVER ALL SUCH PURCHASES.

WHERE THE FORM IS FOR USE BY A CO-PARTNERSHIP OR CORPORATION THE PRONOUN "I" SHOULD BE CHANGED TO "WE" THROUGHOUT.

TEN. REG. 2 PROVIDES THE FORM OF EXEMPTION CERTIFICATE TO BE USED BY TAX-EXEMPT ORGANIZATIONS IN MAKING PURCHASES. SUBJECT TO CHANGE OF "I" TO "WE" WHERE NECESSARY, IT IS AS FOLLOWS:

"I HEREBY CERTIFY: THAT THIS ORGANIZATION IS THE HOLDER OF VALID EXEMPTION PERMIT NO. \_\_\_\_\_ ISSUED PURSUANT TO THE SALES AND USE TAX LAW; THAT THE TANGIBLE PERSONAL PROPERTY DESCRIBED HEREIN WHICH I SHALL PURCHASE FROM \_\_\_\_\_ WILL BE USED EXCLUSIVELY BY THIS ORGANIZATION FOR THE PURPOSES FOR WHICH IT IS ORGANIZED AND WILL NOT BE USED IN SUCH ACTIVITIES AS ARE MAINLY COMMERCIAL ENTERPRISES.

DESCRIPTION OF PROPERTY TO BE PURCHASED:

PURCHASER \_\_\_\_\_

BY \_\_\_\_\_

ADDRESS \_\_\_\_\_

DATED \_\_\_\_\_ 19 \_\_\_\_ "

THE ABOVE FORM MAY BE USED TO COVER A SINGLE PURCHASE, THE GOODS BEING LISTED, OR AS A "BLANKET CERTIFICATE", IN WHICH CASE IT SHOULD BE SO MARKED AT THE TIME OF SIGNING. IT THEN WILL COVER FUTURE PURCHASES.

TEN. REG. 3 PRESCRIBES THE FORM OF EXEMPTION CERTIFICATE TO BE USED BY PURCHASERS OF TANGIBLE PERSONAL PROPERTY IN CONNECTION WITH THE BUYING OF THINGS THAT ARE TO BE UTILIZED IN AND BECOME TANGIBLE PERSONAL PROPERTY FOR SALE. IT IS AS FOLLOWS:

BLANKET CERTIFICATE OF EXEMPTION

FOR PURCHASE OF TANGIBLE PERSONAL PROPERTY FOR USE IN MANUFACTURING UNDER SEC. 2 OF THE MAINE SALES AND USE TAX LAW

"I HEREBY CERTIFY THAT THE FOLLOWING TANGIBLE PERSONAL PROPERTY \_\_\_\_\_

TO BE PURCHASED FROM \_\_\_\_\_ ON AND AFTER JULY 1, 1951, SHALL BE PURCHASED:

TO BECOME AN INGREDIENT OR COMPONENT PART OF TANGIBLE PERSONAL PROPERTY FOR LATER SALE BY ME; OR TO BE CONSUMED OR DESTROYED OR TO LOSE ITS IDENTITY IN THE MANUFACTURE OF TANGIBLE PERSONAL PROPERTY FOR LATER SALE BY ME.

"I FURTHER CERTIFY THAT I ASSUME FULL LIABILITY FOR THE PAYMENT TO THE STATE OF MAINE OF ANY USE TAXES, TOGETHER WITH PENALTIES AND INTEREST, THAT MAY LATER BE DETERMINED TO BE DUE ON ANY PURCHASES COVERED BY THIS CERTIFICATE BECAUSE OF A TAXABLE USE OF THE SAME.

"INVOICES COVERING ALL PURCHASES MADE UNDER THIS CERTIFICATE MUST BE APPROPRIATELY MARKED OR STAMPED TO INDICATE THEY ARE EXEMPT PURCHASES. THE WORDS 'MAINE SALES TAX EXEMPT' WILL SATISFY THIS REQUIREMENT.

SIGNED \_\_\_\_\_  
(NAME OF COMPANY OR INDIVIDUAL)

BY \_\_\_\_\_

TITLE \_\_\_\_\_ DATE \_\_\_\_\_ "

TEN. REGULATIONS 4 AND 5 DEAL RESPECTIVELY WITH RETAILERS' REPORTS AND PAYMENTS AND WITH RETAILERS' RECORDS

TEN. REG. 6 RELATES TO FEEDS, SEEDS, PLANTS AND FERTILIZER. IT SPECIFIES ITEMS INCLUDED IN THE TERM "FERTILIZER" AS GROUND LIMESTONE, HYDRATED LIME, SEED INOCULANTS, PLANT HORMONES AND OTHER SUBSTANCES USED TO ENRICH THE PLANT-FOOD CONTENT OF THE SOIL AND WHICH BECOME A PART OF THE FOOD PRODUCTS GROWN FOR HUMAN CONSUMPTION.

THIS REGULATION ALSO HOLDS THAT SALES OF FEED TO RIDING CLUBS AND RACE-TRACK OPERATORS OR FOR THE PURPOSE OF FEEDING PETS OR ANIMALS NOT USED IN THE PRODUCTION OF FOOD FOR HUMAN CONSUMPTION ARE TAXABLE. IT RULES, MOREOVER, THAT SALES OF FLOWER SEEDS, LAWN SEEDS, LAWN WEED-KILLERS AND OTHER NON-FOOD PRODUCING PLANTS ARE TAXABLE.

TEN. REG. NO. 7 COVERS THE BUSINESS OF FLORISTS AND PARTICULARLY DEALS WITH THE TAXABILITY OF SALES HANDLED BY TELEGRAPH IN AND OUT OF THE STATE. (NOTE: THE RULING THAT INTERSTATE SALES OF FLOWERS AND FLORAL PIECES ARE SUBJECT TO TAX BY THE STATE OF MAINE IS OPEN TO QUESTION AND DOUBTLESS WILL BE APPEALED.)

TEN. REG. NO. 8 DEALS WITH "COMBINED REPORTING" WHICH INVOLVES THE DIRECT PAYMENT OF THE SALES AND USE TAXES BY A CONCERN WHICH FINDS SEPARATE HANDLING OF THE TWO TAXES TO INVOLVE INCONVENIENCE. THE FOLLOWING FORM OF APPLICATION IS PRESCRIBED TO COVER THIS SORT OF SITUATION:

"APPLICATION FOR CERTIFICATE PERMITTING  
DIRECT PAYMENT OF SALES AND USE TAXES  
(COMBINED REPORTING)

I HEREBY CERTIFY THAT THE UNDERSIGNED IS ENGAGED IN THE BUSINESS OF \_\_\_\_\_

(STATE GENERALLY THE TYPE OF BUSINESS)

THAT IT IS IMPRACTICAL FOR THE UNDERSIGNED TO PAY SALES AND USE TAXES SEPARATELY UNDER THE LAW; AND THAT THEREFORE THE UNDERSIGNED REQUESTS PERMISSION TO REPORT AND PAY DIRECTLY TO THE STATE TAX ASSESSOR SALES AND USE TAXES ON ALL TANGIBLE PERSONAL PROPERTY, THE SALE OR USE OF WHICH IS OTHERWISE TAXABLE, IN ACCORDANCE WITH REGULATION #8; AND AGREES TO PAY SUCH TAXES IN ACCORDANCE WITH THE REQUIREMENTS OF THAT REGULATION. IT IS FURTHER AGREED THAT THIS CERTIFICATE WILL BE USED ONLY SO LONG AS IT REMAINS UNREVOKED.

\_\_\_\_\_  
NAME OF APPLICANT.

\_\_\_\_\_  
NAME AND CAPACITY OF OFFICER SIGNING."

SEVERAL INSTRUCTION BULLETINS HAVE BEEN ISSUED BY THE BUREAU OF TAXATION, DEALING WITH QUESTIONS ARISING IN PARTICULAR FIELDS OF TRADE OR INDUSTRY. AMONG THESE ARE THE FOLLOWING:

|                                                                                                                                                                                                                                                                                         |                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| FILLING STATIONS AND GARAGES                                                                                                                                                                                                                                                            | BULLETIN NO. 1   |
| FUNERAL DIRECTORS                                                                                                                                                                                                                                                                       | BULLETIN NO. 2   |
| PHOTOGRAPHERS AND PHOTO FINISHERS                                                                                                                                                                                                                                                       | BULLETIN NO. 3   |
| CONTRACTORS AND SUB-CONTRACTORS                                                                                                                                                                                                                                                         | BULLETIN NO. 4   |
| SHOE REPAIR MEN                                                                                                                                                                                                                                                                         | BULLETIN NO. 5   |
| MEDICINES BY PRESCRIPTION                                                                                                                                                                                                                                                               | BULLETIN NO. 5-A |
| WATCH AND JEWELRY REPAIR MEN                                                                                                                                                                                                                                                            | BULLETIN NO. 6   |
| FEDERAL TAXES (DISTINGUISHING BETWEEN<br>THOSE FEDERAL TAXES WHICH ARE IN-<br>CLUDED IN SELLING PRICES FOR SALES<br>TAX PURPOSES AND THOSE WHICH ARE<br>NOT INCLUDED                                                                                                                    | BULLETIN NO. 7   |
| SMALL SALES AND THE SALES TAX (WITH THIS<br>BULLETIN THE STATE CHAMBER OF COM-<br>MERCE IS IN DISAGREEMENT, REGARD-<br>ING IT AS A MISCONSTRUCTION OF THE<br>INTENT OF THE LEGISLATURE AND IN<br>CONFLICT WITH ONE OF THE SPECIFIC<br>OBJECTIVES OF THE LAW AS DECLARED<br>IN ITS TEXT) | BULLETIN NO. 8   |

OPHTHALMOLOGISTS, OPTOMETRISTS, OCULISTS AND  
OPTICIANS

BULLETIN No. 6-A

BULLETIN 6-A ORIGINALLY WAS ISSUED AS TENTATIVE REGULATION No. 10.

IT IS PROBABLE THAT MANY CHANGES WILL BE MADE IN THE TEMPORARY DECISIONS THUS FAR PUT INTO EFFECT THROUGH TENTATIVE REGULATIONS AND INFORMATION BULLETINS. IT MAY TAKE A CONSIDERABLE AMOUNT OF TIME TO DISPOSE FINALLY OF ALL OF THE QUESTIONS ON WHICH THE STATE TAX ASSESSOR MUST RULE. IF THE USUAL PATTERN FOLLOWS, SOME OF HIS DECISIONS WILL FAIL IN THE COURTS. THUS IT MAY TAKE A YEAR OR MORE TO SETTLE THE MORE SERIOUS CONTROVERSIAL QUESTIONS. MEANWHILE, ACCEPTANCE OF AND COMPLIANCE WITH THE LAW AS IT STANDS AND WITH ITS CONSTRUCTION BY THE PROPER ADMINISTRATIVE OFFICER OF THE STATE GOVERNMENT AND BY THE COURTS WILL BE THE ONLY RATIONAL AND REASONABLE COURSE.

WITHOUT QUESTION THE PRINCIPAL BASIS OF CONTROVERSY AS THE LAW STANDS IS THE STATE TAX ASSESSOR'S DECISION THAT THE LAW REQUIRES PAYMENT BY RETAILERS OF TAX ON THEIR SALES OF 24 CENTS AND LESS, REGARDLESS OF THE FACT THAT THE ACT MOST SPECIFICALLY PROHIBITS THEM FROM COLLECTING ANY TAX ON SUCH SALES.

IN CONTRAST WITH THIS DECISION, THE LANGUAGE OF THE ACT ITSELF CLEARLY SHOWS THAT THE LEGISLATURE CLEARLY INTENDED TO COMPENSATE THE RETAIL MERCHANT FOR HIS SERVICES IN COLLECTING THE SALES TAX AND PAYING IT TO THE ASSESSOR FOR ACCOUNT OF THE STATE TREASURY. ANY STUDY OF THE MATHEMATICAL PROBABILITIES, HOWEVER, WILL SHOW THAT THE "BREAKAGE" WHICH WAS DESIGNED TO GO TO THE RETAILER AS COMPENSATION ACTUALLY WILL RUN IN FAVOR OF THE STATE UNDER THE OFFICIAL RULING. THE TABLES IN THE APPENDIX WILL INDICATE TO SOME EXTENT THE PROBABLE WORKINGS OF THE LAW IN CONNECTION WITH THE MAKING OF SMALL SALES.

IT IS DECIDEDLY IMPORTANT THAT RETAIL SELLERS WHO ARE GOING TO BE ADVERSELY AFFECTED BY BULLETIN No. 8 SHALL KEEP COMPREHENSIVE RECORDS SHOWING THEIR ACTUAL FINANCIAL OUTCOME UNDER THE DECISION THERE MADE PUBLIC.

IN VIEW OF THEIR PRESENTLY UNSETTLED CHARACTER NO FURTHER EFFORT WILL BE MADE HERE TO REVIEW IN DETAIL THE REGULATIONS AND BULLETINS THUS FAR ISSUED. COPIES OF ALL OF THEM CAN BE HAD ON REQUEST ADDRESSED TO THE BUREAU OF TAXATION, SALES TAX DIVISION, STATE HOUSE, AUGUSTA, MAINE. IT IS REASONABLY CERTAIN THAT MANY ADDITIONAL REGULATIONS AND BULLETINS WILL HAVE TO BE ISSUED BEFORE WE SHALL HAVE GENERAL CLARIFICATION OF THE INNUMERABLE QUESTIONS WHICH ARE SURE TO ARISE.

THIS REVIEW OF THE SALES AND USE TAX LAW IS SUBMITTED AS A SERVICE TO THE MEMBERS OF THE MAINE STATE CHAMBER OF COMMERCE AND TO SUCH OTHERS IN MAINE'S ZONE OF COMMERCE AND INDUSTRY AS HAVE SUBSCRIBED FOR IT.

PORTLAND, MAINE,  
JULY 25, 1951.

MAINE STATE CHAMBER OF COMMERCE  
477 CONGRESS STREET  
PORTLAND, MAINE

PRACTICAL WORKING OF "BRACKET" UNDER THE PROVISIONS OF THE MAINE SALES AND USE  
TAX LAW AS CONSTRUCTED BY THE BUREAU OF TAXATION IN  
BULLETIN NO. 8, DATED JULY TENTH, 1951

Actual Results of One Thousand Sales at the Average  
Prices in Each of Twenty-One Brackets Ranging from  
\$0.01 to \$1.24, Showing the Retailer's Actual Loss

| <u>Price<br/>Bracket</u>                  | <u>Average for<br/>Bracket</u> | <u>Total Value of<br/>1,000 Taxable<br/>Sales</u> | <u>Tax Collected<br/>From Buyers</u> | <u>Tax Due<br/>To State</u> | <u>Gain Loss<br/>(retailer)</u> |
|-------------------------------------------|--------------------------------|---------------------------------------------------|--------------------------------------|-----------------------------|---------------------------------|
| \$ 0.01 - \$0.24                          | \$ 0.125                       | \$ 125.00                                         | None                                 | \$ 2.50                     | \$ 0.00 \$ 2.50                 |
| .0.25 - 0.30                              | 0.275                          | 275.00                                            | \$ 10.00                             | 5.50                        | 4.50                            |
| 0.30 - 0.35                               | 0.325                          | 325.00                                            | 10.00                                | 6.50                        | 3.50                            |
| 0.35 - 0.40                               | 0.375                          | 375.00                                            | 10.00                                | 7.50                        | 2.50                            |
| 0.40 - 0.45                               | 0.425                          | 425.00                                            | 10.00                                | 8.50                        | 1.50                            |
| 0.45 - 0.50                               | 0.475                          | 475.00                                            | 10.00                                | 9.50                        | .50                             |
| 0.50 - 0.55                               | 0.525                          | 525.00                                            | 10.00                                | 10.50                       | 0.50                            |
| 0.55 - 0.60                               | 0.575                          | 575.00                                            | 10.00                                | 11.50                       | 1.50                            |
| 0.60 - 0.65                               | 0.625                          | 625.00                                            | 10.00                                | 12.50                       | 2.50                            |
| 0.65 - 0.70                               | 0.675                          | 675.00                                            | 10.00                                | 13.50                       | 3.50                            |
| 0.70 - 0.74                               | 0.720                          | 720.00                                            | 10.00                                | 14.40                       | 4.40                            |
| 0.75 - 0.80                               | 0.775                          | 775.00                                            | 20.00                                | 15.50                       | 4.50                            |
| 0.80 - 0.85                               | 0.825                          | 825.00                                            | 20.00                                | 16.50                       | 3.50                            |
| 0.85 - 0.90                               | 0.875                          | 875.00                                            | 20.00                                | 17.50                       | 2.50                            |
| 0.90 - 0.95                               | 0.925                          | 925.00                                            | 20.00                                | 18.50                       | 1.50                            |
| 0.95 - 1.00                               | 0.975                          | 975.00                                            | 20.00                                | 19.50                       | .50                             |
| 1.00 - 1.05                               | 1.025                          | 1,025.00                                          | 20.00                                | 20.50                       | .50                             |
| 1.05 - 1.10                               | 1.075                          | 1,075.00                                          | 20.00                                | 21.50                       | 1.50                            |
| 1.10 - 1.15                               | 1.125                          | 1,125.00                                          | 20.00                                | 22.50                       | 2.50                            |
| 1.15 - 1.20                               | 1.175                          | 1,175.00                                          | 20.00                                | 23.50                       | 3.50                            |
| 1.20 - 1.24                               | 1.220                          | 1,220.00                                          | 20.00                                | 24.40                       | 4.40                            |
|                                           |                                |                                                   |                                      |                             | \$ 25.00 27.30                  |
| Over-all tax loss on 21,000 taxable sales |                                |                                                   |                                      |                             | 2.30                            |

TAX AND "BREAKAGE" RESULTS OF 21,000 TAXABLE SALES OF TANGIBLE PERSONAL PROPERTY, EVENLY DISTRIBUTED THROUGH THE AVERAGES FOR 11 BRACKETS COVERING PRICES RANGING FROM \$ 0.01 to \$ 1.24, INCLUSIVE, BASED ON THE ASSUMPTION THAT THE RETAILER SHOULD NOT PAY TAX ON BRACKET 1.

| <u>Price<br/>Bracket</u>            | <u>Av. Price For<br/>Bracket</u> | <u>Total Value of<br/>1,000 Taxable<br/>Sales</u> | <u>Tax Collected<br/>From Buyers</u> | <u>Tax Due<br/>State</u> | <u>Retailer's</u> |             |
|-------------------------------------|----------------------------------|---------------------------------------------------|--------------------------------------|--------------------------|-------------------|-------------|
|                                     |                                  |                                                   |                                      |                          | <u>Gain</u>       | <u>Loss</u> |
| \$ 0.01 - 0.24                      | \$0.125                          | \$ 125.00                                         | None                                 | None                     | None              | None        |
| 0.25 - 0.30                         | 0.275                            | 275.00                                            | \$ 10.00                             | \$ 5.50                  | \$ 4.50           |             |
| 0.30 - 0.35                         | 0.325                            | 325.00                                            | 10.00                                | 6.50                     | 3.50              |             |
| 0.35 - 0.40                         | 0.375                            | 375.00                                            | 10.00                                | 7.50                     | 2.50              |             |
| 0.40 - 0.45                         | 0.425                            | 425.00                                            | 10.00                                | 8.50                     | 1.50              |             |
| 0.45 - 0.50                         | 0.475                            | 475.00                                            | 10.00                                | 9.50                     | .50               |             |
| 0.50 - 0.55                         | 0.525                            | 525.00                                            | 10.00                                | 10.50                    |                   | \$ 0.50     |
| 0.55 - 0.60                         | 0.575                            | 575.00                                            | 10.00                                | 11.50                    |                   | 1.50        |
| 0.60 - 0.65                         | 0.625                            | 625.00                                            | 10.00                                | 12.50                    |                   | 2.50        |
| 0.65 - 0.70                         | 0.675                            | 675.00                                            | 10.00                                | 13.50                    |                   | 3.50        |
| 0.70 - 0.74                         | 0.720                            | 720.00                                            | 10.00                                | 14.40                    |                   | 4.40        |
| 0.75 - 0.80                         | 0.775                            | 775.00                                            | 20.00                                | 15.50                    | 4.50              |             |
| 0.80 - 0.85                         | 0.825                            | 825.00                                            | 20.00                                | 16.50                    | 3.50              |             |
| 0.85 - 0.90                         | 0.875                            | 875.00                                            | 20.00                                | 17.50                    | 2.50              |             |
| 0.90 - 0.95                         | 0.925                            | 925.00                                            | 20.00                                | 18.50                    | 1.50              |             |
| 0.95 - 1.00                         | 0.975                            | 975.00                                            | 20.00                                | 19.50                    | .50               |             |
| 1.00 - 1.05                         | 1.025                            | 1,025.00                                          | 20.00                                | 20.50                    |                   | .50         |
| 1.05 - 1.10                         | 1.075                            | 1,075.00                                          | 20.00                                | 21.50                    |                   | 1.50        |
| 1.10 - 1.15                         | 1.125                            | 1,125.00                                          | 20.00                                | 22.50                    |                   | 2.50        |
| 1.15 - 1.20                         | 1.175                            | 1,175.00                                          | 20.00                                | 23.50                    |                   | 3.50        |
| 1.20 - 1.24                         | 1.220                            | 1,220.00                                          | 20.00                                | 24.40                    |                   | 4.40        |
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| Retailer's net gain do.             |                                  |                                                   |                                      |                          |                   | .20         |





Note: First column in each case refers to the Law by sections.  
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