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STATE OF MAINE
ONE HUNDRED AND NINTH LEGISLATURE
COMMITTEE ON TAXATION

February 26, 1980

Senator Richard Pierce, Chairman
Legislative Council
State House
Augusta, Maine 04333

Dear Senator Pierce:

In accordance with Title 1, Chapter 31 of the Maine Revised Statutes Annotated directing the appropriate legislative committee to prepare and submit a report evaluating the advisability of retaining Title 36, §1760, sub-§§15-23 and 25-29 concerning exemptions from the sales and use tax, the Joint Standing Committee on Taxation hereby submits the attached final report of the Committee.

Respectfully submitted,

Thomas M. Teague
Senate Chairman

Bonnie Post

Bonnie Post
House Chairman

JRS/mb
Attachment

REPORT OF THE

JOINT STANDING COMMITTEE ON TAXATION

ON THE STATUTORY REVIEW OF

THE SALES AND USE TAX EXEMPTIONS

CONTAINED IN TITLE 36

SECTION 1760, SUB-§§ 15-23 and 25-29

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I. INTRODUCTION

Title 1, Chapter 31 provides that the appropriate legislative committee having jurisdiction over Title 36, section 1760, sub-§§ 15-23 and 25-29, as amended, shall prepare and submit to the Legislature a report evaluating the advisability of retaining those statutory provisions. That report shall include:

1. An evaluation of the past effectiveness of the statutory provisions;

2. An evaluation of the future need for the statutory provisions;

3. An examination of alternative methods of attaining the purpose of the provisions;

4. An estimate of the cost of retaining the provisions; and

5. A recommendation of the committee as to the amendment, repeal, replacement or retention of the provision, along with any accompanying legislation so required.

Title 36, section 1760-A further provides that the report of the committee evaluating sales tax exemptions shall also include:

1. An evaluation of the economic impact of the exemption on the State or community; and

2. A determination of which group or individuals are assisted by this exemption and their approximate number.

The Joint Standing Committee on Taxation has been designated as the legislative committee having jurisdiction over the statutory provisions subject to review and has evaluated the following sales tax exemptions:

1. sales of hospital supplies and equipment to proprietors of unincorporated hospitals;

2. sales to incorporated hospitals;

3. sales to incorporated nonprofit nursing homes licensed by the Department of Human Services;

4. sales to incorporated nonprofit home health care agencies certified under Title XVIII of the Social Security Act of 1965, as amended;

5. sales to institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research;

6. sales to institutions incorporated as nonprofit corporations for the purpose of establishing and monitoring laboratories for scientific study and investigation in the field of biology or ecology;

7. sales to institutions incorporated as nonprofit corporations for the purpose of operating educational television or radio stations;

8. sales to incorporated nonstock educational institutions;

9. sales to regularly organized churches or houses of religious worship, excepting sales, storage or use in activities which are mainly commercial enterprises;

10. rental charged for living quarters, sleeping or housekeeping accomodations at camps entitled to exemption from property tax under section 652, subsection 1 (benevolent and charitable institutions);

11. rental charged for living or sleeping quarters in an institution licensed by the State for the hospitalization of human beings;

12. rental charged for living or sleeping quarters in an institution licensed by the State for the nursing care of human beings;

13. rental charged for living quarters, sleeping or housekeeping accomodations to any student necessitated by attendance at an incorporated nonstock educational institution;

14. rental charged to any person who resides continuously for 28 days at any one hotel, rooming house, tourist or trailer camp;

15. sales to incorporated private nonprofit residential child caring institutions which are licensed by the Department of Human Services as child caring institutions;

16. sales to automobile dealers of automobiles leased to public or private secondary schools for use in driver education programs;

17. sales of automobiles to veterans who are granted free registration of such vehicles;

18. sales to non-residents of motor vehicles;

19. sales to non-residents of boats, materials used to construct such boats sold to non-residents and sales to non-residents for repair of such boats;

20. sales to non-residents of aircraft;

21. sales to volunteer fire departments and incorporated volunteer nonprofit ambulance corps;

22. sales to mental health facilities and mental retardation facilities which receive support under the Federal Community Mental Health Centers Act or from the Department of Human Services;

23. sales of water pollution control facilities.

II. PUBLIC HEARING

In accordance with 36 MRSA §2603 (Chapter 31), a public hearing was held on January 16, 1980 to solicit and hear testimony from interested parties concerning the tax exemptions subject to review. Oral testimony was heard and/or written testimony was submitted from representatives of the following organizations or individuals: Maine Hospital Association, Blue Cross/Blue Shield, Maine Health Care Association, Maine Camp Directors Association, Maine State Firefighters Association, various representatives of local fire companies, Maine Council of Community Mental Health Centers, a private citizen speaking about mental health facilities, and the Commissioner of the Department of Environmental Protection. A summary of that testimony is presented in the appendix.

III. GENERAL BACKGROUND OF THE SALES TAX IN MAINE

The sales tax was enacted and signed into law on May 3, 1951. Effective July 1, 1951, a tax of 2% was imposed on the value of all tangible personal property sold at retail in the State of Maine.

The sales tax was not a popular idea and was only enacted after much debate. Generally those voting in favor of the sales tax did so with reluctance. (It should be noted that most taxes are enacted "reluctantly" by the Legislature.) The overriding reason for the tax was the essential need of state government for additional revenue.

The original sales tax contained 15 exemptions. Only two of those exemptions are a part of the 23 exemptions being considered for review by this report, hospitals and schools. The remaining 21 exemptions have been added to the sales tax law since 1951.

IV. RATIONALE FOR SALES TAX EXEMPTIONS

Sales taxes in Maine have never existed without exemptions of one kind or another. Many exemptions are unique to the nature of the sale. An exemption may be based on the nature of the item being sold, e.g., food items, or it may be based on the nature of the organization or class of consumer which stands to benefit from the exemption, e.g., churches. The most common rationale for retaining sales tax exemptions and for continuing them in lieu of some other form of assistance include the following arguments:

A. Generally speaking, a sales tax is a tax on the consumer passed along by the retailer. An exemption from sales taxes in these instances results in benefit to the consumer and helps hold down costs in areas where the consumer may already be burdened by inflationary prices, e.g., hospital care, nursing care, and home health care.

B. Some categories of taxpayers are not in a position to pass along the cost to the consumer. The imposition of the tax would negate the basic principle of a sales tax. Examples of this would be exemptions for automobiles donated to schools for driver education programs and for research laboratories which do not charge for their services.

C. A sales tax has often been classified as a regressive tax. Exemptions can help relieve the burden of the tax on those at the low end of the income scale, e.g., the exemption for essentials such as food items and apartment rentals.

D. There are public policy reasons for some sales tax exemptions such as recognition of veterans who lost a limb in the service of their country and state, i.e., the exemption for automobile sales to amputee veterans.

E. Some tax exemptions are supported by already existing tax exemptions for similar organizations. The tax exemption for home health care agencies was supported, in part, by the fact that hospitals and nursing homes were exempt at the time the exemption for home health care agencies was sought.

F. Sales tax exemptions exist to provide competitive equity between similar organizations, e.g., the exemption for private schools merely puts them on an equal footing with state run schools which enjoy sales tax exemptions. A variation of this theory would be to provide competitive equity for some businessmen who must compete with out of state businesses which have no sales tax. (The exemption for sales to out-of-state residents.) Without the sales tax the sales must take place across state lines.

G. Imposition of a sales tax on state funded organizations would result in the meaningless transfer of state funds from one pocket to another with an administrative expense along the way.

H. Sales tax exemptions currently provide a means for the state to support public funded organizations and institutions which it is deemed to be in the public interest to support without the expenditure of state funds. If the current exemptions were eliminated, the resulting scramble for already scarce funding would lower the efficienty and effectiveness of these organizations and institutions which it has been deemed desirable to encourage.

V. RATIONALE FOR LIMITING OR ELIMINATING SALES TAX EXEMPTIONS.

The existence of sales tax exemptions always seems to serve as a goal for some organizations which do not have the exemption. Some of the policy arguments for limiting or eliminating property tax exemptions include the following:

A. Tax exemptions are merely a "hidden" form of subsidy. The Legislature which creates this exemptions has little or no control or oversight over the amount of subsidy and the usefulness or necessity of that exemption.

B. Tax exemptions merely shift the tax burden to other taxpayers, e.g., all the taxpayers in Maine subsidize the medical costs of those utilizing hospital services. If all the exemptions from the sales tax were removed, the tax rate could be reduced for all of Maine citizens while the revenues would remain constant.

C. Tax exemptions often amount to a "gift" from the State (and the taxpayers) to those organizations which enjoy the exemption without sufficient reason at the expense of the general public.

D. Sales tax exemptions violate the basic principle of the sales tax, i.e., to have the person utilizing the goods or services pay the tax and not to have that cost subsidized by other taxpayers on other items.

VI. POLICY ALTERNATIVES CONCERNING SALES TAX EXEMPTIONS

A. Retain current tax exemptions.

B. Repeal all or some of the exemptions and lower the tax rate.

C. Repeal all or some of the exemptions and provide some other form of subsidy. It is suggested that by doing this you would receive a more efficient and accountable method of accomplishing the purpose of the exemptions.

D. Sunset all or some of the exemptions.

E. Limit the tax exemptions to a certain dollar amount of purchases. This would retain the "benefits" of exempting certain essentials while taxing those which purchase expensive, non-essential items.

G. Amend the current exemptions to limit or expand their application.

VII. SALES TAX EXEMPTIONS OF TITLE 36, §1760, sub-§§15-23 and 25-29 ANALYSIS AND RECOMMENDATIONS

The Committee has evaluated each sales tax exemption and submits the following analysis and recommendations. General recommendations are presented in Part VIII. Alternative recommendations are presented in Part IX, in a minority report of the Committee. The general discussions in Parts IV, V and VI are incorporated in this analysis where applicable. Accompanying legislation is included in the Appendices. A full text of each sales tax exemption accompanies its analysis. The total amount collected by the sales tax in fiscal year ending June 30, 1979 was $197, 870, 046, .28 and represented 40.8% of the total state revenue.

A. UNINCORPORATED HOSPITALS. "Sales to proprietors of unincorporated hospitals of hospital supplies and equipment. By 'hospital supplies and equipment' is intended all tangible personal property bought for the care, treatment and housing of patients of the hospital of the hospital." (sub-§15)

1. Affected group. None, there are no unincorporated hospitals currently operating in Maine.

2. Estimated loss of revenue. $ Ø

3. <u>Discussion</u>. An exemption for "hospitals" was part of the original sales tax law when enacted in 1951. The legislative record contains only two comments, by a member of the taxation committee chosen to speak to the exemptions, which offer little in the way of purpose or rationale. These comments were that:

a. the exemptions need no explanation and

b. the exemptions are self-explanatory.

In 1953 the hospital exemption was changed to "unincorporated hospitals" and "incorporated hospitals." There was no explanation and no debate.

The committee assumes that there was a class of hospitals that were unincorporated at the time of enactment of the exemption. However, as of the date of the hearing, there did not appear to be any unincorporated hospitals in the State of Maine. This is evidenced by:

a. lack of response to the hearing,

b. lack of exemptions on file in the Bureau of Taxation, and

c. written testimony of the President of the Maine Hospital Association indicating that he knew of no unincorporated hospitals in Maine.

4. <u>Recommendation</u>. In view of these facts and the strong indication that any new hospital established in Maine would be incorporated, there does not appear to be a need for this exemption. The committee recommends that this exemption be repealed.

B. INCORPORATED HOSPITALS. "Sales to incorporated hospitals." (sub-§16)

1. Affected group. There are 51 hospitals included in this category.

2. Estimated loss of revenue. $4,500,000.

3. Purpose of exemption.

a. To hold down hospital costs to patients by passing along the sales tax exemption either directly on exempt items billed to patients as a sale or indirectly by reducing the operating costs of the hospitals, a reduction that would be reflected in the charges to the patients.

b. In regard to Medicare and Medicaid patients, the exemption allows all of the Federal and State money to be utilized for direct patient care costs and not be siphoned off in taxes.

4. Effectiveness. This exemption reduces costs to patients by eliminating the sales tax on items sold directly to patients and by reflecting a lower operating cost and, thus, lower charge to the patient.

5. Discussion. See previous discussion of "unincorporated hospitals" in section B. above for notes on legislative history of this exemption.

a. Arguments for retention:

(1) Holds down medical costs to patients. This is particularly important in periods of rapidly spiraling hospital costs, a trend which appears to be continuing.

(2) Avoids meaningless transfer of state money from the state in the form of Medicare and Medicaid and

back to the state as a sales tax. This also dilutes effectiveness of the Medicaid and Medicare dollars by using some of that money for sales taxes instead of directly for services.

(3) Reduces paperwork involved in hospital accounting and auditing procedures. Increased paperwork would be reflected in increased cost of operation and increased cost of patient care.

b. Arguments for repeal or amendment:

(1) Redistributes tax burden to a group which does not purchase the product or use the service.

(2) Hides true cost of medical services.

(3) Perpetuates unequal treatment of sales to hospitals. Leased equipment is subject to a sales tax. Equitable treatment would require repeal of all exemptions or extension of the exemption to leased equipment.

(4) Does not reduce paperwork. Separate bookkeeping is now required for exempt and non-exempt items. If anything, a uniform sales tax treatment, i.e., no exemption, might simplify paperwork.

(5) Many agencies are currently working on holding down hospital costs. None of their attempts is related to a sales tax exemption. The real problem in rising hospital costs is not related to the sales tax and cannot be cured by retaining the exemption.

(6) Savings to patients, when spread out among all hospital patients, is negligible and not a factor in the increase of hospital costs.

(7) Medicare and Medicaid payments are currently utilized for payment of those items which are not tax exempt, e.g., admission kits, etc..

6. Recommendations. While there is some validity to the arguments favoring repeal there is also some merit to retention of this sales tax exemption if any tax exemptions are to be retained. Accordingly, the committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

C. NURSING HOMES. "Sales to incorporated nonprofit nursing homes licensed by the Department of Human Services." (sub-§16)

1. Affected group. There are 11 institutions included in this exemption.

2. Estimated loss of revenue. $21,000

3. Purpose of exemption. To help ease the financial burden of these institutions which cater to the needs of the elderly and infirm.

4. Effectiveness. This exemption does reduce the operating costs of these institutions by an average of $2,000 per institution.

5. Discussion. This exemption was enacted in 1971 without legislative debate. The stated purpose of the exemption when enacted is reflected in sub-section 3 above.

a. Arguements for retention.

(1) Nursing homes provide health care and should be treated the same as hospitals for the same reasons. (e.g., reduction of costs to residents)

(2) Some nursing homes are exempt by virtue of

the fact that they are a part of a hospital. Equity demands that all nursing homes be treated the same.

(3) Removal of the exemption would increase costs to the residents of nursing homes and they would deplete their private resources sooner and would be forced to seek public aid.

b. Arguments for amendment or repeal.

(1) Redistributes the tax burden to a group which does not use the service.

(2) Hides the true cost of nursing homes.

(3) Represents a negligible savings to patients when distributed among all nursing home residents.

(4) There is no reason to distinguish between profit and non-profit nursing homes. All nursing homes must comply with the same strict regulations and are highly regulated. Non-profit nursing homes may not necessarily have lower costs since what would normally be considered profit to a profit nursing home may be diverted to higher salaries in a non-profit nursing home. (The equal treatment argument can be used to recommend repeal of the exemption or to recommend that all nursing homes, profit and non-profit, be exempt. The latter course of action may prove costly in view of the fact that there are 11 non-profit nursing homes and 134 profit nursing homes.)

6. <u>Recommendations</u>. While there is some validity to the arguments favoring repeal, there is also some merit to retention of this sales tax exemption if any exemptions are to

be retained. Accordingly, the committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

D. HOME HEALTH CARE AGENCIES. "Sales to incorporated nonprofit home health care agencies certified under Title XVIII of the Social Security Act of 1965, as amended." (sub-§16)

1. Affected group. There are 12 agencies included in this exemption.

2. Estimated loss of revenue. $9,000.

3. Purpose of exemption. To help ease the financial burden of these agencies.

4. Effectiveness. This exemption does reduce the operating costs of these institutions by an average of $750 per agency.

5. Discussion. This exemption was enacted in 1977 without legislative debate. The statement of fact accompanying the legislation indicated that "Sales to nonprofit hospitals and nursing homes are currently exempt from the sales tax."

a. Arguments for retention:

(1) Home health care agencies provide health services similar to hospitals and nursing homes. They should all be treated in a similar manner.

(2) Removal of the exemption would increase the cost of home health care and would decrease the amount of funds available for direct care, diverting those funds to the sales tax.

b. Arguments for amendment or repeal.

(1) Redistributes the tax burden to a group which does not purchase the services.

(2) Hides the true cost of home health care.

(3) Represents a negligible savings to patients when distributed among all recipients of home health care.

6. Recommendations. While there is some validity to the arguments favoring repeal, there is also some merit to retention of this sales tax exemption if any exemptions are to be retained. Accordingly, the committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

E. MEDICAL RESEARCH INSTITUTES

"Sales to institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research." (sub-§16)

1. Affected group. There are 4 institutions included in this exemption.

2. Estimated loss of revenue. $10,000.

3. Purpose of exemption. To help ease the financial burden of these types of institutions.

4. Effectiveness. This exemption reduces the costs to these institutions an average of $2,500 per institution.

5. Discussion. This exemption was enacted in 1953 without legislative debate.

a. Arguments for retention:

(1) These institutions do not charge\for services and the cost of repealing this exemption could not be passed on to any customers. Repeal would reduce the amount of funds available for research and decrease the effectiveness of the institutions.

(2) These institutions are largely funded by grants. Retention of the exemption would allow more of the

grant money to be used directly for the medical research.

b. Arguments for amendment or repeal:

(1) These institutions do not pass along these exemptions directly to consumers and therefore there is no cost savings to the consumer, only a "hidden" subsidy to the institutions enjoying the exemption.

(2) This exemption amounts to a public grant to these institutions. If any such "grant" is intended, it should be provided dirctly and publicly so the taxpayer knows how much he is supporting these institutions and for what reasons.

6. Recommendations. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

F. BIOLOGICAL OR ECOLOGICAL LABORATORIES

"Sales to institutions incorporated as nonprofit corporations for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology." (sub-§16)

1. Affected group. There are two laboratories included in this exemption.

2. Estimated loss of revenue. $2,000.

3. Purpose of exemption. The purpose of this exemption is to exempt from the sales tax certain laboratories whose studies and research are for the benefit of mankind.

4. Effectiveness. This exemption reduces the costs of those laboratories by an average of $1,000 per laboratory.

5. Discussion. This exemption was enacted in 1971 without

a. Arguments for retention:

(1) These institutions do not charge for services and the cost of repealing this exemption could not be passed on to any customers. Repeal would reduce the amount of funds available for research and decrease the effectiveness of the laboratories.

(2) Any state appropriations for these laboratories would have to be increased by an amount equal to the tax loss to provide the same effective amount of state assistance and would merely transfer that additional money from one pocket to another with no increase in tax revenue.

b. Arguments for amendment or repeal:

(1) These laboratories do not pass along these exemptions directly to consumers and therefore there is no cost savings to the consumer.

(2) This exemption amounts to a hidden subsidy to these laboratories in addition to any public grants. If any such additional subsidy is intended, it should be provided directly and publicly so the taxpayer knows the total amount of support for these laboratories and for what reasons that support is given.

6. Recommendations. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

G. EDUCATIONAL TV/RADIO STATIONS

"Sales to institutions incorporated as a nonprofit corporation for the purpose of operating educational television or radio stations." (sub-§16).

1. Affected group. There are two public educational TV/Radio stations exempt under this category.

2. Estimated loss of revenue. $10,000.

3. Purpose of exemption. These educational TV/radio stations are owned and operated by the University of Maine and by Colby, Bowdoin and Bates Colleges. These educational institutions are currently tax exempt. This exemption was enacted to provide the same tax exempt status to the stations that the owners of the stations enjoyed.

4. Effectiveness. This exemption does provide the same tax exempt status to the stations and their owners.

5. Discussion. This amendment was enacted in 1961 and was the subject of legislative debate which is reflected in section 3, above.

a. Arguments for retention:

(1) These stations provide a public service and are operated solely by grants and public funds. A sales tax exemption is merely an extension of this public funding.

(2) There are no customers who are charged for services and thus the sales tax could not be passed along in the usual manner.

(3) Any state appropriations for these stations would have to be increased by an amount equal to the tax loss to provide the same effective amount of state assistance. That would be an inefficient transfer of public money from one pocket to another with no increase in tax revenue.

(4) It is good public policy to support alternatives to commercial radio and television stations, par-

ticularly since they have no commercial funding.

b. Arguments for amendment or repeal.

(1) A tax exemption amounts to a hidden subsidy, in addition to the public grants they currently receive. Any grant should be given directly and publicly so the taxpayer knows exactly how much support he is giving these stations and for what reasons.

(2) These institutions are not direct institutions of education, but are merely a different form of radio and television. They should not enjoy the same tax exempt status as a college or university which provides directed education leading to a degree in a field of learning which can be utilized in the job market.

(3) Private radio and TV stations do not receive a tax exemption. It is inequitable to give a tax exemption to public stations which are in direct competition with the private stations.

6. Recommendations. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

H. SCHOOLS

"Sales to incorporated nonstock educational institutions. 'Schools' mean incorporated nonstock educational institutions including institutions empowered to confer educational, literary or academic degrees, which have a regular faculty, curriculum and organized body or pupils or students in attendance throughout the usual school year, which keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual." (sub-§16)

1. Affected group. There are approximately 200 schools exempt in this classification.

2. Estimated loss of revenue. $65,000.

3. Purpose of exemption. The state contributes considerably to the University of Maine. This provides a way in which the state can contribute something to the private colleges and other schools which contribute to the educational betterment of the State of Maine.

4. Effectiveness. This amendment results in a cost-savings of approximately $65,000 to these schools.

5. Discussion. This exemption was enacted in 1953 and was the subject of legislative debate as reflected in subsection 3 above.

a. Arguments for retention:

(1) Six reasons were given for passage of this legislation during the legislative debate. They are:

(a) private colleges never have and never will seek state or federal aid,

(b) they are non-profit organizations,

(c) the private colleges subsidize Maine students to the tune of 1/2 million dollars a year,

(d) these schools relieve student pressure on state universities,

(e) no other sales tax state taxes non-profit educational institutions, and

(f) if Maine taxes these institutions it would open the door for other states to tax similar institutions in their state. (A domino effect argument.)

(2) Other reasons include:

(a) state and parochial schools don't pay tax,

(b) they provide valuable education to children of Maine, and

(c) their contributions are falling and they need help.

b. Arguments for amendment or repeal.

(1) This exemption requires the taxpayer to support, not only the state supported schools, but also priviate schools as well. The state has established schools for the education of its children. The taxpayer is required to support those schools. There is no reason why the taxpayer should also be required to support every private school in the State, particularly in the form of a "hidden" subsidy which is not subject to review or taxpayer approval through the normal legislative process. (The budget of the state supported schools and the school administrative districts is subject to direct and public approval.)

(2) This tax exemption, which is supported wholly by the taxpayers of Maine, provides a benefit to non-Maine students as well as Maine students.

6. <u>Recommendations</u>. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

I. CHURCHES

"Sales to regularly organized churches or houses of religious worship, excepting sales, storage or use in activities which are mainly commercial enterprises." (sub-§16)

1. Affected group. This exemption applies to all recognized churches in Maine, approximately 2,200.

2. Estimated loss of revenue. $500,000.

3. Purpose of exemptions. This exemption is to relieve the churches of the burden of the sales tax; thereby allowing their resources to be utilized more fully for their purposes.

4. Effectiveness. This exemptions provides a savings to churches.

5. Discussion. This exemption was enacted in 1951 as a part of the original sales tax law. Legislative debate indicated that no explanation was necessary and stated that this particular exemption was self-explanatory.

"During America's pre-revolutionary period, preferential tax treatment of religious property was common in the colonies. The colonists adopted the European patterns of church-state union and religious intolerance making compulsory support of religion the rule rather than the exception. It was assumed that "in a Christian land, no argument is necessary to show that church purposes are public purposes", that if churches were to be taxed, religion could be destroyed; and that churches should not be forced to contribute to the cost of government. The status of the church as an "established" public institution rendered unsound any state policy which would tax its own agency.

At the outbreak of the American Revolution some type of established religion existed in most of the thirteen colonies, although there was a growing sentiment favoring disestablishment and individual religious freedom. After the Revolution the new state governments incorporated the developing principle of religious liberty into their constitutions. With disestablishment, the church was no longer an official arm of the state, thereby destroying the original rationale for exempting church property from taxation. Nevertheless, the custom of exempting such property was continued due largely to public approval of the practice rather than specific legislative grant." (Tax Benefits for Religion, New York University Law Review, Vol. 45: 875-6, Oct., 1970)

Proponents of religious tax exemptions claim that failure to provide a tax exemption for religious institutions would violate the free exercise clause of the U.S. Constitution. Opponents contend that such an exemption is an impermissable establishment of religion. The dichotomy is inherent in the First Amendment to the Federal Constitution. The only definitive statement the Supreme Court has made is that it is not an impermissable establishment of religion if religious property is exempt from taxation as a part of a general scheme of tax exemptions for benevolent and charitable institutions.

a. Arguments for retention.

(1) Churches serve the public good by providing charitable services (which would otherwise need to be directly provided by government) and morally beneficial influences (the complement of which would need to be provided by government, such as additional police protection). A tax exemption is merely good public policy to encourage/assist these types of beneficial institutions. Of the several methods available for government to assist churches, tax exemptions are the "best" because they are the most neutral. For example, exemptions do not require inspection, auditing, and other regulations common to grant programs. No money exchanges hands in the case of an exemption. An exemption guarantees no money to the Church from government or any other source --- the Church must get support from its own supporters under an exemption scheme.

(2) It is a practice so long continued and so deeply imbedded in the traditions of church and state that

it cannot be changed without danger to social order;

b. Arguments for amendment or repeal:

(1) A tax exemption is a subsidy, the cost of which is not readily apparent, and the costs and benefits of which may not be distributed in the most "equitable" or desirable manner. It is poor public policy for the taxpayer to subsidize a religious organization.

(2) A sales tax is a tax on items purchased and is not a tax on the church.

6. Recommendation: The committee recommends that this exemption be retained.

J. RENTAL CHARGES - GENERAL COMMENTS

A sales tax on certain rental charges (under 90 days) was enacted in 1959 in response to a need for additional tax revenue. It was "hailed" as a new type of sales tax, a tax on services as opposed to a tax on sales. Legislative debate in favor of the tax cited the need for the additional revenue, the fact that it would be paid largely by out-of-staters, the relatively small burden it imposed, and the fact that many other states had such a tax without loss of tourist trade. Opponents of the tax viewed it as a crippling blow to the tourist industry and the forerunner of many new taxes in the future on services.

This tax passed and was amended in 1961 mainly to provide clarifications which would ease administration of the tax and lessen any confusion. The 90 day exemption was expanded to exempt rentals of 28 days or more. None of the debate on the original tax or the amendments provided any substantive discussion of the exemptions.

In 1960, the Supreme Court of Maine interpreted the language of the sales tax on "tourist camps". (Camp Walden vs. Johnson, State Tax Assessor). In view of its significance to sales taxes or rental charges and the apparent "exemption" it creates, a full review of that case is in the appendix.

In brief, the Court held that sales tax on living quarters was not applicable to camps operated in such a manner that a charge for living quarters was only a small, incidental part of the total charge for the camp and the furnishing of living quarters was only incidental to the purpose of the camp.

Exemptions to the sales tax on rental charges for "living quarters" were enacted in 1959 as an original part of the bill taxing rentals and amended in 1961 to their present form. In this context, "living quarters" is defined as "sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space." The specific exemptions are discussed below:

1. Rental Charges - Camps. "Rental charged for living quarters, sleeping or housekeeping accommodations at camps entitled to exemption from property tax under section 652, subsection 1 [benevolent and charitable institutions]." (sub-§17).

   a. The purpose of the exemption is to provide sales tax exemption to camps which have a property tax exemption as a benevolent/charitable organization, and to aid camps which provided a valuable service to Maine.

   b. The estimated loss of revenue is nominal.

   c. Arguments for retention:

      (1) There should be no tax on these rentals since camp property is exempt. This would maintain consistency and uniformity.

      (2) These camps provide a service in which the state has an interest in maintaining and encouraging.

      (3) Costs of sales tax could not be passed on to campers because the fees would then exceed the income

ability of the persons served.

(4) A sales tax would place a burden on camps which primarily serve people who can't afford to send their children to camps.

(5) Camp Walden requires exemption even if the specific exemption were repealed.

d. Arguments for amendment or repeal:

(1) Exemption is merely a hidden subsidy with no relation to benefit to state.

(2) There is no compelling reason these rentals should be taxed.

(3) Camp Walden merely interprets the law and a change in the law is within the prerogative of legislature.

2. Rental Charges - Hospitals/Nursing Care Institutions. "Rental charged for living or sleeping quarters in an institution licensed by the State for the hospitalization or nursing care of human beings. (sub-§18)

a. The purpose of this exemption is to exclude these types of living quarters from the sales tax on rental charges for living quarters.

b. The estimated loss of revenue is nominal.

c. Arguments for retention:

(1) The living quarters for patients in hospitals and residents of nursing homes is merely incidental to the service being provided. This is not the type of rental charge which was intended to be taxed by the legislature.

(2) A tax on the rental charges for living quarters in these institutions would merely raise the cost

to the patient/resident and reduce the amount of funds they have to pay for the actual services.

d. Arguments for amendment or repeal:

(1) This exemption amounts to a hidden subsidy which is distributed to all the taxpayers regardless of whether or not they use the services. A sales tax should be paid for those who purchase the goods or services upon which the tax is levied.

3. Rental Charges - Schools. "Rental charged for living quarters, sleeping or housekeeping accommodations to any student necessitated by attendance at a school. 'Schools' means incorporated nonstock educational institutions, including institutions empowered to confer educational, literary or academic degrees, which have a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year, which keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual." (sub-§19)

a. The purpose of this exemption is to encourage or make possible, by helping reduce the costs, attendance at private non-profit educational institutions.

b. The estimated loss of revenue is nominal.

c. Arguments for retention.

(1) The living quarters for students in schools and hospitals is merely incidental to the service being provided. This is not the type of rental charge which was intended to be taxed by the legislature.

(2) A tax on the rental charges for living quarters in these institutions would merely raise the cost to the student and may discourage or prevent them from attending school.

d. Arguments for amendment or repeal:

(1) This exemption amounts to a hidden subsidy which is distributed to all the taxpayers regardless of whether or not they use the services. A sales tax should be paid for by those who purchase the goods or services upon which the tax is levied.

(2) The state should not be in the business of encouraging students to attend private schools .

(3) The state provides educational institutions at all levels of learning. It is an unnecessary burden on the taxpayer to expect him to subsidize educational facilities also.

4. <u>Rental Charges - Hotels, Rooming Houses, Tourist or Trailer Camps</u>." Rental charged to any person who resides continuously for 28 days at any one hotel, rooming house, tourist or trailer camp. Tax paid by such person to the retailer under section 1812 during the initial 28-day period shall be refunded by the retailer. Such tax reported and paid to the State by the retailer may be taken as a credit by the retailer on the report filed by him covering the month in which refund was made to such tenant.

"'Hotel' means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants.

"'Rooming house' means every house, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.

"'Tourist camp' means a place where tents or tent houses, or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation.

"'Trailer camp' means a place where space is offered with or without service facilities to the public for tenting or for the parking and accommodation of automobile trailers which are used for living quarters and the rental price shall include all service charges paid to the lessor."

a. The purpose of this exemption is to exclude from the sales tax that rental charge which is in the nature of permanent lodging.

b. Estimated loss of revenue is $12,000,000.

c. Arguments for retention:

(1) It is public policy not to charge a sales tax on basic necessities such as food and lodging. (This is one way in which a sales tax, often labeled as regressive, can be a more progressive tax.)

(2) The 28 day provision is comparable to other states.

(3) This is not the type of rental arrangement on which the legislator contemplated levying a sales tax when enacted in 1939.

d. Arguments for amendment or repeal:

(1) If a tax is to be imposed on rentals it should

include all rental situations to be equitable.

REECOMMENDATIONS OF THE COMMITTEE:

The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

K. CHILD-CARING INSTITUTIONS

"Sales to incorporated private nonprofit residential child caring institutions which are licensed by the Department of Health and Welfare as child caring institutions." (sub-§18-A)

1. Affected group. There are 15 child-caring institutions exempt from the sales tax.

2. Extimated loss of revenue. $29,000.

3. Purpose of the exemption. These institutions provide residential child-care in a group home setting. This exemption relieves the financial burden of a sales tax to these homes.

4. Effectiveness. This exemption reduces the operating cost of these institutions by approximately $2,000 per institution.

5. Discussion. This exemption was enacted in 1971 without legislative debate.

a. Arguments for retention:

(1) These institutions provide non-foster, supervised group care for children in need of these services. These children are often state wards. Much of the financing of these institutions come from the state. In one sense it is almost a quasi-state institution and a sales tax would merely transfer money from one pocket of the state to another

without a resultant increase in state revenue.

(2) These institutions are not profit making institutions and operate on very limited budgets. There are no consumers to absorb the cost of a sales tax. Repeal of the exemption would effectively reduce the operating expenses of these institutions and hinder their ability to perform their functions.

b. Arguments for amendment or repeal:

(1) This exemption is a hidden subsidy not reflected in the normal state assistance to these institutions. Any assistance given to these organizations should be public and subject to review.

(2) This exemption redistributes the tax burden and requires taxpayers who are not affected by the services provided by these institutions to subsidize them.

6. Recommendation. Accordingly, the committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

L. AUTOMOBILE SALES - DRIVER EDUCATION PROGRAMS

"Sales to automobile dealers, registered under section 1754, of automobiles for the purpose of equipping the same with dual controls and loaning or leasing the same to public or private secondary schools without consideration or for a consideration of not more than $1 a year, and used exclusively by such schools in driver education programs." (sub-§21).

1. Affected group. There are 259 auto dealers in the State

that may be affected by this exemption.

2. Estimated loss of revenue. $60,000.

3. Purpose of exemption. Driver Education in the schools is essential to highway safety. The cost of dealers contributing cars has increased to the extent that the sales tax will make the cost prohibitive and they will discontinue this practice.

4. Effectiveness. This bill does eliminate the sales tax cost for the dealer when he is donating an automobile to a school for driver education purposes. It is not clear at this time if the dealers would continue to provide this service for other reasons (e.g., publicity, public relations, goodwill, etc.) if the exemption were repealed.

5. Discussion. This exemption was enacted in 1953, but was made retroactive to 1951, the date of enactment of the original sales tax. It was enacted without legislative debate.

a. Arguments for retention:

(1) To encourage automobile dealers to continue to donate automobiles to the schools for their use. It seems to be an unfair burden to require the dealer to pay a sales tax on an item that is not sold.

b. Arguments for amendment or repeal:

(1) This exemption creates an unfair burden on the taxpayer and requires him to subsidize driver education programs in the schools without a direct and easily reviewable process.

(2) An exemption of this nature discriminates against private driver education programs which are competing with the driver education programs in the public schools.

6. Recommendation. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

M. AUTOMOBILE SALES - AMPUTEE VETERANS

"Sales of automobiles to veterans who are granted free registration of such vehicles by the Secretary of State under Title 29, section 251. Certificates of exemption or refunds of taxes paid shall be granted under such rules or regulations as the Tax Assessor may prescribe." (sub-§22).

1. Affected group. This exemption includes a limited number of veterans who meet the eligibility requirements. There are approximately 52 average annual sales exempt under this subsection. (All veterans in this group have suffered a loss of limb due to service in the military.)

2. Estimated loss of revenue. $13,000.

3. Purpose of exemption. Federal Law authorized VA to supply certain amputee vets with automobiles. In recognition of debt people of Maine owe to veterans, they should not have to pay the state to enjoy the automobile, which the Federal government has supplied free.

4. Effectiveness. This exemption accomplishes the purpose for which it was established.

5. Discussion. This exemption was enacted in 1953, but was made retroactive to 1951, the date of the original sales tax enactment. It was encated without legislative debate.

a. Arguments for retention:

(1) Public policy of the state demands this exemption as a humanitarian gesture. It is the least the state can do as recompensation and recog-

nition to the veterans who sacrificed so much for their country and their state.

(2) This exemption should be retained to compliment the provision of 29 MRSA §251 which exempts the registration cost of automobiles purchased by these veterans.

b. Arguments for amendment or repeal:

(1) This is another exemption given to a limited class of taxpayers which redistributes the tax burden and provides a subsidy which is not subject to the normal legislative review.

6. Recommendation. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

N. SALES OF CERTAIN ITEMS TO NON-RESIDENTS: GENERAL DISCUSSION

The Federal Constitution prohibits Maine from imposing a sales tax on items sold in Maine to a non-resident and delivered outside the state. Without a tax exemption for these non-resident sales, the retailer could avoid the expense of the sales tax by delivering the item to the non-resident outside the state. On many items the savings would be negligible and would hardly be worth the effort. However, other items such as automobiles, large boats, and aircraft are expensive enough to make a savings in the sales tax very attractive. Out of state delivery in these instances provides meaningful savings and might well become established practice. In order to avoid this seemingly unnecessary delivery requirement and to conform to the spirit and intent of the Federal mandate, sales of certain items to non-residents, for use outside the state, have been exempted from the sales tax,

N-1. SALES TO NON-RESIDENTS: MOTOR VEHICLES

"Motor vehicles purchased by a nonresident and intended to be driven or transported outside the State immediately upon delivery by the seller. If such motor vehicle is registered for use in Maine within 6 months ofthe date of purchase, the person seeking registration shall be liable for use tax on the basis of the original purchase price". (sub-§23)

"'Motor vehicle' means any self-propelled vehicle designed for the conveyance of passengers or property on the public highways."

1. Estimated loss of revenue. Nominal.

2. Purpose of exemption. See general discussion in Section N.

3. Discussion. This exemption was enacted in 1953 for passenger automobiles. In 1975 the exemption was amended to refer to motor vehicles.

a. Arguments for retention:

(1) Eliminates the necessity for dealers to make out of state delivery to maintain tax exempt status.

(2) Helps Maine dealers compete with neighboring states which have no sales tax.

(3) This exemption does not cost any money since the same tax exemption could be received by delivering the items out of state.

b. Arguments for amendment or repeal:

(1) This exemption is merely a "hidden" form of subsidy. It is not subject to public review.

(2) This exemption shifts the burden of taxes to other taxpayers who do not purchase the products.

4. Recommendation. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales

tax rate.

N-2. SALES TO NONRESIDENTS: BOATS

"Sales in this State to nonresidents of yachts and other pleasure boats and commercial vessels and boats actually registered for numbering, enrolled or documented under federal or foreign law in the appropriate customhouses or registry offices for location thereof or home ports thereof outside the State, when such craft are either delivered outside the State or delivered in the State to be sailed or transported outside the State immediately upon delivery by the seller; and any sales to nonresidents, under contracts for the construction of any such craft to be so delivered, of materials to be incorporated therein; and any sales to nonresidents for the repair, alteration, refitting, reconstruction, overhaul or restoration of any such craft to be so delivered, of materials to be incorporated therein. (sub-§25)

1. Estimated loss of revenue. Sales of boats: Nominal.
Construction materials: $31,000.
Repair: $64,000.

2. Purpose of exemption. See general discussion in section N.

3. Discussion. The exemption for the sale of boats to nonresidents was enacted in 1957 without substantive legislative debate. The exemption for the construction of boats sold to non-residents and the sale of materials used in the construction of those boats was enacted in 1965. The emergency preamble to that bill indicated it was necessary to prevent the massive closing of boatbuilding establishments throughout Maine. Legislative debate indicated that the exemption was needed to maintain a competitive advantage for the boatbuilding industry in Maine. Specifically mentioned was the potential loss of a $55 million dollar contract by Bath Iron Works because of the potential $9 million dollar sales tax. The

resulting loss of jobs would be disasterous. The exemption for the sales to nonresidents for repairs to their boats was enacted in 1967 without legislative debate.

a. Arguments for retention:

(1) Eliminates the necessity for dealers to make out of state delivery to maintain tax exempt status.

(2) Helps Maine dealers compete with neighboring states. Loss of sales could directly affect jobs in the boatbuilding industry, for both large and small boatbuilding firms.

b. Arguments for amendment or repeal:

(1) This amendment is a "hidden" form of subsidy and is not subject to review or oversight.

(2) This exemption shifts the burden of taxes to other taxpayers who do not purchase the products.

(3) There is no overriding rationale for the exemption on the sales to non-residents of boat repairs. It is inequitable since tourists in Maine who travel by car do not receive an exemption on the cost of automobile parts or repairs when these repairs are necessary.

4. Recommendations. Generally, the committee recommends that these exemptions be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate. However, the committee recommends that the exemption relating to the sale to non-residents for the repair, alteration, refitting, reconstruction, overhaul or restoration of boats to be delivered outside the state, and the materials incorporated therein be repealed. The committee also recommends that language be added to make the owner liable

for the tax if the boat is subsequently registered, enrolled or documented for location in Maine within 6 months of the sale.

5. Minority recommendation. A minority of the committee does not feel that this exemption should be singled out for repeal until all exemptions have been reviewed and considered for for repeal, along with a reduction of the tax rate, as recommended by this committee.

N-3. SALES TO NONRESIDENTS: AIRCRAFT

"Aircraft purchased by a nonresident and intended to be driven or transported outside the State immediately upon delivery by the seller.

"Aircraft" means any powered contrivance designed for navigation in the air except a rocket or missile.

1. Estimated loss of revenue. Nominal.

2. Purpose of exemption. See general discussion in Section N.

3. Discussion. This exemption was enacted in 1961 without legislative debate.

a. Arguments for retention:

(1) Eliminates the necessity for dealers to make out of state delivery to maintain tax exempt status.

(2) Helps Maine dealers compete with neighboring states which have no sales tax.

(3) This exemption does not cost any money since the same tax exemption could be received by delivering the items out of state.

b. Arguments for amendment or repeal:

(1) This exemption is merely a "hidden" form of subsidy. It is not subject to review or oversight.

(2) This exemption shifts the burden of taxes to other taxpayers who do not purchase the products.

4. Recommendation. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate. The committee also recommends that language be added to make the owner liable for the tax if the airplane is subquently registered in Maine within 6 months of the sale.

O. VOLUNTEER AMBULANCE CORPS AND FIRE DEPARTMENTS

Sales to incorporated volunteer fire departments and to incorporated volunteer nonprofit ambulance corps. (sub-§26)

1. Affected group. There are 28 ambulance corps and 129 fire departments included in this exemption.

2. Estimated loss of revenue. Volunteer ambulance corps-$14,000. Volunteer fire departments=$64,500.

3. Purpose of exemption. To encourage such volunteer organizations which provide valuable service to the community.

4. Discussion. The exemption for volunteer fire departments was enacted in 1957. The exemption for ambulance corps was enacted in 1972. There was no legislative debate.

a. Arguments for retention:

(1) This exemption places the volunteer organizations on an equal sales tax status as municipal organizations.

(2) If the cost of the sales tax were passed on to the consumer, the community would bear this cost as an increased cost of providing this service.

(3) Public policy requires that this type of organization not be burdened by the extra cost of a sales tax.

b. Arguments for amendment or repeal:

facilities which is not subject to the normal review process. Any assistance should be done directly and openly so the taxpayers know which organizations they are assisting and why.

5. Recommendation. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

Q. WATER POLLUTION CONTROL FACILITIES

" Sales of any water pollution control facility, certified as such by the Environmental Improvement Commission, and any part or accessories thereof, or any materials for the construction, repair or maintenance of such facility.

As used in this subsection:

A. "Disposal system" means any system used primarily for disposing of or isolating industrial or other waste and includes thickeners, incinerators, pipelines or conduits, pumping stations, force mains and all other constructions, devices, appurtenances and facilities used for collecting or conducting water borne industrial or other waste to a point of disposal, treatment or isolation, except that which is necessary to the manufacture of products.

B. "Facility" means any disposal system or any treatment works, appliance, equipment, machinery, installation or structures installed, acquired or placed in operation primarily for the purpose of reducing, controlling or eliminating water pollution caused by industrial or other waste, except septic tanks and the pipelines and leach fields connected or appurtenant thereto.

C. "Industrial waste" means any liquid, gaseous or solid waste substance capable of polluting the waters of the State and resulting from any process, or the development of any process, of industry or manufacture.

D. "Treatment works" means any plant, pumping station, reservoir or other works used primarily for the purpose of treating, stabilizing, isolating or holding industrial or other waste." (sub-§29)

1. Estimated loss of revenue. $400,000

2. Purpose of exemption. This exemption was enacted to ease the burden placed on industrial facilities when they were required to meet stricter water quality standards.

3. Discussion. This exemption was enacted in 1969 without legislative debate.

a. Arguments for retention.

(1) Water pollution control facilities are installed in response to federal and state mandated water quality standards. This is an added expense of doing business which is not related to the production or output of the industry or business. Since this type of equipment would not be purchased in the normal course of business, but is being purchased by government mandate, it is not fair to require payment of a sales tax also.

b. Arguments for amendment or repeal.

(1) This exemption may have had some validity when the water pollution control standards were newly implemented and existing buildings and factories had to add, unexpectedly, expensive pollution control equipment. Today, pollution control equipment is an accepted part of the design and construction of new facilities. The exemption no longer serves a useful purpose and amounts to a "hidden" subsidy of no small amount to those businesses and industries which qualify.

5. Recommendation. The committee recommends that this exemption be retained pending consideration of repeal of all sales tax exemptions and consequent reduction of the sales tax rate.

PART VIII. GENERAL RECOMMENDATIONS

A. Repeal of most of the sales tax exemptions and reduction of tax rate.

This committee feels that the Joint Standing Committee on Taxation of the 110th Legislature should review the remainder of the sales tax exemptions and give serious consideration to repeal of all sales tax exemptions, except the exemptions on food and lodging of 28 days or more. If this action were taken, the sales tax rate could be significantly reduced, benefiting all Maine residents and not just those able to take advantage of the exemptions. Food and permanent lodging are not recommended for repeal because of the essential nature of these items.

B. Revision of the tax exemption review process.

This report completes the second review of tax exemptions by the Joint Standing Committee on Taxation of the 109th Legislature. Last year this committee reported on 1/2 of the property tax exemptions. Based on these two reports, the following recommendations are made concerning the legislative review of tax exemptions:

1. As currently provided by law, the Joint Standing Committee on Taxation of one Legislature is required to report on 1/2 of the property tax exemptions during one session and 1/2 of the sales tax exemptions during the other session. A subsequent Legislature will review the remaining exemptions during the following two sessions. The Committee does not feel it is best to separate the review of the property tax exemptions and sales tax exemptions between different Legislatures and in alternating years. Accordingly, this report will include legislation to provide for a review of all sales tax exemptions during a two year period by one Legislature. The next Legislature will have two sessions in which to review all the property tax exemptions. In view of the importance for reviewing tax exemptions periodically, the committee will continue to recommend that this review be

repeated.

2. The committee recommended that this proposed cycle of review be instituted next year by requiring review of all sales tax exemptions by the 110th Legislature, to be reported in the Second Regular Session. All property tax exemptions should be reviewed by the 111th Legislature, to be reported in the Second Regular Session.

APPENDIX A

STATE OF MAINE

Inter-Departmental Memorandum Date January 15, 1980

To John Selser, Legislative Assistant Dept. Legislative Assistance

From Thomas S. Squiers, Director Dept. State Tax Division - Taxation

Subject Cost Estimates for Exemptions from Sales and Use Tax found in 36, M.R.S.A., §1760, Sub-§15 to 23 and Sub-§25 to 29

I have listed below our estimates for the above exemptions. Some sections contain exemptions for more than one type of organization and where possible we have broken down the exemptions to individual type of organizations. In those cases where it is felt the loss is insignificant, I have so indicated with a reason.

As indicated to you previously, these are very rough estimates both as to the estimated cost and the number of organizations involved. Should the Committee express interest in repealing any particular section, please let me know and we will do a more detailed study in an effort to determine the revenue loss.

I believe, however, the estimates as to cost and number of organizations listed below will provide you and the Committee with a general idea as to the cost of the exemptions.

Section Number	Estimated Cost	Number
1760, Sub-§15. Sales to proprietors of unincorporated hospitals.		
1760, Sub-§16. Incorporated hospitals, research centers, churches and schools.		
Incorporated Hospitals	$4,500,000	51
Incorporated nonprofit nursing homes	21,000	11
Incorporated nonprofit home health care agencies	9,000	12
Incorporated medical research	10,000	4
Incorporated biological and ecological laboratories	2,000	2
Educational TV and Radio Stations	10,000	2
Schools	65,000	200
Churches	500,000	2,200
1760, Sub-§17. Camp - Rentals.		
Cost nominal due to Camp Walden vs. State Tax Assessor - Supreme Court Decision 6/1/60 and Sub-§20.	Nominal	
1760, Sub-§18. Certain Institutions - Rentals.		
	Nominal	
Nursing care institutions nominal because of Sub-§20. Hospitals undoubtedly would not qualify as rooming houses, hotels, tourist camps in light of Camp Walden vs. Johnson.		
1760, Sub-§18a. Other Institutions.		
	29,000	15

Section Number	Estimated Cost	Number
1760, Sub-§19. Schools - Rentals.	$	
Most school rentals exempt under Sub-§20.	Nominal	
1760, Sub-§20. Continuous residence; refunds and credits - rentals.		
	12,000,000	
Removal of exemption would subject permanent rentals to tax because of broad definition of "rooming house."		
1760, Sub-§21. Automobiles used in driver education program.		
	60,000	259
1760, Sub-§22. Automobiles to amputee veterans.		
	13,000	52
1760, Sub-§23. Motor vehicles.		
	Nominal	
Revocation of exemption would require vendor to deliver out-of-state to make transaction exempt.		
1760, Sub-§25. Boats Sold to Nonresidents.		
Boats sold to nonresidents	Nominal	
Material sold to nonresident for construction of boats	31,000	
Repairs, Overhauls, etc., nonresidents	64,000	
1760, Sub-§26. Volunteer Ambulance Corp. and fire department.		
Volunteer Ambulance Corp.	14,000	28
Volunteer Fire Departments	64,500	129
1760, Sub-§27. Aircraft purchased by nonresident.		
	Nominal	
1760, Sub-§28. Community mental health facilities and community mental retardation facilities.		
	36,500	52
1760, Sub-§29. Water Pollution Control Facilities.		
	400,000	

You will note that, as of yet, there is nothing to be written in the first section, Section 1760, Sub-§15. This will have to be filled in at a later date and in Section 1760, Sub-§16, there is nothing to be filled in for incorporated hospitals. This will also be filled in at a later date.

TSS:amm

APPENDIX B

Hearing Notes, January 16, 1980

1. Unincorporated Hospitals: No speakers

2. Incorporated hospitals

A. Fletcher Bingham, President of Maine Hospital Association, favors retention of tax exemption. Submitted written statement:

(1) Hospitals are tax exempt under §501 of Internal Revenue Code.

(2) All of hospitals' product purchases are for care of patients.

(3) Taxes would have to be passed on to patient in the form of increased health care cost, thus it is a "sick tax".

(4) Potentially inequitable to impose a sales tax on hospitals since it is questionable if the taxes could be passed on to federal and state governments (through Medicare/Medicaid/CHAMPUS). Unfair to have only those patients not assisted by federal/state payments to pay all of tax.

(5) At request of committee he will supply the following data:

(a) Are there any unincorporated hospitals? (Response: No)

(b) Does hospital pay sales tax on leased equipment? (Yes). Please submit written memos on this. (None submitted.)

(c) % of total sales to hospitals that are taxable under current exemptions in this sub-section: (Response: "These costs are not identifiable separately on the patient's bill and it would be extremely difficult to cost account, with the degree of specificity required for taxation purposes, a breakdown of the services provided such as personal services, food and the other items that are exempt from sales tax provisions under section 1760, and those that are not."

B. John McKernon, representing BC/BS, favors retention of tax exemption.

(1) Cost is passed on to subscriber

(2) As a policy matter, he feels the state should absorb the cost to reduce the cost to people obtaining a useful service.

3. Nursing homes

John Doyle, representing Maine Health Care Association favors retention of tax exemption. Submitted written statement:

A. 145 licensed nursing homes, 8300 residents, 83% are state residents supported under Medicaid (which is funded 70%-federal and 30%-state.) Department of Human Services spends $53 million annually for long term care, the major portion of which is directed to nursing homes.

B. Nursing homes are most regulated industry in state. Inflation and increases in wages, heating costs, and food costs have insured that no nursing home is receiving windfall profits. It is difficult to meet needs of residents within limits of available funds and state regulation. MHCA is currently participating in Governor's Task Force in Long Term Care. Until Task Force presents its findings to 110th Legislature, it would be ill-advised to undertake a piecemeal approach to an industry.

C. Imposition of sales tax for rental charges (#12) would require complex cost element breakdown.

D. Imposition of sales tax for rental charges (#12) would largely fall on the 83% of the residents funded by State (30%) and federal (70%) funds. This would merely transfer funds from one state pocket to another and create an accounting nightmare.

E. Residents would be forced to pay more and it would deplete their private resources sooner and require them to be on Medicaid sooner.

F. Recommendation: Exemption be continued or, at least, nothing be done to until Governor's Task Force makes its report.

4. Home Health Care Agencies: No speakers

5. Medical Research Institutions: No speakers

6. Biological or Ecological Laboratories: No speakers

7. Educational TV/Radio Stations: No speakers

8. Incorporated Nonstock Educational Institutions: No speakers

9. Churches: No speakers

10. Rental Charges - Camps.

Jack Erler, Legislative Agent, Maine Camp Directors Association, favors retention of tax exemption. Submitted written statement:

A. 80 camps estimated exempt, serving mainly Maine children.

B. These camps have contributions and fees that cannot be increased with inflationary increase in expenses or they would quickly exceed the income ability of the persons served.

C. Exemption directly benefits children who would not otherwise have opportunity to be out of doors in healthy, clean, natural setting.

D. ORAL: Burden would be placed on camps which primarily serve people who can't afford to send their children to camp.

11. Rental Charges - Hospitals: See item #2.

12. Rental charges - Nursing Care Institutions: See item #3.

13. Rental charges - Schools: No speakers

14. Rental Charges - Hotels, nursing homes, tourist or trailer camps: No speakers

15. Child-caring institutions: No speakers

16. Auto Sales - Driver Education programs: No speakers

17. Auto Sales - Amputee Veterans: No speakers

18. Sales to non-residents, Motor Vehicle: No speakers

19. Sales to non-residents, boats: No speakers

20. Sales to non-residents, aircraft: No speakers

21. Volunteer ambulance corps and fire departments

A. R. E. Cotton, Jr., Treasurer, Pleasantdale Hose Co. #3, sent a written statement to the committee favoring the retention of the tax exemption.

B. Eugene Temple, Executive Director, Maine State Firefighters Association favors retention of the tax exemption. He indicated that many fire departments are municipal and therefore already exempt.

C. Eugene Bran, Fire Chief, Rumford, favors retention of the tax exemption citing the high cost of much of the equipment.

D. Robert McCleary, Fire Chief, Farmington, favors retention of the tax exemption.

22. Community Mental Health & Mental Retardation Facilities

A. Larry Boise, Executive Secretary, Maine Council of Community Mental Health Centers, favors retention of the tax exemption. Submitted a written statement:

(1) Removal of exemption "would have measurable negative impact on our ability to sustain the quality and volume of services..."

(2) Total sales tax is estimated at $60,000-$75,000 annually. This represents 2,000-2,500 treatment sessions which would be lost if the sales tax exemption were not retained. If the loss of these treatment sessions results in a year of institutional care at a state facility, the cost would be $20,000 per patient per year.

B. Gene Bowman, private citizen, Mexico. Involved with mental health facilities such as Horizons Unlimited and Hope School. He feels the facilities could use the money.

23. Water Pollution Control Facilities

Henry Warren, Commissioner, Department of Environmental Protection submitted a written statement:

A. Water pollution control equipment is an accepted part of construction costs nationally under today's standards.

B. The original idea may have had merit when the equipment was being added to existing plants. Most of that work has already been accomplished.

C. The wording of the statute is very broad and provides the Board of Environmental Protection with little guidance. Modification of the language should be considered.

APPENDIX C

CAMP WALDEN vs. JOHNSON, STATE TAX ASSESSOR
(Maine Supreme Court, 1960, 156 Mr. 160)

FACTS: Under the language of the newly passed sales tax on "tourist camps", the State Tax Assessor issued instructions requiring camps to break down their billing to show the amount charged for "living quarters". If such a breakdown was not prepared the sales tax was to apply to the total charge for staying at the camp. Camp Walden did not break down its charges and one of the parents refused to pay the sales tax. The State Tax Assessor billed the parent for the sales tax on the entire amount of the charge. (The tax amounted to $27 on a $900 fee.) The matter worked its way through the courts and was finally presented to the Maine Supreme Court.

QUESTION BEFORE THE COURT: Is the parent liable for the sales tax?

CONCLUSION: NO.

REASONING: The court relied upon the common and accepted definition of "tourist camp" to mean camps or cabins designed to "provide temporary sleeping or housing accomodations [to tourists who are temporarily away from their homes], and any other service rendered to the guest is merely incidental thereto."

Contrasted with this are the boys' and girls' camps which "provide, under proper discipline, for periods ranging from weeks to an entire season, a supervised program of instruction and recreation for boys and girls. The program is the inducement to attend the camp. The housing accomodations are merely incidental to that program." The court determined that these boys' and girls' camps were <u>not</u> tourist camps.

> the operation
> "The nature of/these camps [boys'and girls'camps] are so well known that we must assume that the members of the legislature knew that a total aggregate fee is paid to cover the entire services provided by the camp, including instructi supervision, food lodging, and other services rendered to the campers, and that only a small part of the entire fee could possibly apply to cover living quarters. We feel that the failure of the legislature to establish some method of allocating the charge for living quarters is some indication that it did not intend to tax the fees charged by these camps." (p. 167)

FINDING: The legislature "did not intend to extend its [the term tourist camp's] meaning to include the authorization of a tax against the owner of a campt conducted in the manner in which the appelant's camp was conducted, where an entire lump sum is charged and where the living quarters are only incidental to a bona fide, organized, and disciplined program of instruction and recreation."

DOES THE WALDEN HOLDING "SPILL-OVER" TO OTHER RENTAL SITUATIONS?

We may presume that by applying the reasoning of the court, the Walden holding would exempt other similarly situations organizations by either:

1. DEFINITION: The organization does not fall within the definition of the taxable class,

OR 2. LEGISALTIVE INTENT: It was not the intent of the legilature to tax those organizations because:
   a. The total aggregate fee encompassed many services,
   b. Living quarters are merely incidental to the purpose of the rental situation, and
   c. The Legislature failed to establish a method of allocating the charge for living quarters.

(NOTE: The second criteria may be useful in proving the the first criteria.)

PROPOSED LEGISLATION - MAJORITY REPORT

AN ACT to Revise the Law Concerning Sales Tax Exemptions and Repeal Certain Exemptions

Be it enacted by the people of the State of Maine, as follows:

Sec. 1. 1 MRSA § 2601 is repealed and replaced as follows:

§2601. Review of statutory provisions.

The following statutory provisions shall be reviewed according to the schedule below:

Underlined

1. Review of sales tax exemptions. The sales tax exemptions contained in Title 36, Part 3, except the exemptions provided by Title 36, section 1760, sub-sections 1 and 2, shall be reviewed by January 1, 1982 and every four years thereafter.

2. Review of property tax exemptions. The property tax exemptions contained in Title 36, Part 2, shall be reviewed by January 1, 1984 and every four years thereafter.

Sec. 2. 1 MRSA § 2602, 1st sentence, is amended to read:

§ 2602. Committee review reports.

Any legislative committee having jurisdiction over a statutory provision listed in section 2601 shall prepare and submit to the Legislature, within 30 legislative days after the convening of the ~~first~~ second regular session after the date set out in section 2601 for review of that provision, a report evaluating the advisability of retaining the statutory provision.

Sec. 3. 1 MRSA § 2603, sub-§ 1, is repealed and replaced as follows:

§2603. Contents of report

Underlined

1. Report. A report prepared pursuant to section 2602 shall include:

A. An evaluation of the past effectiveness of the statutory provision ;

B. An evaluation of the future need for the statutory provision;

C. An examination of alternative methods of attaining the purpose of the provision;

D. An estimate of the cost of retaining the provision;

underlined

E. An evaluation of the economic impact of the exemption on the State or community;

F. A determination of which groups or individuals are assisted by the exemption and their approximate number; and

G. A recommendation of the committee as to the amendment, repeal, replacement or retention of the provision. If amendment or repeal is recommended, the report shall include the necessary legislation.

Sec. 4. 36 MRSA § 660 is repealed and replaced as follows:

§660. Legislative review of exemptions.

The legislative committee having jurisdiction over the review of property tax exemptions provided in Title 1, chapter 31, shall be the Joint Standing Committee on Taxation.

Sec. 5. 36 MRSA § 1760, sub-§ 15 is repealed.

Sec. 6. 36 MRSA § 1760, sub-§ 25 is amended to read:

underlined

25. Boats sold to nonresidents. Sales in this State to nonresidents of yachts and other pleasure boats and commercial vessels and boats actually registered for numbering, enrolled or documented under federal or foreign law in the appropriate customhouses or registry offices for location thereof or home ports thereof outside the State, when such craft are either delivered outside the State or delivered in the State to be sailed or transported outside the State immediately upon delivery by the seller; and any sales to nonresidents, under contracts for the construction of any such craft to be so delivered, of materials to be incorporated therein~~;~~

~~and-any-sales-to-nonresidents-for-the-repair,-alteration,-refitting, reconstruction,-overhaul-or-restoration-of-any-such-craft-to-be-so delivered,-or-materials-to-be-incorporated-therein.~~ If a craft so registered is registered for a location or home port in the State, within 6 months of the date of purchase, the person seeking registration shall be liable for the use tax on the basis of the original purchase price.

all underlined

Sec. 7. 36 MRSA § 1760, sub-§27 is amended by adding a sentence to read:

If any such craft are registered for use in Maine within 6 months of the date of purchase, the person seeking registration shall be liable for use tax on the basis of the original purchase price.

Sec. 8. 36 MRSA § 1760-A is repealed and replaced as follows:

§ 1760-A. Legislative review of sales tax exemptions.

The legislative committee having jurisdiction over the review of sales tax exemptions provided in Title 1, chapter 31, shall be the Joint Standing Committee on Taxation.

STATEMENT OF FACT

This bill is submitted as the result of the statutory reveiw of certain sales tax exemptions by the Joint Standing Committee on Taxation. It revises the statutory requirements for the review of sales and property tax exemptions to allow one Legislature to review all sales tax exemptions during the first and regular sessions and the subsequent Legislature to review the/all property tax exemptions during the first and second regular sessions. (Currently one-half of all the property tax exemptions and one-half of the sales tax exemptions are reviewed by each Legislature.)

This bill also repeals the sales tax exemptions on unincorporated hospitals, since there are none, and the sales tax exemptions on the sale to nonresidents for the repair of boats.

This bill requires that non-residents who received an exemption for the purchase of a boat or airplane or the purchase of materials for constructing a boat, must pay the sales tax if that boat or airplane is registered in Maine within 6 months of the purchase. This 6 month provision is currently a part of the law for sales of automobiles to non-residents.

PROPOSED LEGISLATION - MINORITY REPORT

AN ACT to Revise the Law Concerning Sales Tax Exemptions

Be it enacted by the people of the State of Maine, as follows:

<u>Sec. 1. 1 MRSA § 2601</u> is repealed and replaced as follows:

§2601. Review of statutory provisions.

underlined

The following statutory provisions shall be reviewed according to the schedule below:

1. Review of sales tax exemptions. The sales tax exemptions contained in Title 36, Part 3, except the exemptions provided by Title 36, section 1760, sub-sections 1 and 2, shall be reviewed by January 1, 1982 and every four years thereafter.

2. Review of property tax exemptions. The property tax exemptions contained in Title 36, Part 2, shall be reviewed by January 1, 1984 and every four years thereafter.

<u>Sec. 2. 1 MRSA § 2602</u>, 1st sentence, is amended to read:

§ 2602. Committee review reports.

Any legislative committee having jurisdiction over a statutory provision listed in section 2601 shall prepare and submit to the Legislature, within 30 legislative days after the convening of the ~~first~~ <u>second</u> regular session after the date set out in section 2601 for review of that provision, a report evaluating the advisability of retaining the statutory provision.

<u>Sec. 3. 1 MRSA § 2603, sub-§ 1</u>, is repealed and replaced as follows:

§2603. Contents of report

underlined

1. Report. A report prepared pursuant to section 2602 shall include:

A. An evaluation of the past effectiveness of the statutory provision ;

B. An evaluation of the future need for the statutory provision;

C. An examination of alternative methods of attaining the purpose of the provision;

D. An estimate of the cost of retaining the provision;

E. An evaluation of the economic impact of the exemption on the State or community;

F. A determination of which groups or individuals are assisted by the exemption and their approximate number; and

G. A recommendation of the committee as to the amendment, repeal, replacement or retention of the provision. If amendment or repeal is recommended, the report shall include the necessary legislation.

underlined

Sec. 4. 36 MRSA § 660 is repealed and replaced as follows:

§660. Legislative review of exemptions.

The legislative committee having jurisdiction over the review of property tax exemptions provided in Title 1, chapter 31, shall be the Joint Standing Committee on Taxation.

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Sec. 5. 36 MRSA § 1760, sub-§ 15 is repealed.

Sec. 6. 36 MRSA § 1760, sub-§ 25 is amended by adding a new sentence to read"

If a craft so registered is registered for a location or home port in the State, within 6 months of the date of purchase, the person seeking registration shall be liable for the use tax on the basis of the original purchase price.

Sec. 7. 36 MRSA § 1760, sub-§27 is amended by adding a sentence to read:

If any such craft are registered for use in Maine within 6 months of the date of purchase, the person seeking registration shall be liable for use tax on the basis of the original purchase price.

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Sec. 8. 36 MRSA § 1760-A is repealed and replaced as follows:

§ 1760-A. Legislative review of sales tax exemptions. The legislative committee having jurisdiction over the review of sales tax exemptions provided in Title 1, chapter 31, shall be the Joint Standing Committee on Taxation.

STATEMENT OF FACT

This bill is submitted as the result of the statutory reveiw of certain sales tax exemptions by the Joint Standing Committee on Taxation. It revises the statutory requirements for the review of sales and property tax exemptions to allow one Legislature to review all sales tax exemptions during the first and regular sessions and the subsequent Legislature to review the/all property tax exemptions during the first and second regular sessions. (Currently one-half of all the property tax exemptions and one-half of the sales tax exemptions are reviewed by each Legislature.)

This bill also repeals the sales tax exemptions on unincorporated hospitals, since there are none

This bill requires that non-residents who received an exemption for the purchase of a boat or airplane or the purchase of materials for constructing a boat, must pay the sales tax if that boat or airplane is registered in Maine within 6 months of the purchase. This 6 month provision is currently a part of the law for sales of automobiles to non-residents.