

MAINE TAX ALERT

A Publication of the Maine Bureau of Taxation for Tax Professionals

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Public Communications Tel: (207) 287-6362

TAX AND SMALL BUSINESS LOAN INFORMATION SEMINARS

The Bureau of Taxation and the U.S. Small Business Administration are sponsoring a series of seminars for in depth information on Maine sales and use tax. This issue includes the registration form for the Sales and Use Tax Symposium, to be held in seven locations, from Machias to Kittery and from August 28 to October 9. We are fortunate to be able to bring you this opportunity for specific instruction on Maine sales tax in cooperation with the U.S. Small Business Administration. SBA representatives will present information on new SBA loan programs and other assistance for small and very small businesses. Each participant in the seminar will receive a sales and use tax book which will be useful as a comprehensive reference on this tax. The fee of \$25 per person covers the cost of lunch and the textbook. In the past, we have received many requests for a day session covering sales and use tax. Please send in your reservations soon.

The August TAX ALERT will include an invitation and registration form for seminars on the new Combined Form. This is the form which will replace current withholding tax and unemployment insurance tax filings effective January 1, 1997. The Combined Form Seminars will be held in convenient locations in many parts of the state. These seminars will be presented by the Department of Labor and the Bureau of Taxation.

MULTISTATE TAX COMMISSION ANNUAL MEETING IN PORTLAND July 28 to August 2, 1996

The Multistate Tax Commission 1996 Annual Meeting and Committee Meetings will be held at the Holiday Inn by the Bay in Portland, Maine, from July 28 through August 2, 1996. The Seminar and Workshops on Thursday, August 1, are open to business participation. The theme of the day will be fairness in multistate taxation. Governor Angus S. King will

address the Conference. Bob Hanson, North Dakota State Tax Commissioner and Chair of the MTC, will speak on traditional principles of tax fairness from the tax administrator's view. One of the concurrent afternoon sessions will provide an opportunity for state and business representatives to exchange ideas on simplifying the administration of state taxes applicable to businesses liable for taxes in several or more states.

Registration fees for government and business participants are \$300. There is an additional fee for guests. Conference participants may also take shopping trip to Freeport or a cruise to a lobster bake on Peaks Island. For registration information, please contact the MTC Service Center at 1 800 525 6338.

TAX CLEARANCE LETTER FOR YOUR CLIENT BUYING A BUSINESS

Whether your client is a seller or the buyer of a business, you should determine whether the business has tax debts outstanding at the time of the sale. The buyer should be careful to demand a tax clearance letter prior to the purchase of a business to avoid becoming liable for some of the former owner's business tax debts. A tax clearance letter should be requested from the seller of the business. The seller can request a tax clearance

letter or authorize another party to receive the letter. The request for a tax clearance letter must be in writing from an officer of the Corporation or owner of the business and on business letterhead including a statement that the signer is an officer or an owner of the business. The request must include federal employer identification numbers and state sales tax numbers and should be mailed to:

Attn: Joanne Parker
Bureau of Taxation
State of Maine
24 State House Station
Augusta ME 04333-0024

or by FAX to: Attn: Joanne Parker 207 287 6627

The tax clearance letter will probably be completed the day after the request is received at the Bureau of Taxation. If you want the letter sent or faxed to an address different from the business address, this information should be part of the request. Requests for tax clearance letters made to the Bureau by potential purchasers, by business successors or by third parties, will not be honored without specific authorization of an officer of the seller corporation or the seller owner of the business.

1996 MAY TAX PROFESSIONAL SURVEY

We have received over 200 responses to our May TAX ALERT survey. We hope that if you have not already completed the survey, you will do so. We will begin reviewing the responses so that we can pass on the results to you. We were able to use many of the suggestions you offered in the 1995 survey responses.

TAX AND RENT REBATE PROGRAM

A reminder to you for the benefit of your elderly clients and others: the Tax and Rent Program will begin again on August 1, 1996. Beginning with this 1996 program, direct deposit of refunds will be available. Instructions for arranging direct deposit will be in the application booklet. We urge you to help your clients apply early for the tax and rent program. Each year many folks miss the December 31 application deadline.

The Bureau of Taxation can offer assistance to volunteer groups which plan to prepare tax and rent applications at Senior Centers or other convenient locations. Please call 207 287 6362 for workshop assistance.

STATE TAX REFUND PROVISIONS

Refund provisions of Maine tax law differ from those of federal tax law. In some situations, state tax refunds are available only for two years from the time the tax was paid.

If the taxpayer has not filed a return, refunds are available only if the return is filed within two years of the date that the tax was paid. If sums were paid in as withholding or estimated tax, the two years begins with the due date of the return, usually April 15 of the following year. Therefore, the taxpayer who files a 1993 return on April 20, 1996 and shows a refund due on the return, will not receive a refund of tax paid on or before April 15, 1994. If \$100 of tax was paid on March 3, 1995, then that amount would still be available for refund on the return filed April 20, 1996. In this case, it is less than 2 years since payment of the \$100. The refund amount shown on the return, disallowed because of the statute of limitations, is not available either as a refund or as a credit against other tax amounts due. It is lost to the taxpayer entirely. There are provisions for extending the statutory period by agreement.

For the taxpayer who has filed a return and amends resulting in a refund, the refund will be available if the amended return was filed within the later of 3 years from the time the original return was filed or 2 years from the time the tax was paid. In some cases, the 3 year period is extended by any extension of time to file the return. Please refer to 36MRSA e5278 for more details.

COURT DECISION UPHOLDS TAX DEFINITIONS

Apex Custom Lease Corporation purchased vehicles from an affiliated automobile dealership which it then "leased back" to the dealership. Apex contended that the transaction was not a "retail sale" pursuant to 36 MRSA e1752(11) and hence not a "use" for purposes of provisions of the sales and use tax statutes.

On June 6, 1996, the Maine Supreme Judicial Court ruled for the State in a *de novo* hearing in Apex Corporation's appeal of the Hancock County Superior Court summary judgment in favor of the State.

It was agreed by both parties that the purpose of the sale-leaseback transactions was to allow Ellsworth Autohaus, Inc. to use its full line of credit. Both Autohaus and Apex had lines of credit with the same bank. Because Autohaus did benefit from the sale of the vehicles to Apex, so the transactions fall within the definition of "business" in 36 MRSA e1752(1-C). As there was a purchase and there was use, the Court upheld the lower court's judgment on this issue.

A subsidiary issue was use tax on the lease of telecommunications equipment by Apex. The Court affirmed that leasing this equipment fell within the meaning of "taxable service" as defined in the statute and upheld the lower courts summary judgment of the Assessor's imposition of use tax on that service.

REVIEW OF APPELLATE DECISIONS

We are continuing the presentation of interesting Appellate Division decisions:

A. ISSUE - USE TAX - Whether scrap generated as waste product in a manufacturing process and subsequently used as fuel for boilers at that and other facilities is exempt from use tax. Raw materials are purchased at a price set for the whole, that is, covering both the usable components and the components which become waste products during the process. Also, the raw material is not purchased in order to provide fuel for the company's boilers.

The purchase of the raw material would be subject to sales tax but for the specific exemption in 36 MRSA Sec. 1760(74). The purchase of the raw material is properly categorized as an "intermediate transaction in the economic process," see J. Hellerstein and W. Hellerstein, *State Taxation*, Vol. II, para. 14.03 (1992). Ultimately, the purchase price of the raw materials will be included in the end product sales price which will be subject to sales tax. The components of the raw materials which become waste have no separate value and are not separately subject to use tax. Consequently, the taxpayer's later use of the waste material as fuel is not subject to use tax.

B. ISSUE - USE TAX - A purchaser paid use tax on certain items incorporated into real estate prior to purchase. Is the vendor then relieved of use tax liability on those items?

The vendor installed the items so that they were incorporated into real estate prior to the passage of title from the vendor to the purchaser. As a result, the vendor is deemed to be the final user of the material as tangible personal property and subject to use tax.

The purchaser is entitled to a refund of the use tax paid on the items since the transfer was not taxable.

The vendor is liable for use tax on the items it incorporated into real estate. The fact that the purchaser erroneously paid use tax on the items does not relieve the vendor of its tax liability.

C. ISSUE: SALES AND USE TAX - Denial of a Certificate of Exemption for the purchase of depreciable equipment or repair parts for use in commercial fishing under Rule 323.02(D).

The taxpayer is involved in commercial fishing and sought the certificate of exemption for that activity.

Rule 323.02(D) provides that a certificate of exemption will not be issued to persons whose filings under the U.S. Internal Revenue Code indicate that

the person is primarily engaged in a related but non-qualifying business activity. Notwithstanding (this) exception, purchases of machinery, equipment and repair parts used directly and primarily in...commercial fishing would qualify for refund.

A test of the taxpayer's business activity showed that the taxpayer was involved in commercial fishing within the meaning of 36 MRSA Sec 2013(1)(B). However, the principal business activity of the taxpayer was not commercial fishing. Therefore, the denial of commercial fishing exemption was upheld in this case.

D. ISSUE: INDIVIDUAL INCOME TAX - Whether the taxpayer is entitled to file a return as a single person and claim the standard deduction.

The taxpayer and spouse agreed to an uncontested divorce in 1991. The divorce became final in 1993. The taxpayer filed as a single person and claimed the standard deduction for 1992. The spouse filed married filing separately and itemized deductions. IRC 63(c)(6) states in part: "Certain individuals...not eligible for standard deduction...a married individual filing a separate return where either spouse itemizes deductions.

The taxpayer and spouse, while they lived apart, were not legally separated under decree of divorce or separate maintenance. Therefore, the taxpayer was not entitled to file as a single person.

TAX PRESENTATIONS

During the May-June period, the Bureau of Taxation has made presentations on tax developments to the Association of Law Firm Administrators, the Maine Society of Professional Accountants and the Maine Chapter of the National Association of Tax Practitioners. The State Tax Assessor addressed 500 state tax administrators and other government representatives in Baltimore on managing a tax agency in the 21st century. In addition, the Bureau's information booth at the Blaine House Conference on Small Business publicize the BETR Program. The Bureau of Taxation participated with the Dept. of Labor in a booth to publicize the new Combined Form.

NEXT MONTH...

Watch for your invitation to Combined Form Seminars to be included in the August issue of TAX ALERT.