

Butterine—Licenses—Statutes.

Section 2435 R. C. M. 1921 providing for a license of one cent per pound on oleomargarine and butterine is still in force and not superseded by chapter 188, laws of 1925, as amended.

March 8, 1928.

G. A. Norris, Esq.,
Chief of Dairy Division, Department of Agriculture,
Helena, Montana.

My dear Mr. Norris:

You have submitted to this office a letter from The Corporation Trust Company of New York in which this company wishes to be advised whether the first paragraph of section 2435 R. C. M. 1921 has been superseded by chapter 188 of the session laws of 1925, as amended by chapter 10 of the session laws of 1927, or whether a corporation selling oleomargarine in Montana is required to take out both licenses.

Section 2435 provides that every person, company, or corporation selling oleomargarine, butterine, or imitation of cheese, shall pay a license of one cent per pound for all these articles sold. This section has never been specifically amended nor specifically repealed.

In 1925 the legislature enacted chapter 188 which provides that it shall be unlawful for any person, firm or corporation * * * to sell, exchange, offer for sale or have in possession with intent to sell or offer for sale or exchange, any oleomargarine, imitation or filled cheese, or any substitute for any dairy product made from milk or cream, without first securing a license from the state department of agriculture, labor and industry, to conduct such sale or exchange. The fee for such license shall be \$250.00 for a license to sell at wholesale and \$75.00 for a license to sell at retail.

This chapter was amended by chapter 10 of the session laws of 1927. The only change made by the last amendment was to require every person, firm or corporation conducting such sale or exchange in more than one place of business to pay a separate license for each place of business and a separate fee for each license.

Chapter 188 contains no general repealing clause and this fact must be given some significance as the legislature presumably knew of the provisions of section 2435.

It is a well established rule of law that repeal by implication is not favored by courts and where one act is not in conflict with another both must be given effect if possible. Section 2435 is not, in my opinion, in conflict with the provisions of chapter 188. The license there provided for is based on the amount of sales, to-wit, one cent per pound, while the license as provided for by chapter 188, as amended, is a lump sum for wholesale and retail establishments regardless of the amount of business they do.

25 R. C. L. 924 lays down the following rule:

“It is a very common thing for cumulative remedies to be thus provided in the revenue laws, and the more natural if not the necessary inference in all such cases is that the legislature intended the new law to be auxiliary to and in aid of the purposes of the old law, even when some of the cases provided for may be equally within the reach of each. * * *” (Citing *Wood v. U. S.*, 10 L. Ed. 987; *U. S. v. 67 Packages of Dry Goods*, 15 L. Ed. 54; *Morris v. Arthur*, 95 U. S. 144, 24 L. Ed. 420; *Saxonville Mills v. Russell*, 29 L. Ed. 554.)

In the case of *U. S. v. 67 Packages of Dry Goods*, the court said:

“* * * this court has not been disposed to apply with strictness the rule which repeals a prior statute by implication, where a subsequent one has made provision upon the same subject, and differing in some respect from the former, but have been inclined to uphold both, unless the repugnancy is clear and positive, so as to leave no doubt as to the intent of Congress; especially in cases where the new law may have been auxiliary to, and in aid of the old, for the purpose of more effectually guarding against the fraud.”

It is therefore my opinion that section 2435 is still in effect and has not been amended by chapter 188, as amended.

Very truly yours,

L. A. FOOT,
Attorney General.