

#397  
TAXATION ) Invalidity of automobile use tax does not affect remainder  
SALES TAX ) of act relative to collection of sales tax on motor vehicles.

12/22/49

December 21, 1949



Honorable G. H. Bates  
Director of Revenue  
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"In the case of THE STATE OF MISSOURI, at the relation of TRANSPORT MANUFACTURING AND EQUIPMENT COMPANY, a corporation, vs. G. H. BATES, et al., No. 41456, the Supreme Court of Missouri handed down its opinion on November 14, 1949, in which it specifically held that the use tax on motor vehicles imposed by Laws of Missouri, 1947, Volume 2, pages 431 to 436 was unconstitutional.

"We are now confronted with the question as to what extent this decision affects the sales tax imposed by the same law and particularly in the following respect.

"The Sales Tax Act, Laws of Missouri, 1945, pages 1865 to 1881, inclusive, would require the auto dealer to collect the sales tax from the purchaser at the time sale was made and remit same to the Department of Revenue.

"The 1947 law involved in this case would require the purchaser of an automobile to pay the sales tax to the Department of Revenue before securing Certificate of Title. Therefore, our question is this, should we now collect the sales tax on automobiles under the 1947 law, or revert to the 1945 law and require the dealer to collect and remit sales tax on automobiles?"

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The act cited in your letter, and which included the use tax, consisted of a total of five sections. Only one of the sections related to the use tax. Sub-paragraphs (c) and (d) of section 11412 imposed such tax. The other provisions of the act related to collection of the sales tax, previously imposed, upon motor vehicles. The general scheme of these provisions was to transfer the collection of sales tax upon sales of automobiles from the dealer to the Director of Revenue. Instead of requiring that the dealer collect the tax at the time of sale, provision was made for the payment of such tax by the purchaser to the Director of Revenue at the time that the certificate of title to the automobile was obtained. Payment of the tax was made a condition precedent to the issuance of the certificate, unless the transaction involved was exempt from sales tax. Section 11412 (a) and (b) made such provision, and the remaining sections of the bill, except those imposing the use tax, made various changes in the sales tax act, required by the change in the method of collecting the tax on such transactions.

"A statute may \* \* \* be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected, and this rule applies, even though the constitutional and unconstitutional parts are in the same section of the act; but if the parts are inseparably connected with each other, the entire statute will be held void." 59 C.J., Statutes, sec. 205, p. 639.

The rule was stated by the Missouri Supreme Court in the case of State ex rel. Harvey v. Wright, 251 Mo. 325, l. c. 337, 158 S.W. 823, as follows:

"We might state it in the following language, by saying that, if after cutting out and throwing away the bad parts of a statute, enough remains, which is good, to clearly show the legislative intent, to furnish sufficient details of a working plan by which that intention may be made effectual, then we ought not as a matter of law to declare the whole statute bad."

We feel that, insofar as the act in question is concerned, the provisions of the act relating to the change in the method of collection of the sales tax upon motor vehicles are independent and separable from those relating to the use tax. Certainly enough remains to show the legislative intention in such regard and to furnish sufficient details by which that intention may be made effectual.

Honorable G. H. Bates

The basis of the decision of the court did not involve in any manner the validity of the provisions of the act relative to the sales tax. The use tax was declared invalid because of the exemption therefrom of motor vehicles having a seating capacity of ten or more passengers, the court holding that such exemption rendered the tax not uniform. No such exemption is found in the sales tax on motor vehicles.

No reference was made in the case before the Supreme Court to the validity of the provisions of the act relating to the sales tax. The court, in its opinion handed down on November 14, 1949, employed language which might have been taken to mean that the entire act was invalid. However, the opinion was modified on December 12, 1949, and restricted to declare invalid only that portion of the act levying the use tax. The last paragraph of the opinion, as modified, reads in part as follows:

"\* \* \* The invalid exemption renders that portion of this Act levying the use tax herein considered invalid since the imposition of such tax, without the exemption, would be other than that which the General Assembly intended and enacted. We cannot free the use tax levied from the unconstitutional taint of the condemned exemption. The portion of the Act levying the use tax must fall with the invalid exemption. For these reasons the use tax levied in the Act is violative of Section 3 of Article X of the Constitution."

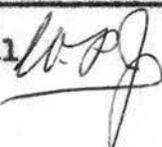
#### CONCLUSION

Therefore, this department is of the opinion that the decision of the Supreme Court in the case of State ex rel. Transport Manufacturing and Equipment Co. v. Bates et al., in which the use tax imposed by laws of Missouri, 1947, Vol. II, p. 431, was held unconstitutional, did not affect the portions of said act which provided a new method of collecting sales tax upon sales of motor vehicles, and that the method of collecting such tax should continue to be that provided in said 1947 act.

Respectfully submitted,

APPROVED:

ROBERT R. WELBORN  
Assistant Attorney General

J. E. TAYLOR  
Attorney General 

RRW/feh