

PERSONAL PROPERTY:  
STATUTORY CONSTRUCTION:  
STEAM:  
TAXATION:  
SALES-USE TAX:

Sales tax may not be assessed upon  
the sale of steam used for heating  
purposes.

OPINION NO. 35  
(349 - 1966)

March 7, 1967

Honorable James E. Godfrey  
State Representative - 62nd District  
St. Louis City  
418 Olive Street  
St. Louis, Missouri 63102



Dear Representative Godfrey:

This is in answer to your request for an opinion of this office as to whether sales taxes may be levied pursuant to Section 144.020, RSMo Supp. 1965, upon the sale of steam.

This section, so far as here pertinent provides:

"1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(1) Upon every retail sale in this state of tangible personal property a tax equivalent to three per cent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to three per cent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange; except as otherwise provided in section 144.025;

\* \* \* \* \*

(3) A tax equivalent to three per cent of amounts paid or charged on all sales of electricity or electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;"

\* \* \* \* \*

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A "sale at retail" is defined in Section 144.010, RSMo to include:

"1. (8)(b) Sales of electricity, electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;"

It is well established that a taxing statute must be strictly construed in favor of the taxpayer and against the taxing authority and the fact that a particular subject of taxation is within the purview and intendment of a taxing statute must clearly appear. *A. P. Green Fire Brick Co. v. Missouri State Tax Commission*, Mo. Sup., 277 S.W.2d 544. Any doubt as to the imposition of a tax must be resolved in favor of the taxpayer. *Shively v. City of Keytesville*, Mo.App., 238 S.W.2d 682; *State ex rel. Kansas City Power & Light Co. v. Smith*, Mo. Banc., 111 S.W.2d 513. In the latter case the court in construing subparagraph (3) held that sales tax could not be assessed upon sales of electricity to the Kansas City Public Service Company to be used to propel its street cars over its street railway system because the company was not a commercial or industrial consumer.

The sale of steam is not specifically included in Section 144.020. Such sale could be held to be taxable only under subparagraph (3) as a sale of water, or gas, or as tangible personal property, taxed under the general provision of subparagraph (1).

In considering this question we assume that the inquiry is being made as to sales of steam heat by means of steam piped to radiators. See *Detroit Edison Co. v. State*, Mich., 298 N.W. 525. In such cases the steam circulates through the heating system of the user and does not, as such, become the property of the user. The real purchase is of heat and since heat is not tangible personal property the sale of steam heat is not made taxable as such by subparagraph (1) of Section 144.020.

Neither do we believe that the sale of steam heat is taxable under subparagraph (3). Although steam is a form of gas, we think it clear that from the use of the words "natural or artificial" in reference to gas, that steam would not be included under the term, but that the term "gas" would include only heating and cooking gas, whether natural or artificial. See 26 C.J.S., Gas, p. 614 and 617.

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Nor do we think that steam used for heating purposes is included within the term "water" as used in Section 144.020, subparagraph (3). Water, generally, is sold in specified amounts and comes under the control of and becomes the property of the buyer. As we stated earlier, when steam is used for heating purposes, the sale is not of the steam itself, which does not become the property of the user, but of the heat generated by the steam.

Since the sale of steam is not specifically made subject to sales tax and because there is substantial doubt as to whether steam used for heating purposes may be classed either as water, or gas, or as tangible personal property in our opinion this doubt must be resolved in favor of the taxpayer and the sale of steam for heating purposes may not be subjected to the imposition of sales tax under Section 144.020.

In reaching this conclusion we are also mindful of the rule that where there is doubt as to the meaning of a statute, the construction given by the officers charged with its administration shall be considered to determine its meaning. *England v. Eckley*, Mo. Sup., 330 S.W.2d 738, 744; *Rathjen v. Reorganized School R-II of Shelby County*, Mo. Sup., 284 S.W.2d 516, *Wiley v. Stewart Sand & Material Co.*, Mo. App., 206 S.W.2d 362. The Department of Revenue has never interpreted Section 144.020 to impose a tax upon the sale of steam and never has attempted to collect taxes on such sales.

If the legislature desires to place a tax upon the sale of steam, although the inclusion of the word "steam" probably would include the sale of steam heat, *Detroit Edison Co. v. State*, supra, the better procedure would be to add both "steam" and "steam heat."

#### CONCLUSION

It is the opinion of this office that sales tax may not be assessed upon the sale of steam used for heating purposes.

The foregoing opinion, which I hereby approve, was prepared by my Assistant John H. Denman.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General