

SALES TAX: Municipally owned plants selling light and water to users and consumers are subject to the tax.

11-18
November 15, 1935



Hon. E. A. McDonald
Prosecuting Attorney
Mercer County
Princeton, Missouri

Dear Sir:

This Department is in receipt of your letter requesting an opinion as to the following state of facts:

"The Princeton Light and Water Plant is owned and operated by the City of Princeton.

As the City Attorney I have advised the City Council that in my opinion that in collecting the City Light and Water Bills the Sales Tax should not be collected. I am basing my opinion on Sec. 3, Exemptions, on page 416 Session Acts, 1935.

We would be pleased to have your opinion."

Section 2, Laws of Missouri 1935, page 415, provides, in part, as follows:

"From and after the effective date of this Act and up to and including December 31, 1937, there shall be and is hereby levied and imposed and there shall be collected and paid:

* * * * *

(c) A tax equivalent to one (1) 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."

Section 5 of this Act, provides, in part, as follows:

"Every person receiving any payment or consideration upon the sale of property or rendering of service subject to the tax imposed by the provisions of this Act, or required to make collection of the tax imposed by the provisions of this Act, shall be responsible not only for the collection of the amount of the tax imposed on said sale or service but shall, on or before the 15th day of each month, make a return to the State Auditor of all taxes collected for the preceding month or required to be collected for the preceding month, and shall remit the taxes so collected or required to be collected to the State Auditor. The seller of any property or person rendering any service, subject to the tax imposed by this Act is directed to collect the tax from the purchaser of such property or the recipient of the service as the case may be.

The tax imposed by this Act is a tax upon the sale, service or transaction and shall be collected by the person making the sale or rendering the service at the time of making or rendering such sale, service or transaction. * * * * *

In the first section of the Emergency Revenue Act of 1935, municipal corporations are expressly included

within the term "person." This section provides:

"The following words, terms and phrases when used in this Act, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) 'Person' includes any individual, firm, copartnership, joint adventure, association, corporations, municipal or private, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit, and the plural as well as the singular number."

From the above quoted sections of the Emergency Revenue Act, it is clear that a municipal corporation is required to collect the tax equivalent to one per cent. of the amount paid or charged for all sales of electricity or electrical current, water and gas (natural or artificial) to domestic, commercial or industrial consumers.

If municipal corporations are to be exempted from the provisions of this Act it could only be by reason of Section 3 of the Act, which provides:

"There are hereby specifically exempted from the provisions of this Act * * * such portion of the gross receipts as is derived from sales of tangible personal property, services, substances and things which the general assembly of the State of Missouri is prohibited from taxing or further taxing under the Constitution of this State."

In view of the fact that the Act specifically includes municipal corporations as being subject to this tax, both as vendor and vendee, to exempt such corporations would be to hold said Act unconstitutional with respect to said municipal corporations. The settled policy of this de-

partment, with the exception of certain instances where the unconstitutionality of the law has been clear and unmistakable, has been to uphold the constitutionality of all statutes and leave the final determination of the matter to the courts of the State of Missouri. The late Judge Fitzsimmons, in the case of State v. Ward (Supreme Court of Missouri) 40 S. W. (2d) 1074, said:

"It is a fixed rule, scarcely needing restatement, that no legislative enactment should be declared unconstitutional unless it appears very clearly so, and every reasonable intendment should be made to sustain it."

And in the more recent case of State ex inf. McKittrick v. American Colony Insurance Company (Supreme Court of Missouri) 80 S. W. (2d) 876, l. c. 883, Judge Ellison stated:

"We think this contention is sound. The rule of construction invoked by respondents is well established. In State v. Ward, 328 Mo. 658, 664, 40 S. W. (2d) 1074, 1076, the late lamented Fitzsimmons, C. said: 'It is a fixed rule, scarcely needing restatement, that no legislative enactment should be declared unconstitutional unless it appears very clearly so, and every reasonable intendment should be made to sustain it.' Likewise, in State ex rel. Columbia Telephone Co. v. Atkinson, 271 Mo. 28, 42, 195 S. W. 741, 745, the rule is said to be that if the act be 'fairly susceptible of two or more constructions, that interpretation will be adopted which will avoid the effect of unconstitutionality, even though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language employed.' See, also, Black on Interpretation of Laws (2d Ed.) Sec. 41, p. 113. Some authorities say 'courts are bound to go to the very verge of construction to sustain the constitutionality of statutes,' 12 C.J.

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Sec.220, p. 790; and this rule applies in making state statutes harmonize with the Constitution of the United States as well as with the Constitution of the state. 59 C. J. sec.616, p. 1038; Overton v. State, 7 Okl. Cr. 203, 205, 114 P. 1132, 123 P. 175, error dismissed 235 U. S. 31, 35 S. Ct. 14, 59 L. Ed. 112."

CONCLUSION

In view of the foregoing, it is the opinion of this department that municipal corporations are subject, both as vendor and vendee, to the Emergency Revenue Act of 1935 (Laws of Missouri 1935, page 411).

Respectfully submitted,

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APPROVED:

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JWH:LC