

SALES TAX: Sales made by post exchanges to members of the camp are not subject to the tax. The original purchase made by the post exchange from the merchant or wholesaler is subject to the tax

10-21
October 7, 1935



Captain W. G. Robinson
J A G Reserve, Special Inspector
Fort Leavenworth, Kansas

Dear Sir:

This Department is in receipt of your letter of September 24, wherein you request an opinion as to the following:

- "Query 1: Are sales conducted by a post exchange operated in CC Camps in the State of Missouri subject to the Missouri sales tax?
- Query 2: If subject to such a sales tax, is the tax payable by the enrollee, who is the ultimate consumer, or is it payable by the post exchange in its transactions of purchase with various jobbers and wholesalers? "

I

We are impressed with the argument and logic as presented in your letter, namely; that camp exchanges are instrumentalities of the Federal Government and not subject to state taxation. However, it appears that by custom and by the fact that such exchanges have existed and played such an important part in various ways in the camps, that the Government recognizes their existence and, perhaps, in many ways, treats them as instrumentalities of the Federal Government, but the question of such camps being instrumentalities of the Federal Government has been decided by three members of the Court sitting

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as the Circuit Court of Appeals of the Fifth Circuit of the United States Court, in the following language: (67 Fed.(2nd) 591)

"It is to be conceded that an excise tax on the sales of gasoline is inoperative as to sales made to the United States, either directly, or indirectly through one of its departments, for government use. Panhandle Oil Co. v. State of Mississippi, 277 U. S. 218, 48 S. Ct. 451, 72 L. Ed. 857, 56 A. L. R. 583. There a sale of gasoline was made direct to the United States for the use of the coast guard and a government hospital. No doubt the ruling would have been the same if the sales had been made directly to these instrumentalities of the government, for then also the United States would have been the real purchaser. But the tax here is not on the sale but is on the withdrawal of the gasoline. Furthermore, a post exchange is, of course, not the government; nor is it a department or instrumentality thereof. On the contrary, a post exchange is a voluntary, unincorporated, co-operative association of army organizations in which all share as partners in the profits and losses. The government has no share in the profits, and is not bound by the losses. We are therefore of opinion that sales made by appellant to the post exchanges at Camp McClellan and Maxwell Field are not exempt from the state excise taxes. People v. Standard Oil Co. (Cal. Sup.) 22 P. (2d) 2. "

Therefore, regardless of any argument to the contrary, we are of the opinion that post exchanges maintained in CCC Camps are not instrumentalities of the Federal Government, and, hence, are not exempt from the tax undertaken to be imposed by the State of Missouri on sales at retail for that reason.

II

Having determined that post exchanges are not

instrumentalities of the Government and cannot be exempt from the tax on that ground, we shall next consider the question from other angles. The Missouri Sales Tax Act, Laws of Missouri 1935, page 413, sub-section (c), defines 'business' as follows:

" 'Business' includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect and the classification of which business is of such character as to be subject to the terms of this Act. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business does not constitute engaging in business, within the meaning of this act."

Sub-section (e) relating to sales at retail, is defined as follows:

" 'Sale at retail' means any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. Where necessary to conform to the context of this Act and the tax imposed thereby, it shall be construed to embrace:

- (1) Sales of admission tickets, cash admissions, charges and fees to places of amusement, entertainment and recreation; games and athletic events.
- (2) Sales of electricity, electrical current, water and gas (natural or artificial), to domestic, commercial or industrial consumers.
- (3) Sales of service to telephone subscribers and to others through equipment

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of telephone subscribers for the transmission of messages and conversations, both local or long distance, and the sale, rental or leasing of all equipment or services pertaining or incidental thereto.

(4) Sales of service for transmission of messages by telegraph companies.

(5) Sales or charges for commercial laundry, cleaning, pressing and dyeing service.

(6) Sales of tickets, fares and services by every person operating a railroad, any sleeping car, dining car, express car, and such buses and trucks as are licensed by the Public Service Commission of Missouri, engaged in the transportation of persons or freight for hire.

(7) Sales of or charges for advertising of whatever kind or character to be published in newspapers or magazines or to be displayed on billboards or other kind of indoor or outdoor advertising devices or to be broadcast over radio stations, or to be displayed by any stereopticon or motion picture.

(8) Sales or charges for all rooms, meals and drinks furnished at any hotel, tavern, inn, restaurant, eating house, drug store, dining car, tourist camp, tourist cabin, or other place in which rooms, meals or drinks are regularly served to the public."

The tax contemplated in the Act, without deciding the character or type of tax it really is, is to be paid by a person receiving or purchasing the tangible personal property for use or consumption. In the case of post exchanges in the CCC camps the question arises who is the user or consumer. You state in your letter that no one but an enrollee or official of the camp is allowed to do business at the exchange, and there is no business done with civilians.

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Your letter again states that the post exchange is conducted and governed by a council consisting of company officers and two of the enrollees. We assume that the two enrollees are members of the CCC Camp; that limited profits can only be made and that such profits are to be paid into a company fund for the purpose of improving the morale and contributing to the happiness and well-being of the men.

We think by the definition of the word 'business' defined in the Act, the Legislature contemplated the tax to be collected by persons engaged in a general retail business or retail sales without restriction as to who are the purchasers. It also appears that no individual receives any profit, gain, benefit or advantage personally from the post exchanges; that the profits belong solely to the camp; that every member of a camp, including the officers, technically has an interest in the profits, not accruing to him personally but to the camp as a whole; that the camp is the purchaser of merchandise for the purpose of retailing it to themselves, the individual members. Therefore, the post exchange being the user and consumer the tax would be on the transaction when the post exchange acquires or purchases the tangible personal property from the merchant or person selling such tangible personal property.

Respectfully submitted,

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APPROVED:

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