

SALES TAX: Receipts from operation of school bus not subject to tax; Funds derived from service charges to members of a mutual telephone company are subject to tax.

March 10, 1936.



Hon. James H. Pettijohn,
Prosecuting Attorney,
Holt County,
Oregon, Missouri.

Dear Sir:

This department is in receipt of your letter of March 4, requesting an opinion on two questions relating to the Sales Tax Act, which we shall discuss in the order presented.

I

"Is a party who is paid a salary by a school board for transporting children to and from school, required to make a return and pay a sales tax?"

The Emergency Revenue Act of 1935 (Laws of Mo. 1935, pp. 411 to 426, incl.) imposes a tax on two distinct types of sales--sales of tangible personal property and sales of certain services, substances and things. Funds derived from the transportation of children to and from school could not in any wise be considered sales of tangible personal property and if taxable at all, it would come under the provisions of Sec. 2, sub-section (h) (page 416), which provides:

"A tax equivalent to one (1) per cent. of the amount paid or charged for tickets, fares and services by every person operating a railroad, 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."

We assume that the party referred to in your inquiry uses a school bus; it is our understanding that school buses do not come within the jurisdiction of the Public Service Commission of Missouri. The test of the liability of busses for the tax under sub-section (h) of the Act is that said buses must be licensed by the Public Service Commission; therefore, it is the opinion of this department that a person operating a school bus is not liable for any tax within the meaning of the Sales Tax Act.

II

"Is a Mutual Telephone Company required to collect a sales tax on the service charge from members of the association, those payments being used solely to employ operators and maintain the lines belonging to the members?"

The service charges collected from individual members of a mutual telephone company do not constitute sales of tangible personal property; hence, must be determined by the terms of Sec. 2, sub-section (d) of the Act (Laws of Mo. 1935, p.415), which is as follows:

"A tax equivalent to one (1) per cent. on amounts paid or charged on all sales of service to telephone subscribers and to others through equipment of telephone subscribers for the transmission of messages and conversations, both local and long distance, and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto."

In view of the terms of the above section, i.e., "one per cent. ***on all sales of service to telephone subscribers and to others ***", it is the opinion of this department that service charges to members of a mutual telephone company are taxable within the meaning of the Sales Tax Act.

Respectfully submitted,

APPROVED:

OLLIVER W. NOLEN,
Assistant Attorney General.