

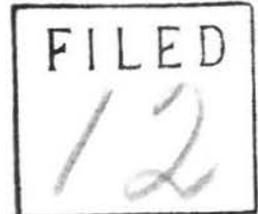
TAXATION:

Sales Tax-
Only State Penal
Institutions Exempt

) Only Penal Institutions supported by funds
) appropriated out of State Treasury exempt
) from provisions of the 2% Sales Tax Act.
)
)

October 12, 1937

10-13



Mr. Marcy K. Brown, Jr.
Assistant City Counselor
Kansas City, Missouri

Dear Sir:

This office acknowledges receipt of your request for an official opinion of this department as to whether or not the 2% sales tax should be collected on supplies sold to Kansas City, Missouri, for the penal institutions of said city, including the Municipal Farm and the Women's Reformatory of that city.

From your letter it appears that you are under the impression that such sales should be exempt because said institutions are classed as penal institutions and that by the provisions of Section 46 of the 2% Sales Tax Act, penal institutions are exempt from the provisions of said Act.

The word "person" is defined in Subsection (a) of Section 1 of the Act to include municipal corporations. Kansas City is a municipal corporation of the State of Missouri.

The word "purchaser" is defined in Subsection (e) of Section 1 of the Act to mean a person who purchases tangible personal property or to whom services are rendered, receipts from which are taxable under Section 2 of the Act. Section 2 of the Act provides for the collection of a tax equivalent to 2% of the purchase price paid or charged for every retail sale in this state of tangible personal property.

By virtue of the provisions of Subsection 39 of Section 1 of Article I of the charter of Kansas City, said city is permitted to acquire, provide, operate and maintain charitable, educational, comfort, recreative, curative, corrective, detentive, penal and other institutions. It is by virtue of the provisions of this section that the City of Kansas City operates

October 12, 1937

and maintains penal institutions, including its Municipal Farm and Women's Reformatory, which institutions are used for the purpose of confining persons who have violated the charter and city ordinances of said city. These institutions are penal institutions, supported by funds of Kansas City, Missouri.

The Legislature, by Section 46 of the Sales Tax Act, exempted from the provisions of the Act sales made by or to

" * * * penal institutions and industries operated by the Department of Penal Institutions, * * * "

The Department of Penal Institutions referred to in said Section 46 was created by virtue of the provisions of Section 8316, R. S. Mo. 1929 and it is provided in said Act that said department shall have and exercise control and jurisdiction over all penal institutions in this state supported in whole or in part by the direct appropriation of money out of the State Treasury, and more particularly over the Missouri Reformatory at Boonville, State Industrial Home for Girls at Chillicothe, State Industrial Home for Negro Girls at Tipton and the State Penitentiary.

In view of the fact that the Legislature by Subsection (a) of Section 1 of the Act specifically and definitely included a municipal corporation within the terms of the Act, then such municipal corporation or any of its branches or departments could not be exempted from the Act, except in clear and explicit terms.

Upon examination of Section 46, we find that the words "penal institutions" are in the same phrase as "industries operated by the Department of Penal Institutions", and the two being joined by the word "and", we construe this statute to refer to the penal institutions of the Department of Penal Institutions referred to in said Section 8316, R. S. Mo. 1929 and that it did not intend to include penal institutions which were not supported in whole or in part by the direct appropriation out of the State Treasury and which were not in the Department of Penal Institutions described in said Section 8316.

October 12, 1937

CONCLUSION

It is, therefore, the opinion of this department that sales made by or to penal institutions, which are not in the Department of Penal Institutions, as set out in Section 8316, R. S. Mo. 1929, are not exempt from the provisions of the Sales Tax Act and that the penal institutions of Kansas City, including the Municipal Farm and the Women's Reformatory are not in the exempted class of penal institutions, as set out in said Act, and are liable for the payment of the sales tax on purchases made for said institutions.

Respectfully submitted,

TYNE W. BINTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB:RT