

SALES TAX:

Sections 13,  
24 and 25,  
Sales Tax Act  
of 1937.

) In case the State Auditor extends time for  
) making any return or paying any tax required  
) by this Act, such taxpayer is relieved of the  
) payment of the interest prescribed by Section  
) 24 and is entitled to deduct the 3% of the tax  
) as provided by Section 25 of the Act.

July 14, 1937.

7-17



Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Sir:

This Department is in receipt of your letter of July 12, 1937, wherein you request an opinion as to the provisions of the following sections of the Sales Tax Act of 1937 (Senate Committee Substitute for House Committee Substitute for House Bill No. 6, enacted by the 59th General Assembly); which said sections and your question concerning same, as set out in your letter, are as follows:

"Section 13 of the Act provides as follows:

'The Auditor for good cause may extend, for not to exceed sixty days, the time for making any return or paying any tax required under the provisions of this Act.'

"Section 24 provides as follows:

'All taxes not paid to the Auditor by the person required to remit the same on the date when the same becomes due and payable to the Auditor, shall bear interest at the rate of three (3) percent per calendar month, or fraction thereof, from and after such date until paid.'

"Section 25 of the Act provides as follows:

'From every remittance to the State Auditor made on or before the date when the same becomes due, the person required to remit the same shall be entitled to deduct and retain an amount equal to three per cent thereof.'

"The question is whether or not, if this Department has granted a taxpayer an extension for filing returns under the provisions of Section 13, is the taxpayer entitled to retain 3% of the amount of tax collected as provided in Section 25. Also if the taxpayer has been granted an extension for filing returns, would it be necessary for the taxpayer to pay 3% interest per month or fraction thereof as provided in Section 24 for each month or fraction thereof after the 15th day of the month following collection until remittance is received at this office?"

In arriving at our conclusions it is necessary to consider, together with the foregoing sections, the following provisions of Section 5 and Section 10, of said Act, as follows:

"Section 5. 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. \* \* \* \*"

"Section 10. Every person making or rendering any sale, service or transaction taxable under this Act shall on or before the fifteenth day of the month after this Act becomes effective, and on or before the fifteenth day of every calendar month thereafter, individually or by duly authorized officer or agent make and file with the Auditor a written return, in the manner and form designated or prescribed by said Auditor, and upon blanks furnished by him showing the amount of gross receipts from sales, services and taxable transactions by such person and the amount of tax due thereon during and for the preceding calendar month, or that portion thereof subsequent to the effective date of this Act, and with such written return such person shall remit to the Auditor the amount of said tax due. \* \* \* \* \*"

Section 13 of the Act provides as follows:

"The Auditor for good cause may extend, for not to exceed sixty days, the time for making any return or paying any tax required under the provisions of this Act."

Section 24 of the Act provides as follows:

"All taxes not paid to the Auditor by the person required to remit the same on the date when the same becomes due and payable to the Auditor, shall bear interest at the rate of three (3) per cent per calendar month, or fraction thereof, from and after such date until paid."

Section 25 of the Act provides as follows:

"From every remittance to the State Auditor made on or before the date

July 14, 1937.

when the same becomes due, the person required to remit the same shall be entitled to deduct and retain an amount equal to three per cent thereof."

The general provisions of Sections 5 and 10 of the Act, making the sales tax payable by the fifteenth day of every calendar month after the collection of such tax, do not apply where the Auditor by authority of the provisions of Section 13 for good cause extends, not to exceed sixty days, the time for making any return or paying any tax required. By this section it appears that the Legislature has especially given the Auditor power to grant an extension of time for making the return and payment of the tax for a period not to exceed sixty days, and thereby changing the "due date" for such report and payment. The term "due date," or date when same becomes due, seems to refer to the general provisions of the statute that the tax shall be paid by the fifteenth.

The Auditor, by the provisions of Section 13, may extend the time for making any return paying any tax required under the provisions of said Act. Within that time the tax will not be determined. It is true the statute imposes the tax, but that does not constitute a debt in the ordinary sense. It is rather a liability to a debt; there remains to be determined that the person or firm is subject to the tax, and the amount of the tax, before an indebtedness can be said to have accrued and be payable. If the Auditor grants to the person or firm such extension of time to make their return and/or pay the tax, then such indebtedness would not accrue until the time of such extension and the taxpayer would not be liable for the payment of any interest as provided by Section 24, and if he has paid the tax on the "due date", which is especially fixed by the Auditor, he is entitled to deduct and retain an amount equal to three per cent. of such remittance, as provided by Section 25 of the Act.

#### Conclusion.

We are, therefore, of the opinion that the taxpayer who has been granted an extension of time by the Auditor in which to pay the tax provided by this Act, and if he makes

Hon. Forrest Smith

-5-

July 14, 1937.

report and pays his tax within such time, is not liable for the payment of the interest provided in Section 24 of the Act, and he is entitled to deduct and retain an amount equal to three per cent. of such remittance.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney-General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney-General

TWB:EG