

TAXATION: Rural Electrification Co-Operative Associations to pay the
SALES : sales tax for electric current and energy purchased from
TAX : the seller of such current.

September 10, 1937.

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Mr. Gray Snyder,
Attorney at Law,
Palmyra, Missouri.

Dear Sir:

This department acknowledges receipt of yours of
the 2nd instant which is as follows:

"As City Attorney for the City of Palmyra,
Marion County, Missouri, am asking for
your opinion, as to whether or not, the
City of Palmyra, a municipal corporation,
who has entered into a contract with the
Missouri Rural Electrification Corporation,
for the delivery of electric current and
energy in the County upon the collection
of its monthly rentals or payments for the
current so used is required to collect from
the said Rural Electrification Corporation,
a Sales Tax for such sale. Understand that
upon the delivery on the part of the City
from its municipal plant to this Rural Elec-
trification Corporation, distributed among
its several customers who are the ultimate
consumers thereof, as the City does not deal
with the ultimate consumers, but with the
manager and directors of the Rural Electri-
fication."

Your request involves the question of who is the
purchaser for use and consumption of the electric current
which your City sells or to whom is the retail sale of such
current made.

The term "retail sale" as defined in sub-section
"g" in Section 1 of the 2% Sales Tax Act of Missouri passed
in 1937, is as follows:

"Sale at retail" means any transfer made
by any person engaged in business as de-
fined 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:"

The word "purchaser" as defined in said Act in Sub-section "e" of Section 1 thereof, is as follows:

"The word "purchaser" whenever used in this Act means a person who purchases tangible personal property or to whom are rendered services, receipts from which are taxable under Section 2 of this Act."

The word "person" is defined in Sub-section "a" of Section 1 as follows:

"Person" includes any individual, firm, co-partnership, joint adventure, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency (except the State Highway Department,) 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."

In our research upon this question we have examined the Articles and Certificate of Incorporation of the Missouri Rural Electrification Co-Operative Association and we find that it was incorporated under Article 29 of Chapter 87, R. S. Mo. 1929 for the purpose of conducting a business as authorized by Section 12748 R. S. Mo. 1929, which provides as follows:

"Any number of persons, not less than twelve (12), may associate themselves together as a co-operative association, society or exchange, having all the incidents, powers and privileges of corporations, for the purpose of conducting any agricultural or mercantile business on the co-operative plan, including

The buying, selling, manufacturing storage, transportation or other handling or dealing in or with by associations of agriculturists, of agricultural, dairy or similar products, and including the manufacturing transformation of such articles into products derived therefrom, and for the purpose of the purchasing of or selling to all shareholders and other groceries, provisions and all other articles of merchandise."

We find that this Section provides that Co-Operative Associations may sell commodities to others than its members or stockholders, however upon the examination of the Articles and Certificate of Incorporation of the Missouri Rural Electrification Co-Operative Association we find that it shall sell commodities to its members only.

"Even though the statute gives certain powers to a corporation, yet such corporation may restrict its authority by adopting articles or a constitution curtailing the powers authorized by the statute and, in such case, the articles or constitution will gover." 14a, C. J. Section 2095, page 259.

By Section 7 of the 2% Sales Tax Act, the legislature directed the State Auditor to make, promulgate and enforce reasonable rules and regulations for the enforcements of said Act. Pursuant thereto the State Auditor has made Rule 38, which is as follows:

"Private clubs such as country clubs and other such organizations which are not open to the general public, are deemed to be the users or consumers of goods which they purchase and resell to their members, and sellers of supplies of said clubs should collect and remit the tax thereon. If the club is not open to the general public it will not be necessary for them to collect tax on goods which they sell, provided that they have previously paid the tax thereon at the time of purchase.

"However if private concessionaries operate dining rooms, cigar stands, lunch stands, cafes, swimming pools, or if the professional at country clubs sells golf equipment or other sporting goods, such concessionaries or professionals are making sales for use or consumption and are engaged in business and must collect and remit the tax on said sales to the State Auditor, even though the sales are made only to the members or their guests.

"If clubs are open to the general public, they must be treated as any other business and must collect and remit the tax on their sales made."

It is a settled law for the construction given the statute by those charged with the duty of executing it, is always entitled to the most respectful consideration and ought not to be overruled without cogent reason. U. S. vs. Moore, 95 U. S. 760 l. c. 763.

From the foregoing citation we think the said Electrification Association has authority to restrict its activities to its own members or stockholders and since the business operations of this Co-Operative Association are restricted to its own members or stockholders, and since it does not deal with the general public and in view of the fact that the operations of this Association, so far as they apply to its own members and to the general public, are analogous to that of a club or private organization, we think for the current and electric energy which it receives from the City of Palmyra, that it comes within the classification of a club or private organization and that it is the user and consumer of the current and the electric energy sold by said City and that the Sales Tax should be collected by the City of Palmyra from the said Missouri Rural Electrification Co-Operative Association with its monthly bills.

CONCLUSION.

This office is, therefore, of the opinion that the City of Palmyra should collect the 2% sales tax on electric current and energy that it sells to the said Missouri Rural Electrification Co-Operative Association and, that said Association is the user and consumer of such current and energy and is liable for the payment of the tax.

Respectfully submitted,

APPROVED:

TYRE W. BURTON
Assistant Attorney General.

J. E. TAYLOR.