

TAXATION:
SALES TAX:

Municipal corporation is a user and consumer of tangible personal property bought by the corporation to be used upon W.P.A. projects and is liable for the sales tax therefor.

March 2, 1939



Mr. G. H. Bates, Supervisor
Sales Tax Department
Office of the State Auditor
Jefferson City, Missouri

Attention: Mr. John H. Hendren

Dear Sir:

This is in reply to yours of recent date wherein you submit the following question:

"Are sales made by a material house to a municipal corporation in Missouri and used by the municipal corporation on W.P.A. projects subject to the Two (2) Per Cent Sales Tax now in effect in this state, Laws of Missouri 1937, Page 552?"

Subsection (a) of Section 1 of the Sales Tax Act 1937, page 555, Laws of Missouri, 1937, provides 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."

Subsection (g) of said section 1, page 556, Laws of Missouri, 1937, provides 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 or in 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 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 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.

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

Section 2, page 557 of said act provides as follows:

"From and after the effective date of this Act and up to and including December 31, 1939, there shall be and is hereby levied and imposed and there shall be collected and paid:

"(a) Upon every retail sale in this State of tangible personal property a tax equivalent to two (2) per cent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to two (2) per cent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange."

The section of the federal act which is pertinent to the W.P.A. projects is Section 6 of Title 15, par. 728, page 211, U.S.C.A., and it provides as follows:

"Sec. 6. Federal agencies having supervision of projects prosecuted under the appropriations in this title are authorized to receive from sponsors of non-Federal projects con-

tributions in services, materials or money, such money to be deposited with the Treasurer of the United States. Such contributions shall be expended or utilized as agreed upon between the sponsor and the Federal agency."

By this section it seems that the city which is a co-sponsor with the federal agency retains jurisdiction of the materials and moneys which it puts into a project to the extent that they cannot be used or spent unless the city agrees to it. Section 5 of this bill found in Title 15, par. 728, page 211, by virtue of which such projects as a municipality and the federal government prosecute or undertake certain projects, provides as follows:

"Sec. 5. No Federal construction project, except flood control and water conservation projects authorized under other law, shall be undertaken or prosecuted under the appropriations in this title unless and until there shall have been allocated and irrevocably set aside Federal funds sufficient for its completion; and no non-Federal project shall be undertaken or prosecuted under such appropriations unless and until the sponsor has made a written agreement to finance such part of the entire cost thereof as is not to be supplied from Federal funds."

This section requires the municipality, by an agreement in writing, to furnish its proportionate part of the materials or money for the project. Its portion may be furnished in materials or money which will depend upon the circumstances of each particular case. From the reading of Sections 5 and 6, supra, we do not think that these acts could be so construed that it would be said that the municipality sells that part of the materials which it furnishes as a co-sponsor on the project to the government.

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It only furnishes them as its part and as a co-sponsor of the project. If the municipality uses material to comply with its part of the project, then it would seem that it is the user and consumer that is contemplated by the Sales Tax Act. We fail in our research to find where such a question as you have submitted has been before the courts of any of the states.

CONCLUSION.

If the project is one in which a contractor undertakes to do a certain piece of work, he furnishing the materials therefor, then the contractor is liable for the sales tax, but if it is a project on which the city is to furnish the materials and the contractor does the work, then the city is the user and consumer and is liable for the payment of the sales tax.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

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