

TAXATION

SALES TAX: House Amendment No. 1 to House Bill 125 would subject all ultimate consumers of electrical current, steam heat, water and gas, to the provisions of the sales tax, except those which are exempt under Sections 11409 and 11453 of the Act.

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Hon. Joseph A. Falzone  
Missouri State Senator  
25th District  
Jefferson City, Missouri

Dear Senator Falzone:

This is in reply to yours of April 12, wherein you submit and request as follows:

"If you will refer to the Journal of the House for Thursday, April 1st, Page 928, you will find that Amendment No. 1. was adopted by the House and reads as follows:

'A tax equivalent to two (2%) percent of amounts paid or charged on all sales of electricity or electrical current, steam heat, water and gas (natural or artificial) to users or consumers.'

The original law and the original Bill used the words "domestic, commercial or industrial", which words were replaced by the words, "users or".

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I would appreciate your furnishing me with an opinion immediately as to just how this amendment affects individuals, partnerships, firms or corporations of this State. In other words, will this amendment embrace a field not now covered by the law or the Bill in its original form?"

Sub-section (g) of Section 11407 of House Bill 125 defines "sale at retail" as follows:

"(g) '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 article and the tax imposed thereby, it shall be construed to embrace:"

By this definition it will be seen that the tax is imposed only on the sale of the taxable article, when it is sold to the ultimate user or consumer and that if it is to be sold again in any form as tangible personal property the transaction is not taxable under the Act.

Section 2 of sub-section (g) of said Section 11407 of the Act reads as follows:

"(2) Sales of electricity, electrical current, water and gas (natural or artificial), to domestic, commercial or industrial consumers."

This Section in its present form is in the same form that the sales tax act was in when it was before the Supreme Court in the case of State ex rel. Kansas City Power and Light Company vs. Smith, State Auditor, 111 S. W. (2d) 513.

In describing the business and transactions of the Kansas City Power and Light Company which the Auditor was attempting to tax under the section similar to said Section 2 supra, the court said, l. c. 513:

"Respondent is engaged in selling and furnishing electricity or electrical current, and the sole question in this case is whether it (respondent) is liable for tax on the sale of electrical

current sold to Kansas City, the city of Sweet Springs, and the city of Glasgow, where it is used to pump water for their municipally operated waterworks systems, and for tax on the sale of electrical current sold to the Kansas City Public Service Company, used in propelling its street cars over its street railway system in Kansas City, Mo., and Kansas City, Kan." \* \* \*

Construing this Section the court at l. c. 514 said:

"Our consideration is finally narrowed to the construction of subsection (b) of section 2 A. Respondent contends that the words "domestic," "commercial," and "industrial" were intended by the Legislature to be used in their restrictive meanings, and that the electricity sales here involved were not made to consumers coming within this classification; therefore, the act does not apply. On the other hand, appellant contends that the quoted words are used in their broad and most general sense, and that it was the legislative intent to cover the sale of all electrical current."

In that case the court held that the words, "domestic," "commercial," and "industrial" were intended by the Legislature to be used in their restrictive meaning and ruled the case as follows; l. c. 515, (7)

"We have come to the conclusion that the electricity sold to the Kansas City Public Service Company, used to propel its street cars over its street car system, and the power used by Kansas City and the cities of Sweet Springs and Glasgow in pumping water, is used neither for commercial nor industrial purposes within the meaning of this act, and therefore is not subject to the tax in question."

Apparently this amendment has been made in light of the ruling made by the court in the Kansas City Power and Light

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Company case. In other words, when the court ruled in that case that the Legislature used these words in their restrictive meaning, then by striking out these words the section as amended would be all inclusive. In other words, by the proposed amendment the tax would not be limited to retail sales to ultimate users or consumers of electricity, electrical current, water and gas (natural or artificial), which are domestic, commercial, or industrial consumers, but it would be imposed on all such sales, regardless of the nature of the business which used or consumed such products so long as such user or consumer are not exempt under Sections 11409 and 11453.

This amendment would not apply to transactions wherein electricity, electrical current, gas or water is sold to a municipality which is to re-sell it to users and consumers because under the definition of the term "retail sale," as defined in the act, the tax cannot be imposed until it is sold for ultimate use or consumption. The amendment would affect industrial partnerships, firms or corporations in the same manner.

Respectfully submitted,

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APPROVED:

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ROY MCKITTRICK  
Attorney General

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