

TAXATION -

Federal Excise Taxes and freight charges not deductible from "contract price" in levying

SALES TAX:

tax on motor vehicles under Sales Tax Act.

May 5, 1949

FILED

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Honorable William H. Burden  
Missouri Senate  
Capitol Building (Room 319)  
Jefferson City, Missouri

5-14

Dear Senator Burden:

This is in answer to your recent letter requesting an opinion from this department and reading as follows:

"I have received several inquiries from people in my district as to whether or not our local auto license bureau, in assessing the sales tax on new automobiles, is justified in including the freight and the Federal Excise Tax as a part of the cost in determining the amount of tax. They have requested me to attempt to obtain a ruling from your department on the legality of the above procedure."

In disposing of your inquiry we look to the latest legislative declaration on this subject which is to be found in House Bill No. 258, Laws of Missouri 1947, Vol. II, page 431. This recent Act is now to be found embraced in Sections 11411, 11412, 11416, 11417 and 11420, Mo., R.S.A. House Bill No. 258, supra, repealed Sections 11411 and 11416 contained in House Bill No. 274 enacted by the 64th General Assembly (Laws of Missouri 1947, Vol. I, page 553) and Sections 11412, 11417 and 11420 contained in House Bill No. 652 (Laws of Missouri 1945, page 1865) enacted by the 63rd General Assembly relating to sales tax and known as the Sales Tax Act.

Having disclosed the method by which the 64th General Assembly, by its enactment of House Bill No. 258, supra, repealed and re-enacted Sections 11411, 11412, 11416, 11417 and 11420 of the Sales Tax Act (Article 24, Chapter 74, Mo. R.S.A.) our discussion must now turn to the purpose for which House Bill No. 258, supra, was enacted. The expressed purpose of the Act may be discovered by reference to the title of the Act which reads as follows:

"AN ACT to repeal Sections 11411 and 11416 contained in House Bill No. 274 enacted by

the 64th General Assembly and Sections 11412, 11417 and 11420 contained in House Bill No. 652 enacted by the 63rd General Assembly, relating to sales tax and known as the Sales Tax Act and to enact five new sections in lieu thereof relating to the same subject matter to be known as Sections 11411, 11412, 11416, 11417 and 11420, respectively, and to transfer the collection of sales tax on motor vehicles from vendors thereof to the Director of Revenue and providing procedures therefor, to levy an additional tax for the use of the highways of the state by motor vehicles, and to provide exemptions therefrom."

From a reading of the Act in question, as well as by reference to its title, it is readily discovered that the legislature, in its enactment of House Bill No. 258, supra, sought only to amend the general Sales Tax Act by selecting motor vehicles out of the great wealth of tangible personal property subject to the Sales Tax Act, and provide a more feasible plan for the imposition, collection and reporting of the tax of general application under the Sales Tax Act, in its relation to motor vehicles. In construing House Bill No. 258, supra, we are not dealing with an Act that is capable of standing alone, but it must be viewed as a component part of the Act which it amends. Only by this method are we able to construe the Sales Tax Act as a whole and by so doing arrive at the legislative intent, both expressed and implied in the language used. The amending sections are so drawn as to negate any contention that they constitute a law separate and distinct from the general Sales Tax Act. Such sections are written so as to harmonize with the over-all scheme of the Sales Tax Act. This conclusion is tenable as we review the nature of the amendments, their scope and affect in relation to the Sales Tax Act. We next consider the amendments.

Section 11411 of House Bill No. 258, supra, changes the wording of Section 11411 of House Bill No. 274, Laws of Missouri 1947, Vol. I, page 553, by adding the following proviso:

"\* \* \* Provided, however, that the collection of the tax imposed by this article on motor vehicles shall be made as provided for in Section 11412 of this Act \* \* \*".

The quoted proviso from the amended Section 11411 of House Bill No. 258, operates as an exception to the general rules laid down in the section pertaining to the general imposition and collection of the tax imposed by the Sales Tax Act, and directs our attention to the following amended Section 11412, of House Bill No. 258, where we are to find the general rule stated regarding (a) penalties imposed for wilful and intentional refusal to pay the tax imposed by the Sales Tax Act, (b) the method of acquiring a certificate of title to a new or used motor vehicle subject to the tax imposed by the Sales Tax Act, (c) the legislative denomination of the tax imposed by the Sales Tax Act on motor vehicles as a use tax, and (d) exemption clauses. The importance of this amended section to the inquiry at hand makes it advisable to quote the section in its entirety, as follows:

"Section 11412. SALES TAX ON MOTOR VEHICLES. -

(a) It shall be the duty of every person making any purchase or receiving any service upon which a tax is imposed by this article to pay the amount of such tax to the person making such sale or rendering such service; any person who shall wilfully and intentionally refuse to pay such tax shall be guilty of a misdemeanor: Provided, however, that the provisions of this section shall not apply to any person making any purchase or sale of a motor vehicle subject to sales tax as provided by the Missouri Sales Tax Act.

(b) That at the time the owner of any new or used motor vehicle which was acquired in a transaction subject to sales tax under the Missouri Sales Tax Act makes application to the Director of Revenue for an official certificate of title and the registration of said automobile as otherwise provided by law, he shall present to the Director of Revenue evidence satisfactory to said Director of Revenue showing the purchase price paid by or charged to the applicant in the acquisition of said motor vehicle, or that no sales tax was incurred in its acquisition, and if sales tax was incurred in such acquisition, such applicant shall pay or cause to be paid to the Director of Revenue the sales tax provided by the Missouri Sales Tax Act in addi-

tion to the registration fees now or hereafter required according to law, and the Director of Revenue shall not issue a certificate of title for any new or used motor vehicle subject to sales tax as provided in said Missouri Sales Tax Act until the tax levied for the sale of the same under said Act has been paid as herein provided. As used above, the term 'purchase price' shall mean the total amount of the contract price agreed upon between the seller and the applicant in the acquisition of said motor vehicle, regardless of the medium of payment therefor. In the event that the purchase price is unknown or undisclosed, or that the evidence thereof is not satisfactory to the Director of Revenue, the same shall be fixed by appraisement by the Director. The Director of Revenue shall endorse upon the official certificate of title issued by him upon such application an entry showing that such sales tax has been paid or that the vehicle represented by said certificate is exempt from sales tax and state the ground for such exemption.

(c) In addition to all other taxes now or hereafter levied and imposed upon every person for the privilege of using the highways of this state, there is hereby levied and imposed a tax equivalent to two percent of the purchase price, as defined in subsection (b) hereof, which is paid or charged on new and used motor vehicles purchased or acquired for use on the highways of this state which are required to be registered under the laws of the State of Missouri. That at the time the owner of any such motor vehicle makes application to the Director of Revenue for an official certificate of title and the registration of the same as otherwise provided by law, he shall present to the Director of Revenue evidence satisfactory to said Director showing the purchase price paid by or charged to the applicant in the acquisition of said motor vehicle, or that said motor vehicle is not subject to the tax herein

provided and, if said motor vehicle is subject to the tax herein provided such applicant shall pay or cause to be paid to the Director of Revenue the tax provided herein. In the event that the purchase price is unknown or undisclosed or that the evidence thereof is not satisfactory to the Director of Revenue, the same shall be fixed by appraisalment by the Director. No certificate of title shall be issued for such motor vehicle unless said tax for the privilege of using the highways of this state has been paid.

(d) The tax imposed by this section shall not apply to motor vehicles on account of which the sales tax provided by this act shall have been paid, nor to motor vehicles brought into this state by a person moving into Missouri from another state who shall have registered said motor vehicle in said other state at least ninety days prior to the time it is registered in this state, nor to motor vehicles acquired by registered dealers for resale, nor to motor vehicles purchased, owned or used by any religious, charitable or eleemosynary institution for use in the conduct of any regular religious, charitable or eleemosynary functions and activities, nor to motor vehicles owned and used by religious organizations in transferring pupils to and from schools supported by such organization, nor where the motor vehicle has been acquired by the applicant for a certificate of title therefor by gift or under a will or by inheritance, and the tax hereby imposed has been paid by the donor or decedent, nor to a motor vehicle, for which a certificate of title is sought by the applicant, which was acquired by him within the State of Missouri in an isolated or occasional sale as defined by subsection (c) of Section 11407 of the Missouri Sales Tax Act, nor to any motor vehicle owned or used by the State of Missouri or any political subdivision thereof, nor by any educational institution

supported by public funds, nor to farm tractors or motor vehicles having a seating capacity of ten passengers or more."

Section 11412, just quoted, supra, amended Section 11412 of House Bill No. 652, Laws of Missouri 1945, page 1865, by re-enacting the last mentioned section in its entirety, with an added proviso, as subparagraph (a) of House Bill No. 258, supra, to be followed by subparagraphs (b), (c) and (d). The result of the action of the legislature in repealing and re-enacting, with an added proviso, Section 11412 of House Bill No. 652, Laws of Missouri 1945, page 1865, as subparagraph (a) of the present Section 11412, merely carried over into the present law a penal clause of the Sales Tax Act, and the added proviso now contained in subparagraph (a) of the present Section 11412 must be read in connection with subparagraphs (b), (c) and (d) of such section, not in an attempt to create a class of persons, purchasers of motor vehicles, as exempt from paying the tax imposed, but as exempting them from the penal clause only when they follow the procedure and meet the requirements outlined in subparagraphs (b), (c) and (d) of the present section.

When the legislature so drafted the present law as to make the tax on motor vehicles levied under the Sales Tax Act payable to the Director of Revenue, such amendment necessarily required that a proviso be placed in the Sales Tax Act exempting from the penal clause contained in subparagraph (a) of the present Section 11412, persons making purchases of motor vehicles subject to the Sales Tax Act. In no other way could the purchasers of motor vehicles liable for the payment of the tax under the Sales Tax Act be relieved of the responsibility attaching to all purchasers of tangible personal property to pay to the seller the tax due on such property under the penal clause contained in subparagraph (a) of the present Section 11412. The wisdom of setting up the present Section 11412 in its existing form may well be challenged, but we do feel that when the section is read in the light of other germane provisions of the Sales Tax Act, it becomes feasible in operation and serves the purpose for which it was enacted by the legislature.

Section 11416 of House Bill No. 258, Laws of Missouri 1947, Vol II, page 431, amended the same numbered section found in House Bill No. 274, Laws of Missouri 1947, page 553. Sections 11417 and 11420 of House Bill No. 258, Laws of Missouri 1947, Vol. II, page 431, amended corresponding section numbers of House Bill No. 652, Laws of Missouri 1945, page 1865.

Such sections of the Sales Tax Act just referred to, did no more than place an exemption clause in said sections insofar as such sections had application to sales, services and transactions provided for in subparagraph (b) of the present Section 11412 of House Bill No. 258, supra.

Having devoted a considerable portion of this opinion to a review of House Bill No. 258, and its structure, we now consider the main inquiry made relative to the inclusion of Federal Excise Tax and freight charges in the purchase price of an automobile as a base on which to compute the tax payable to the Director of Revenue of Missouri by a non-exempt purchaser of a motor vehicle. Subparagraph (b) of Section 11412, House Bill No. 258, supra, provides that the tax is to have as its base the "purchase price paid by or charged to" the purchaser of the motor vehicle. Such section defines purchase price in the following language:

\* \* \* As used above, the term 'purchase price' shall mean the total amount of the contract price agreed upon between the seller and the applicant in the acquisition of said motor vehicle, regardless of the medium of payment therefor. \* \* \*

In defining "purchase price" in Section 11412, supra, the legislature has defined a term used in the Act and such definition is not to be enlarged upon in order to create an exception to the rule stated. We must accept the language as written and its simple clarity is not to be disputed in this instance.

Most Federal Excise Taxes are levied on the producer or manufacturer and are not required, by law, to be passed on to the consumer. Section 3403, Title 26, U.S.C.A. provides for a manufacturer's excise tax, on automobiles and accessories therefor, equivalent to stated percentages of the price for which the automobiles, and accessories therefor, are sold.

In the case of *People v. Werner* (1936) 364 Ill., 594, 5 N.E. (2nd) 238, a writ of error was brought in the Supreme Court of Illinois to determine whether the Retailers' Occupation Tax Act of Illinois, which imposed a three per cent tax on gross receipts of sales of tangible personal property at retail, was, in its operation unconstitutional because as applied to retail sales of gasoline it was allegedly a tax upon a tax. One of the

contentions of the gasoline retailer in that case was that, as a gasoline retailer, he had paid a federal excise tax on the gasoline and that it was improper for the State of Illinois to levy the Retailers' Occupation Tax on his gross receipts of sales of gasoline to his customers. The Court held that the retailer's contention was without substance in law or fact, and spoke as follows:

"The claim that Werner, as a gasoline retailer, has paid a federal excise tax of one cent per gallon since January, 1934, is likewise without substance in law or fact. Section 617 of the internal revenue laws (26 U.S.C.A. Secs. 3601-3629, see 26 U.S.C.A. Sec. 1420 et. seq. note) levies a federal excise tax of one cent per gallon on the producer or importer of gasoline and prescribes for his registration and the conditions under which he shall furnish bonds, make returns, and pay the tax to the federal collector of the district. No excise tax is imposed upon or paid by the retailer of gasoline. It may be true that the federal excise tax upon gasoline which is paid by the producer or importer is, upon its sale to the retailer, added to the cost of the product as a separate charge, in the same manner as transportation, delivery, insurance, or other charges are added. The itemization of these separate charges, or any of them, in the invoices sent by the producer or importer to the retailer, does not change the fact that the producer or importer has paid the tax to the federal government and has thereby, in effect, raised the cost of the gasoline to the retailer. The federal excise tax has therefore made the gasoline cost one cent per gallon more to the retailer, just as import or other taxes levied by the federal government are added to the price of cigars, cigarettes, clothing, or automobiles sold by producers or importers to retailers. The retailer, whether of tobacco, gasoline, clothing or automobiles, has no duty or burden of collecting or paying over to the federal government any manufacturer's or importer's excise taxes--they have already been paid before he gets the

article, and they are as much a part of the cost to him as are freight, express, insurance, or other charges which enter into and increase the cost of such articles. When either the tobacco, the gasoline, the clothing, or the automobile is sold, the retailer recoups himself against loss when he gets at least as much as he had paid for the article, regardless of how much federal or other taxes may have been paid at different stages by the processors, importers, or manufacturers who preceded him in its ownership. \* \* \*

The reasoning contained in the case of *People v. Werner*, just cited, may well be applied to the fact situation at hand, and the conclusion hereinafter made is based on the well reasoned opinion of the Illinois Supreme Court.

CONCLUSION.

It is the opinion of this department that the term "purchase price" as used in Section 11412 of House Bill No. 258, Laws of Missouri 1947, Vol. II, page 431, is the contract price agreed upon between the seller and the buyer of a motor vehicle, and that the Director of Revenue of Missouri must use such price as a base on which to compute the tax payable by the buyer under the Sales Tax Act of Missouri, without deducting from such base figure any freight charges or Federal Excise Taxes which may have entered into such contract price.

Respectfully submitted,

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APPROVED:

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