

SALES TAX: Liability for tax upon advertising posters to be shipped outside state depends upon time of passage of title.

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Department of Revenue  
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"We have a manufacturer of paper posters at St. Louis, Missouri, who will print a large amount of posters for concerns outside the State of Missouri. He will warehouse the posters and when the posters are put in the warehouse, he sends an invoice to his customer and collects his charges. Is this acceptance of the merchandise in Missouri therefore subject to Missouri Sales Tax?"

In your opinion request you give us no information relative to the ultimate destination of the goods in question. Presumably, they are intended for ultimate shipment and use outside Missouri. Otherwise, there would appear to be no question of sales tax liability. Upon the basis of this assumption the fundamental problem is determination of whether or not title to the goods in question passed upon their completion and payment of the purchase price. If title did not pass until actual delivery to the purchaser in another state, the transaction would be such as would be exempt under Section 11409, Mo. R.S.A., exempting retail sales made in commerce between this state and any other state, and the holding of the Supreme Court in the case of American Bridge Company v. Smith, 352 Mo. 616, 179 S.W. (2d) 12.

If the taxable event occurred upon payment of the purchase price and the goods were thereafter warehoused in this state as

property of the purchaser to await the pleasure of the purchaser as to their ultimate destination, transaction would not, we feel, fall within Section 11409, supra, and would be subject to tax. The rule in this regard is stated in 11 Am. Jur., Commerce, Section 70, page 65, as follows:

" \* \* \* substantial authority establishes the rule that a commodity does not become the subject of interstate transportation so as to preclude taxation by the state merely by reason of the fact that the owner intends its exportation. Not only is a mere intention to export an article or commodity insufficient of itself to exempt it from state taxation, but the rule appears to be that a movement merely in preparation for export--in other words, a mere transfer of the property to a depot or other place within a state from which the transportation or journey to another state is to begin at a convenient time--is not a part of that transportation so as to exempt the property, because of such transfer or movement, from state taxation. The beginning of the transit which constitutes interstate commerce is the point of time that an article is started on its ultimate passage. \* \* \*"

In the absence of complete information concerning details of the transaction, just when passage of title could have occurred is difficult to say. The principal factor upon which the passage of title between a seller and the purchaser depends is the intention of the parties, to be determined according to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances surrounding the particular transaction. 46 Am. Jur., Sales, Section 413, page 585. The only information submitted regarding any of these matters is the fact that payment of the purchase price is made upon completion of the posters. "Although the actual payment of the price or part thereof by the buyer in case of a sale of specified or identified chattels is a circumstance tending to show that it is the intention of the parties that the title pass, this circumstance is not controlling." 46 Am. Jur., Sales, Section 449, page 614. Consequently, we cannot determine the question of passage of title merely on the basis of information regarding payment.

"While actual delivery is of the greatest importance in determining whether title to goods has passed, there may be a constructive delivery under which title may pass, if such is the intention of the parties." 46 Am. Jur., Sales, Section 434, page 603. Some circumstances which would tend to show in this case whether or not such delivery had occurred as would evince passage of title upon the goods being placed in the warehouse are ownership of the warehouse and the question of at whose expense the warehousing was done. The contract of sale might contain an express provision in regard to these matters. If the seller was required by the contract to deliver the goods to the purchaser at some specified place at the seller's expense and merely hold them in his own warehouse pending notice from the purchaser, that would indicate no passage of title would occur until delivery at such specified place. If the goods were placed in a warehouse owned by the seller and no charge made to the buyer for their storage, there might well be considered to be no such constructive delivery as would evince passage of title. On the other hand, even if the goods were placed in the seller's warehouse, if the buyer paid storage charges, that fact, together with the payment of the purchase price, would be strong evidence of delivery sufficient to indicate passage of title. If the warehouse is owned by the buyer, the delivery would undoubtedly be regarded as actual delivery sufficient to pass title. If the warehouse is owned by a third person and warehousing charges are paid by the buyer, delivery to the warehouse would undoubtedly be considered sufficient to result in passage of title.

These matters, and any other facts which might shed light upon the agreement and the intention of the parties, would have to be ascertained in order to determine the question of whether or not this transaction is subject to sales tax. Since we do not have these facts, we can only point out to you what the problems are.

#### Conclusion.

Therefore, it is the opinion of this department that where a manufacturer of paper posters in this state prints posters for concerns outside Missouri, the ultimate destination of the posters being outside the state, and upon the completion of the posters

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collects his charges and warehouses the finished products, whether or not the transaction is subject to the Missouri sales tax depends upon the time of passage of title. If title passes upon completion of the posters and payment of the purchase price, the transaction is taxable. If title does not pass until the goods reach their ultimate destination outside this state, the transaction is exempt under Section 11409, Mo. R.S.A. When title passes is a matter to be determined by the intention of the parties, as shown by the terms of the contract, the conduct of the parties, usages of trade, and the circumstances surrounding the transaction.

Respectfully submitted,

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APPROVED:

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