

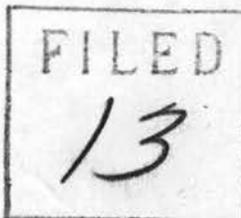
SALES TAX
INTERSTATE COMMERCE:

A sale of goods in one state for transportation to another state is not interstate commerce where the agreement itself is to be completed and carried out wholly within the borders of a state; and such transaction is therefore subject to the Missouri Sales Tax Act.

December 16, 1949

12/21/49

Mr. W. H. Burke
Department of Revenue
Jefferson City, Missouri



Dear Mr. Burke:

This is in reply to your request for an opinion which is as follows:

"The GMC Truck & Coach Division of General Motors sell merchandise to the Missouri Pacific Transportation Company destination points outside the State of Missouri. They deliver these shipments from the St. Louis Warehouse to the Missouri Pacific Railroad Company, the owner of the Missouri Pacific Transportation Company, who deadhead the material to the proper destination.

"Should we collect sales tax on these shipments or are they Interstate?"

On September 20, 1949 you further informed this department that the orders for the truck and bus supplies herein involved were mailed to the General Motors Company in St. Louis from out-of-state offices of the Missouri Pacific Transportation Company with the information that the said supplies be delivered to the depot of the Missouri Pacific Railroad Company in St. Louis, Missouri.

The facts as recited in your opinion request and the supplemental information supplied this department by you involve a sale of goods in Missouri by the General Motors Corporation to a branch of the Missouri Pacific Transportation Company located outside the State of Missouri. The contracts of sale in these transactions provided for the delivery of the purchased property to a common carrier in St. Louis, Missouri, by the General Motors Corporation, which carrier would accept the goods for delivery to the Missouri Pacific Transportation Company and assess the freight charges to the said Missouri Pacific Transportation Company.

Your opinion request presents the following question:

Mr. W. H. Burke

Are the above described purchases and sales transactions in interstate commerce, and, therefore exempt from the Missouri Sales Tax under Section 11409 Mo. R. S. Ann., 1939?

A general definition of interstate commerce is stated in the case of Addyston Pipe & Steel Company v. U. S., 175, U. S. 211 as follows:

"Interstate commerce consists of intercourse and traffic between the citizens and inhabitants of different states, and includes not only the transportation of persons and property * * * * *, but also the purchase, sale and exchange of commodities."

It will be noticed that the foregoing general definition of interstate commerce does not include all intercourse and traffic between citizens and inhabitants of different states. It would therefore seem to follow that there may be some instances of intercourse and traffic between citizens and residents of different states which would not be transactions in interstate commerce. One such instant would be a contract of sale between citizens of different states where the agreement itself were completed and carried out wholly within one state. The rule in this regard is stated in 11 Am. Jur., Commerce, Section 40, page 38, as follows:

"* * * * * A contract of sale between citizens of different states is not a subject of interstate commerce merely because it was negotiated between citizens of different states or by the agent of a company in another state where the agreement itself is to be completed and carried out wholly within the borders of a state. * * * * *"

In the particular transactions herein involved the orders were accepted, filled and delivered to the carrier in St. Louis, Missouri. The completion of these acts constituted a complete performance of the contract of sale. Inasmuch as the contract of sale was completed and entirely carried out in the State of Missouri it would seem to follow that such transaction was intrastate and therefore subject to the Missouri Sales Tax.

A rule which lends support to holding the transactions herein involved as being subject to the Missouri Sales Tax is stated in 11 Am. Jur., Commerce, Section 70, page 66 as follows:

"The beginning of the transit which constitutes interstate commerce is the point of time that an

Hon. W. H. Burke

article is started on its ultimate passage.
* * * *

It will be noticed that the above quoted rule provides that the interstate character of transactions of the nature as herein involved does not commence until the article is started on its ultimate passage. This interpretation of the rule was rendered by the court in the case of Illinois Central Railroad Company v. Fuentes et al 236 U. S. 157 in the following manner:

"When freight actually starts in the course of transportation from one State to another it becomes a part of interstate commerce. The essential nature of the movement and not the form of the bill of lading determines the character of the commerce involved. * * * *

The above quotation mentions the fact that the nature of the bill of lading is not the controlling factor to be determined in arriving at a conclusion as to whether a particular transaction is interstate or intrastate. The identical qualification is made in regard to the form of contracts and sale. The authorities are in complete agreement in holding that the parties do not have the power to change intrastate transaction into an interstate transaction by the particular form of the contract. The rule in this regard is stated in 11 Am. Jur., Commerce, Section 28, page 29, and in the case of Superior Oil Company v. Mississippi, 280 U. S. 390, page 394, as follows:

"* * * * It is not within the power of the parties by the form of their contract to convert what is exclusively a local business, subject to state control, into an interstate commerce business, protected by the commerce clause. * * * *

Applying the above quoted rule to the transactions herein involved it would necessarily follow that the form of the contract of sale, insofar as it retains the title to the articles sold in the vendor, or transfers the title to the said articles to the vendee would have no effect, nor would it be of any material assistance in determining the character of the transaction. The character of the transaction should be determined from the substance of the transaction and not the form of the transaction.

The above quoted rule was applied in the case of Superior Oil

Hon. W. H. Burke

Company v. Mississippi, 280 U. S. 390 P. 394 wherein the court recognized the sham employed by the parties to a contract of sale and held that the transaction remained an intrastate transaction by expressing its opinion as follows:

"The instrument then provided that the property consigned herein remains the property of said Superior Oil co. until it shall be delivered to the consignee or consignee's agent at the point of destination,' with provisions throwing all risks upon the purchaser. The seller of course paid no freight. The document seems to have had no other use than, as the Supreme Court of Miss. said, to try to convert a domestic transaction into one of interstate commerce."

(Underscoring ours)

This case on page 395 also takes into consideration the proposition that the vendor had knowledge of the vendee's intent to ship the property outside the borders of the state in which the sale was completed and held that such knowledge on the part of the vendor was not sufficient to change the character of the transaction. The court related the following example:

" * * * * If it had bought bait for fishing that it intended to do itself, the purchase would not have been in interstate commerce because the fishing grounds were known by both parties to be beyond the state line. A distinction has been taken between sales made with a view to a certain result and those made simply with indifferent knowledge that the buyer contemplates that result."

To the same effect as the Superior Oil Co. v. Mississippi case and citing such case is the case of Department of Treasury of the State of Indiana et al v. Wood Preserving Corporation, 313 U. S. 67, pages 64 and 65, the court in discussing the transactions of the Wood Preserving Corporation whereby it sold ties to a Railroad Company to be delivered at a point outside the state, made this statement:

"In these transactions respondent through its agent at once accepted from its vendors the ties which the Railroad Company found satisfactory and then and there sold and

Hon. W. H. Burke

delivered these ties to the Railroad Company. These were local transactions, sales and deliveries of particular ties by respondent to the Railroad Company in Indiana. The transactions were none the less intrastate activities because the ties thus sold and delivered were forthwith loaded on the railroad cars to go to Ohio for treatment. The contract providing for the treatment called for the treatment of the ties to be delivered by the Railroad Company at the Ohio plant, and the ties bought by the Railroad Co. in Indiana, as above stated, were transported and delivered by the Railroad Company to the treatment plant. Respondent (Wood Preserving Corp.) did not pay the freight for that transportation and the circumstance that the billing was in the name of the consignor is not of consequence in the light of facts showing the completed delivery to the Railroad Company in Indiana.

(Underscoring ours)

The aforementioned cases are factually similar to the transactions contained in your opinion request inasmuch as in such cases the property sold was to be shipped to points outside the state in which the sale was made, the vendor had knowledge of the vendee's intent to so ship the goods and agents of the vendee accepted delivery of the goods for and in place of the vendee.

In the present instance the vendee directed the goods be delivered to the Missouri Pacific Railroad for shipment outside the State of Missouri, the charges for such shipment were billed to the Missouri Pacific Transportation Company, thus placing the goods under the control of the Missouri Pacific Transportation Company the instant that the General Motors Corporation delivered the same to the Missouri Pacific Railroad Company, and at the same time the General Motors Corporation completed the entire contract of sale within the borders of the State of Missouri.

CONCLUSION

It is, therefore, the opinion of this department that the sale of bus and truck supplies to the Missouri Pacific Transportation Company

Hon. W. H. Burke

and delivered to the Missouri Pacific Railroad Company as provided by the contract of sale constituted an intrastate transaction inasmuch as the entire contract of sale was completed within the borders of the State of Missouri and such transaction is not exempt from the payment of the Missouri Sales Tax under Section 11409 Mo. R. S. Ann. 1939.

Respectfully submitted

PHILIP M. SESTRIC
Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL 

PMS:A