

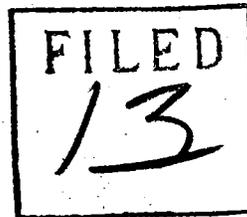
TAXATION SALE:

SALES TAX:

Sale by Missouri dealer to Missouri purchaser, of property shipped to dealer from foreign manufacturer for delivery to purchaser subject to Sales Tax.

April 11, 1950

Mr. W. H. Burke,
Assistant Supervisor,
Department of Revenue,
Division of Collection,
Jefferson City, Missouri.



Dear Mr. Burke:

We have your recent request for an opinion from this office. Your letter is as follows:

"The E. A. Martin Company at Joplin, Missouri are dealers in farm and other machinery. They have had quite a few cases which we have set up an assessment against them in which an order was placed with Martin and Company for a tractor or other machinery which is not carried in stock. The order is sent, for example, to the Caterpillar Tractor Company at Peoria, Illinois for shipment direct to Martin's customer, Mr. William Jones, at Neosho, Missouri.

"On account of the amount of money involved the shipment is billed to the order of the Caterpillar Company for William Jones, c/o E. A. Martin and Company at Neosho, Missouri. The original bill of lading is sent to Martin and Company who send their representative to Neosho and he presents the bill of lading to the railroad agent, pays the freight, and unloads the tractor, inspects it, and operates it to see that everything is in perfect condition and it is then ready to be turned over to Mr. Jones. At this time the finance man (in case these arrangements have not been made before hand) arranges with Mr. Jones for either full payment or time-payment on the machinery and then the machinery is turned over to Mr.

Mr. W. H. Burke:

April 11, 1950

Jones who takes it on to his place of operation.

"The E. A. Martin Company claim that these are interstate commerce transactions and would like to have your confirmation or disapproval of their contention."

Laws of 1947, Vol. 1, page 547 provides in part as follows:

"Amount of tax. - - From and after the effective date of this Act, there shall be and is hereby levied and imposed and 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." (Underscoring ours)

We also have in this state what is commonly known as exemption statute, Laws of 1945, page 1865, Section 1; Laws 1949, page _____, House Bill No. 303 Section 1, which exempts certain transactions in interstate commerce. It is clear, however, that if the instant transaction is intrastate in character, the above exemption statute would have no application here.

An examination of the facts set out in your letter indicates that the transaction with which we are here concerned is in intra, rather than interstate commerce.

In the recent case of Brosious v. Pepsi-Cola Co. 155 F. (2d) 99 the court stated as follows, l.c. 103:

"* * * When a substance is transported from one state into another, the interstate movement ends with the delivery of that substance to a distributing company. Subsequent sales and deliveries to customers of such company constitute intrastate commerce. East Ohio Gas Co. v. Tax Comm., 1931, 283 U.S. 465, 471, 51 S. Ct. 499, 75 L. Ed. 1171; State v. Bartles Oil Co., 1916, 132 Minn. 138, 155 N.W. 1035, L.R.A. 1916D, 193. Also, see 'original package'

Mr. W. H. Burke:

April 11, 1950

cases, *People ex rel. Burke v. Wells*, 1908, 208 U.S. 14, 28 S.Ct. 193, 52 L. Ed. 370; *State v. C.C. Taft Co.*, 1920, 183 Iowa 548, 167 N.W. 467, 9 A.L.R. 390, writ of error dismissed in 252 U.S. 569, 40 S. Ct. 345, 64 L. Ed. 720; *Baltimore & O. R. Co. v. United States*, D.C.N.Y., 1936, 15 F. Supp. 674. See Rottschaffer on Constitutional Law p. 321."

and it has been held as follows:

"The question whether commerce is 'inter-state' or 'intrastate' must be determined by the essential character of the commerce, and not by mere billing or forms of contract. *Gerdert v. Certified Poultry & Egg Co.*, D.C. Fla., 38 F. Supp. 964, 972.

"A movement of freight from the point of origin to the place of ultimate destination may be so interrupted that from the point of interruption a new and local service is obtained and transportation from point of interruption would be 'intrastate commerce.' *Sherman v. Southern Pac. Co.*, 93 P. 2d 812, 817, 34 Cal. App. 2d 490."

It is apparent that the instant situation is governed by the cases above cited, but added weight is given to this by the facts you recite. You state that the Martin Co. representative presents the bill of lading and takes possession of the tractor. It is manifest that this agent is acting for the Martin Co., and not for the ultimate purchaser. That the tractor has come to rest, in this state, while under the control of the Martin Co. is equally certain, and therefore it appears that the delivery of the tractor to the ultimate purchaser is a transaction in intrastate commerce, and therefore not within the exemption statute, supra.

That the sale itself is between the dealer, the Martin Co., and the purchaser is made explicit by your letter. Obviously the only purpose in marking the bill of lading "William Jones, c/o E.A. Martin & Co." is for the purpose of identification, that is, to insure that the purchaser "Jones" gets the kind and size of tractor he ordered. The statement of facts does not reveal any other connection between the purchaser and the manufacturer. The purchase, or "sale," then, is made in this state and therefore clearly falls within the provisions of

Mr. W. H. Burke:

April 11, 1950.

Section 1, page 547, Vol. 1, Laws 1947, set out in part,
supra.

CONCLUSION

It is, therefore, the opinion of this office that a sale transaction between a Missouri dealer and a Missouri purchaser, in which the subject matter of the sale is shipped by a foreign manufacturer to said dealer, who in turn delivers same to purchaser, is an intrastate sale and therefore not exempt from the Missouri Sales Tax, even though the shipment is marked for the ultimate purchaser in care of said dealer.

Respectfully submitted,

H. JACKSON DANIEL,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
Attorney General.

HJD:cg