

SALES TAX:

TAXATION: SALES:

: Transaction in interstate commerce exempt
: from Missouri Retail Sales Act. Whether mer-
: chandise actually passed into interstate move-
: ment may properly be the subject of inquiry
: by the Director of the Department of Revenue,
: and the burden rests with the taxpayer claim-
: ing exemption to prove the merchandise sold
: actually passed into interstate commerce.

Honorable G. H. Bates,
Director of Revenue
Department of Revenue,
Jefferson City, Mo.



Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office on the following question:

" Re: Opinion of the Attorney General dated June 12, 1950 - Applicability of the Missouri Sales Tax to sales by Missouri vendors to Missouri purchasers involving interstate transportation.

"Our auditors have recently completed an audit on a steel company in St. Louis and have set them up for sales tax on the sale of a steel bridge sold to a railroad company and loaded on the cars of said railroad company, but destined for delivery out of state.

"We have held that under the above named opinion such sales would be taxable. However, counsel for the railroad company takes the position that said bridge was accepted by the company as a common carrier for delivery to the point out of state, and that the company does not actually secure title to said bridge until the contract for transportation has been completed and the bridge delivered to the point of destination.

"We have held that the railroad company cannot act in a dual capacity but took title and possession on their cars in Missouri.

"Because of the difference of opinion on the above named transaction, may we have your ruling on the matter?"

The opinion referred to in your letter apparently was an opinion rendered by this office to Mr. W. H. Burke under date of December 16, 1949, the conclusion of which reads as follows:

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

Your attention is also directed to an opinion from this office rendered to the Department of Revenue under date of April 18, 1951, dealing with the same problem. The conclusion reached therein reads as follows:

"It is the opinion of this department that a retail sale of tangible personal property by a Missouri seller to a buyer wherein the contract of sale provides for delivery within this state and the transaction is completed in Missouri the sale is subject to the State Retail Sales Act, Chapter 144, R. S. Mo. 1949. Such a sale constitutes an intrastate transaction if the entire contract of sale is completed within the borders of the State of Missouri, and it is immaterial that the purchaser or his agent may subsequently transport the property out of this state; the sales tax applies to such a transaction for the reason that interstate movement does not commence until after the taxable transaction has been completed.

"It is further the opinion of this office that retail sales transactions necessitating the transportation of goods from Missouri into other states, and in which title and ownership to such goods pass either in another state, or while the goods are moving in commerce are exempt from the provisions of the retail sales tax act under section 144.030, RSMo. 1949; further, if the seller is obligated under his contract of sale to deliver to a point outside the state the sales tax does not apply, provided the property is not returned to a point within the state for use or consumption. It is the duty of the Director of Revenue, however, in any particular case in which the taxpayer claims exemption under the section 144.030 cited above to determine as a matter of fact whether a particular transaction involves an actual shipment in interstate commerce or whether such a subterfuge is used to evade payment of the tax. The burden is upon the taxpayer to establish the fact that such transaction is a bona fide sale in interstate commerce and not merely a medium used to evade the tax due."

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The Missouri Sales Tax Law, Chapter 144, RSMo. 1949, levies a tax on retail sales. Section 144.030 thereof specifies exemptions to the tax. The railroad company and the steel company mentioned in your letter apparently believe the particular sale transaction in question was exempt from the sales tax as a transaction in interstate commerce. The burden rests with the taxpayer to prove the right to an exemption, and the right to be exempt from the payment of the sales tax in this case depends upon whether or not the taxpayer can establish as a fact that the transaction was a sale in interstate commerce. The property sold to the railroad company was loaded on the cars of the said railroad, apparently by the seller, and although the contract called for transportation to a destination outside the state of Missouri, actually there appears no reason why the agent of the railroad company could not deliver the property wherever he was directed by the purchaser after he had accepted the same loaded on cars in St. Louis. If the contract of sale and a bill of lading have no other use than to try to convert a domestic transaction into one of interstate commerce as a means to evade payment of a tax in this or any other state, then the design will fail and such subterfuge should be properly the subject of an inquiry by the Director of the Department of Revenue to determine if the sale in question was a bona fide transaction actually involving interstate commerce and exempt from the tax or only constituted an ineffective attempt to clothe an intrastate sale with the indicia of an interstate transaction to avoid taxation. By your letter you indicate the goods were delivered to the consignee in St. Louis and were from that time on in the hands of the consignee who had exclusive control over the property. The goods passed into the hands of the consignee before they started any interstate movement. The goods passed to the hands of the purchaser in St. Louis to do with as it liked. The transportation company will not be allowed to make purchases in this state, accept delivery in Missouri of the goods purchased, but clothe the transaction with a false aura of an interstate transaction in order to hold the immunities of interstate business.

If the sale is actually one involving delivery of goods in interstate commerce i.e., if the order for the goods has been placed by an outstate purchaser for delivery and use outside Missouri, the transaction would not be subject to the tax in question.

Whether this particular transaction actually involved a delivery of merchandise outside of Missouri this office has no way of knowing. The burden rests upon the taxpayer claiming exemption to establish as a fact that the merchandise was actually delivered outside the state and in the event of question as to whether the goods actually passed into interstate commerce the Director of the Department of Revenue may properly require the taxpayer to show proof of actual delivery of goods outside Missouri.

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CONCLUSION.

Whether tangible personal property actually passes into interstate commerce is a question of fact in the particular case and the Director of the Department of Revenue may properly require the taxpayer claiming exemption from taxation under the Missouri Retail Sales Act for a transaction in interstate commerce to establish that the merchandise actually passed into interstate commerce.

If a contract for sale and purchase of goods requiring delivery to a point outside this state is made as a subterfuge with the purpose being to avoid the Missouri State "Sales Tax" and goods are not actually moved in interstate commerce, such subterfuge will not be effective to evade payment of the tax.

If the sale by a Missouri seller is made to an outstate purchaser in such a manner that the transaction actually involves interstate commerce such a sale would be exempt from the sales tax levied by the Missouri Retail Sales Act.

Respectfully submitted,

JOHN E. MILLS,
Assistant Attorney General.

APPROVED:



J. E. TAYLOR
Attorney-General

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