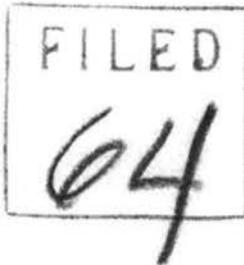


SALES TAX ON
ELECTRICITY AND GAS:

An apartment house is subject to the Missouri Sales Tax on the purchase of electricity and gas for the use of its tenants.



May 1, 1953

Honorable M. E. Morris
Director of Revenue
Jefferson Building
Jefferson City, Missouri

Dear Mr. Morris:

We have given careful consideration to your request for an opinion, which request is as follows:

"Will you please furnish this Department an official opinion as to whether or not the St. Louis Housing Authority would be subject to the Missouri State Sales Tax on the purchase of:

"(1) Electricity, which is furnished to tenants.

"(2) Gas, which is furnished to tenants.

"It is understood that this electricity and gas are furnished to apartment dwellers and the sales price is included in the rental paid on the apartment by the apartment dwellers."

The St. Louis Housing Authority was organized under the Housing Authorities Law and is governed by the provisions of that Act, which is contained in Chapter 99, RSMo 1949.

This opinion passes only on the question of whether or not the St. Louis Housing Authority is exempt from the Missouri Sales Tax Act under the provisions of subsection (10) of Section 39, Article III, Constitution of Missouri. Such subsection provides as follows:

"To impose a use or sales tax upon the use, purchase or acquisition of property paid for out of the funds of any county or other political subdivision."

Honorable M. E. Morris

This office in an opinion written for Mr. G. H. Bates, State Collector of Revenue, under date of August 9, 1946, held that the proper definition of the term "other political subdivision" herein mentioned was that which is found in Section 15, Article X, Constitution of Missouri, which is as follows:

"The term 'other political subdivision' as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax."

An organization established under the Housing Authorities Law may have certain earmarks of a political subdivision, but there is nothing in the act to give any such organization the power to tax. It is, therefore, not exempt from the sales tax under subsection (10) of Section 39, Article III, Constitution of Missouri.

The Sales Tax Law, incorporated in Chapter 144, RSMo 1949, provides for certain exemptions in Sections 144.030 and 144.040, but by no stretch of the imagination can any of these exemptions apply to an authority organized under the Housing Authorities Law.

Sales of electricity and gas are definitely included in the Sales Tax Law in subsection (8) of Section 144.010. Any such sale is defined as a "Sale at retail," and the consumer must pay the tax. But in this case who is the consumer? Is it the housing authority who purchases the services from the utility company, or is it the tenant who rents an apartment from the authority with the services included in the rental?

The Supreme Court of Missouri in 1937 handed down a decision on a similar question in *City of St. Louis v. Smith*, 342 Mo. 317. In this case certain contractors agreed with the City of St. Louis to make certain improvements and to furnish all labor and material necessary for such construction. The court held that the contractors, not the city, were the consumers of the material within the meaning of the Sales Tax Law. In the course of that opinion, on page 321, the court said:

Honorable M. E. Morris

"In our judgment the contractors in this case did not buy the materials in question for the purpose of reselling such materials to the city. They were under contract to deliver to the city a finished product. It was the inseparable commingling of labor and material that produced the finished product. Our conclusion is that the contractors used and consumed the material in order to produce the finished product in compliance with their contract. Since the contractors used and consumed the material, they and not the city are primarily liable for the one per cent sales tax. The sale of the materials by the dealer to the contractors was the taxable transaction, and it was the duty of the dealer to collect the tax from the contractors at the time the sale was made."

The transactions herein are the same as those contained in the case of the housing authority in the purchase of electricity and gas for supply to its tenants under their rental contracts. The housing authority agrees to deliver to its tenants a separate and definite unit, consisting of an apartment, with or without furnishings, and including electricity and gas. By this line of reasoning the housing authority is held to be the consumer.

CONCLUSION

It is the opinion of this office that the St. Louis housing Authority is subject to the Missouri Sales Tax on the purchase of electricity and gas for use of its tenants.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. B. A. Taylor.

Yours very truly

JOHN M. DALTON
ATTORNEY GENERAL

BAT:A