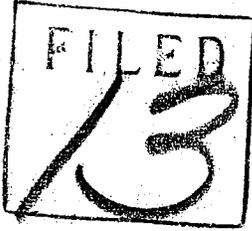


SALES TAX:  
TAXATION:  
PUBLIC UTILITIES:

Electrical current used to prevent  
electrolysis of pipe lines not subject to  
sales tax.



December 7, 1955

Honorable W. H. Burke  
Assistant Supervisor  
Sales Tax Division  
Department of Revenue  
Jefferson City, Missouri

Dear Mr. Burke:

This office is in receipt of a request from you for an opinion as follows:

"We have a request from a common carrier pipe line company for an exemption from sales tax on invoices for electricity used by them in cathodic protection units at various points in Missouri.

"These units are for the purpose of preventing electrolysis or deterioration of the lines by static electricity which forms on the pipes from various causes. This static electricity builds up to a point where a discharge into the ground occurs, and at this point electrolysis or pitting of the pipe occurs unless these cathodic protection units are installed. This condition does not effect the operation of the common carrier in transporting oil inside the pipes, and the cathodic units are for the purpose of greatly prolonging the life of these pipes.

"The common carrier claims that under Rule 57 of our Rules and Regulations that they should be exempted from paying sales tax on these invoices and therefore desire a refund of the sales tax already paid by them for the past two years. Will you please advise if they should be exempted from the sales tax on these transactions?"

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The purpose of the use of the electrical current, the sales tax upon which is in question here, is shown to be for the protection of the steel pipe in the company's pipe line. Its use does not extend to the furtherance of the movement of the oil in the pipe in interstate commerce as we understand it in your request letter. It is alleged to be exempted from the purview of the tax according to Rule 57. It is thought best to quote Rule 57 of the rules and regulations relating to the Missouri Sales Tax (revised to November 1, 1953) which is quoted in what we think to be the applicable part as follows:

"The sales tax is imposed on sales of electricity, electrical current, water and gas to domestic, commercial or industrial consumers only and is not imposed on sales to other classes of consumers (Kansas City Power & Light Co. v. Smith, State Auditor, 111 S.W. (2d) 513). Examples of consumers that cannot be classified as commercial consumers are public utilities, waterworks, telegraph and telephone companies, railroads and street railways and other common carriers when the electricity, electrical current, water and gas are not used in commercial phases of the business. The tax does apply when the electricity, electrical current, water and gas are used in sales rooms, display rooms, retail stores, downtown ticket offices, and other such commercial phases of the above consumers business."

This above rule appears to have been formulated in accordance with Sections 144.010 and 144.020, RSMo 1949. Section 144.020, Subdivision 3 is as follows:

"3. A tax equivalent to two per cent of amounts paid or charged on all sales of electricity or electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers."

Rule 57, in the portion quoted above, seems to have been developed from consideration of the above quoted portion of the Sales Tax Act and to have been further modified by the decision in Kansas City Power and Light Co. v. Smith which it quotes. It is believed, that in view of the decision in the above case, that the use of electrical current, for the purposes described in the opinion request, cannot be determined to be for domestic, commercial

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or industrial consumption. It is thought best to here quote from the Power and Light Company case at l.c. S.W. 515 as follows:

"(6) If appellant is correct in his contention that the word 'commercial' includes everything pertaining to commerce, then it would also include industrial pursuits; for instance, a shoe manufacturer is engaged in an industrial pursuit in making and selling shoes. If 'commercial' is used in its broad sense, it includes also the word 'industrial.' This the appellant admits, for in his brief he says: 'We respectfully urge upon this court that the term "commercial" as used in this act, might include in its scope "industrial," for both are closely associated; "commercial" includes "industrial."' If the word 'commercial' includes 'industrial,' then why did the Legislature use the word 'industrial' also? We have already seen that every word should be given a meaning in construing a statute if possible; we therefore conclude that the word 'commercial' was not used by the Legislature with the intention of including the word 'industrial.' Both were used in the act, not in the broad sense, but, rather, in a restricted sense.

"The ordinarily accepted use of the phrase 'commercial establishment' denotes a place where commodities are exchanged, bought, or sold, while the ordinarily accepted meaning of the phrase 'industrial establishment' denotes a place of business 'which employs much labor and capital and is a distinct branch of trade; as, the sugar industry.' Webster's New International Dictionary. Thus, we see that the transportation of passengers would not come within the ordinary meaning of either the word 'commercial' or 'industrial.'"

Of course, since it is a generally accepted rule that taxing statutes should be strictly construed in favor of the tax payers, we must come to the conclusion that the purpose of the use of the electrical current sought to be charged with sales tax is neither domestic, commercial nor industrial under the

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strict meaning of those terms and as they are construed by our Supreme Court.

CONCLUSION

It is therefore the opinion of this office that electrical current used by a common carrier pipe line in a process for the protection and preservation of the steel in the pipe line does not come within the terms of Sections 144.010 and 144.020, RSMo 1949. It is therefore not subject to tax.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James W. Paris.

Yours very truly,

JOHN M. DALTON  
Attorney General

JWF/bi