

Opinion 122, Answered by Letter
(Joseph Nessenfeld)

March 12, 1962

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Mr. Charles D. Trigg
Comptroller and Budget Director
State Capitol
Jefferson City, Missouri

Dear Mr. Trigg:

This will reply to your recent letter requesting our informal opinion as follows:

"I respectfully request an informal opinion regarding the State's obligation for the payment of gross earnings tax on utility bills. Is the State exempt from such tax or liable for payment of the tax?"

As we understand your question, the tax is a license tax imposed upon the utility based upon the gross receipts. It is not imposed upon the consumer. There is no question concerning the right of the municipality to impose such a license tax. See *Union Electric Co. v. City of St. Charles, Mo. Sup.*, 181 S.W. 2d 526. In that case, it was held that a license tax measured by gross receipts does not constitute, directly or indirectly, a sales tax.

The mere fact the utility presently lists the tax separately from the other portion of the charge for its services does not have the effect of making the tax one imposed upon the consumer. The charge for the services rendered is the aggregate amount shown on the bill including that portion of the charge represented by the "tax". "The utility remains the party taxed, and the utility still pays the tax." See *State ex rel City of West Plains v. Public*

Service Commission, Mo. Sup., 310 S.W. 2d 925, 934; and State ex rel Hotel Continental v. Burton, Mo. Sup., 334 S.W. 2d 75,82. The tax is but one expense of operation. The last two cited cases hold that the Public Service Commission may authorize a utility to state the amount of the tax separately from the balance of the customers' charges, and thereby "partially itemize" the bills. However, irrespective of the method of billing, the money with which the utility pays the tax is necessarily obtained in every instance from the customers. The incidence of the gross receipts tax is not changed by the fact that charges are itemized. It may be added that there is no constitutional prohibition against the assessment of an excise tax upon the State of Missouri. See State ex rel Missouri Portland Cement Co. v. Smith, 90 S.W. 2d 405 (which involved the 1875 Constitution). Section 6 Article X of the 1945 Constitution exempts only the real and personal property of the state from taxation. We are aware of no provision in the law which would exempt the State of Missouri from liability for that portion of the charge of the utility for service rendered which results from the levy of an excise tax such as the gross receipts license charges of various municipalities.

It is our opinion, therefore, that the State is liable for payment of the bills in the situation set forth in your letter.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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