SALES TAX: Section 144.025, RSMO Cum. Supp 1963 applies to every retail sale involving a trade-in allowance, regardless of whether the person seeking to avail himself of the trade-in allowance had actually paid tax on the traded-in property.

OPINION NO. 43

April 3, 1964

FILED
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Honorable Jack C. Jones
State Senator
16th District
Carrollton, Missouri

Dear Senator Jones:

This is in answer to your recent letter requesting an official opinion from this office. Your letter sets forth the following question:

> "Mr. A. is General Manager of a rather small corporation. He traded an automobile which was titled in his name and on which sales tax had been paid to the State of Missouri, for a new automobile which he had titled in the name of the corporation. The difference between the trade-in allowance and the purchase price exceeded five hundred dollars. He has been told by the Department of Revenue that the sales tax will be computed on the total price of the new automobile. It is his position that the sales tax should be computed only on that portion of the purchase price in excess of the actual allowance made for the automobile which was traded in."

The sales tax provision (Section 144.025, RSMo Cum. Supp. 1963) authorizing the use of a trade-in allowance in determining the portion of the purchase price which is subject to our sales tax law reads as follows:

> "Other provisions of law notwithstanding, in any retail sale where any article on which a sales or use tax has been paid to this state is taken in trade as a credit or part payment on the purchase price of the article being sold and the difference between the trade-in allowance and the purchase price exceeds five hundred dollars, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price in excess of the actual allowance made for the article traded in or exchanged."

It is the opinion of this office that Section 144.025, supra, applies to the factual situation outlined in your letter. To quote the statute, sales tax "shall be computed only on that portion of the purchase price [of the new automobile] in excess of the actual allowance made for the article traded in or exchanged".

The legal conclusion we have reached involves our construction of Section 144.025, supra and can be better illustrated by a slight change in your factual situation. For example, suppose Mr. A had given his used automobile, upon which he had previously paid a Missouri sales or use tax, to the corporation. This transfer would not be taxable, and the corporation could obtain a certificate of title without the necessity of paying the Missouri motor vehicle use tax, Section 144.450, RSMo 1959. If the donee-corporation purchased a new automobile and used the older vehicle as a trade-in on this purchase, could it claim the special allowance of Section 144.025, supra, if the difference is over $500.00? The answer to this question we believe is in the affirmative and lies in a determination that a purchaser may claim the trade-in allowance on an article of tangible personal property acquired by him through a nontaxable transaction.

Although the purchaser may not have paid a tax on the traded-in vehicle, it is our opinion that the legislative intent of Section 144.025, supra, was to classify articles of tangible personal property upon which a Missouri sales or use tax has been paid as distinguished from those articles upon which no tax has been paid. The former class of "articles" can be used in order to obtain a

trade-in allowance while the latter class cannot. Such a classification seems reasonable to us. The General Assembly has wide discretion in making classifications for taxation purposes. State ex rel. Transport Mfg. and Equipment Co. v. Bates, Mo. Sup., 224 SW2d 996, 1000 (1949).

The language used in the statute refers to "any retail sale where any article on which a sales or use tax has been paid to this state is taken in trade. * * *" The word "any" is all comprehensive and the equivalent of the words "every" and "all". Hamilton Fire Insurance Co. v. Cervantes, Mo. App., 278 SW2d 20, 24 (1955); State ex inf. Rice ex rel. Allmon v. Hawk, 360 Mo. 490, 228 SW2d 785, 788 (1950). There is no mention in the statute of any requirement that the person wanting to avail himself of the allowance must have himself paid sales or use tax on the property being traded in. We believe none should be read into the statute because (using the language of the Supreme Court in Gas Service Co. v. Morris, Mo. Sup., 353 SW2d 645, 654 (1962)) "* * *there is no justification for inferring or concluding that the legislature meant to say anything other than the ordinary meaning of the words it used in section [144.025, supra] would indicate it did say". We must ascribe to the language in this section its plain and rational meaning.

CONCLUSION

Section 144.025, RSMo Cum. Supp. 1963 applies to every retail sale involving a trade-in allowance for an article on which a sales or use tax has been paid to the state, when the difference between the purchase price and the trade-in allowance exceeds $500.00, even though such sales or use tax was paid by someone other than the person seeking to avail himself of the trade-in allowance.

The answer to your inquiry is that sales tax should be computed only on that portion of the purchase price of the new automobile which is in excess of the trade-in allowance given for the automobile previously titled in Mr. A's name.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Eugene G. Bushmann.

Very truly yours,

Thomas F. Eagleton

THOMAS F. EAGLETON
Attorney General