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SALES TAX):
CITY SALES TAX:

If a sale is made by a retail merchant whose place of business is within the city limits of a city having a city sales tax, and the purchaser takes possession

within the State of Missouri, then the city sales tax applies. The manner by which an order is received by a seller is irrelevant for the purposes of the city sales tax, so long as the goods are delivered within the State of Missouri. The sale is deemed to be consummated at the place of business of the seller, and this place of business is the tax situs irrespective of the method of delivery.

July 28, 1970

OPINION NO. 188

Mr. James E. Schaffner, Director
Department of Revenue
Jefferson State Office Building
Jefferson City, Missouri 65101



Dear Mr. Schaffner:

You have recently requested that we advise you with regard to your responsibility with respect to cities sales taxes where the city has adopted a sales tax pursuant to the City Sales Tax Act Sections 94.500 to 94.570, RSMo 1969. Your questions are:

"1. If a non-resident purchaser who makes a purchase but does not take possession of the merchandise purchased within the taxing jurisdiction of a city having a city sales tax and the merchandise must be shipped to the purchaser elsewhere in the state, is the purchaser subject to that city's sales tax?

"2. If the order is placed by phone, mail order, or by an out-of-house salesman, does the city sales tax apply?

"3. If this merchandise is delivered by common carrier or by the vendor's own conveyance to the purchaser in another city having a city sales tax, which city is the tax situs?

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The above questions are answered by Section 94.549(5) which defines place of sale. This section states:

"5. For the purposes of a sales tax imposed by an ordinance pursuant to sections 94.500 to 94.570, all retail sales shall be deemed to be consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has more than one place of business in this state which participates in the sale, the sale shall be deemed to be consummated at the place of business of the retailer where the initial order for the tangible personal property is taken, even though the order must be forwarded elsewhere for acceptance, approval of credit, shipment or billing. A sale by a retailer's employee shall be deemed to be consummated at the place of business from which he works."

In answering such questions as those posed above, it is important to keep in mind the language contained in Section 94.520, to wit:

"The ordinance imposing the city sales tax under the provisions of sections 94.500 to 94.570 shall impose upon all sellers a tax for the privilege of engaging in the business of selling tangible personal property or rendering taxable services at retail. .
."

Section 94.540(5) is consistent with this philosophy of taxation, for it imposes the sales tax only upon those retail sellers who are subject to the city's jurisdiction, i.e., retail sellers who are within the city's jurisdictional limits.

Thus, the answers to your questions are as follows:

1. If a sale is made by a retail merchant whose place of business is within the city limits of a city having a city sales tax, and the purchaser takes possession within the State of Missouri, then the city sales tax applies.

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2. Since for the purpose of the city sales tax act, the sale takes place at the place of business of the seller, the manner by which an order is received by a seller is irrelevant and the tax is imposed so long as the goods are delivered within the State of Missouri.

3. For the purposes of the City Sales Tax Act, the sale is deemed to be consummated at the place of business of the seller, and that is therefore the tax situs. Where the goods are delivered is irrelevant so long as it is in the State of Missouri. Thus, if the sale is made in City A, which has a city sales tax, but delivery is made to the purchaser in City B, which also has a city sales tax, City A's sales tax will apply to the sale. Furthermore, if a sale is made in City A which does not have a city sales tax, yet delivery is made in City B which does have such a tax, City B's sales tax cannot be imposed upon the purchase.

CONCLUSION

It is therefore, our opinion that:

1. If a sale is made by a retail merchant whose place of business is within the city limits of a city having a city sales tax, and the purchaser takes possession within the State of Missouri, then the city sales tax applies.

2. The manner by which an order is received by a seller is irrelevant for the purposes of the city sales tax, so long as the goods are delivered within the State of Missouri.

3. The sale is deemed to be consummated at the place of business of the seller, and this place of business is the tax situs irrespective of the method of delivery.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Craft.

Very truly yours,



JOHN C. DANFORTH
Attorney General