September 4, 1970

OPINION LETTER NO. 358

(Answered by letter-Park)

Honorable George W. Parker
State Representative
District No. 120
819 Crestland
Columbia, Missouri 65201

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358

Dear Representative Parker:

This letter is in response to your request for an opinion concerning the imposition of Missouri sales tax in the situation where a manufacturing firm sells bottled soft drinks to a purchaser for resale.

More specifically, you raised the following questions:

> "1. Is it correct to assume that a soft drink manufacturing firm that sells their product for re-sale by others is a wholesaler? And, when and if this same firm sells its product to others who are not going to re-sell then the firm is functioning as a retailer?
>
> "2. Does a firm selling soft drinks, when selling their product to a purchaser who will re-sell said product, have any liability or responsibility under law to collect the sales tax for the State?"

Sections 144.010 and 114.510, RSMo 1969, impose a 3 per cent tax upon every retail sale of tangible personal property in the State of Missouri.

Section 144.270, RSMo 1969, empowers the Director of Revenue to promulgate rules and regulations for the the administration and enforcement of the sales tax law. Pursuant to that section, the Director of Revenue has issued Rule 67, stating:

> "Vending machines and other automatic sales devices.--Sales of all merchandise such as candies, drinks, tobaccos, cigarettes, etc., made by means of vending machines and other automatic sales devices through which sales of tangible personal property are made for money, coins, tokens or coupons redeemable in money's worth are taxable sales of tangible personal property regardless of the fact that on some types of machines it is impossible to collect in addition to the sales price, the tax thereon.
>
> "When vending machines are placed in a coded establishment, and the person operating such establishment owns the articles sold through the vending machines and makes collections of the coins deposited in the machines in the payment for articles so sold, such person must report and pay the tax measured by his gross receipts from sales made through such vending machines. * * * "
>
> "However, if the person operating such establishment has no control over or right of access to the articles in vending machines located on his premises, and if he has no access to the gross receipts in such machines and no right to remove such receipts, without the consent of the owner of such machines, he will not be considered to be the owner of the articles sold through such vending machines, but the owner of such articles will be held liable for the sales tax."

Rule 67 provides that sales of bottled soft drinks to individual consumers through vending machines are presumed to be retail sales by the manufacturing firm, not the business concern upon whose premises the vending machines are located, unless said business concern is coded by the Department of Revenue as a retailer and has control over or access to the articles in the vending machines and makes collection of the gross receipts produced by such machines.

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Section 144.210, RSMo 1969, creates a presumption that sales to individual consumers through vending machines are retail sales and the manufacturer is liable for the collection of sales tax upon such sales unless he proves that he is not making sales at retail. Likewise, in Attorney General Opinion No. 13, dated January 13, 1950, issued to Mr. W. H. Burke, a copy of which is enclosed, this office expressed the view that the Department of Revenue may consider sales by a wholesaler to a purchaser who is not coded and paying sales tax, as retail sales, and the burden is on the wholesaler to show otherwise. We believe the principle expressed in this opinion would be applicable to a manufacturer under the circumstances outlined in your letter.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure:
Op.No.13-50-Burke