

TAXATION:
SALES TAX:

The sales tax should be collected on tangible personal property sold to the county court if the seller is engaged in the business of selling such property.

February 6, 1942

Hon. Wilbur F. Daniels,
Prosecuting Attorney
Howard County
Fayette, Missouri

Dear Mr. Daniels:

Replying to your letter of recent date, wherein you request an opinion from this department on the following statement of facts.

"I would like an opinion on the following:
Does the County Court have to pay a sales tax on lumber purchased from individual farmers, said lumber to be used by the County Court in the construction of roads and bridges?"

Apparently, from your letter, you are under the impression that the sales tax should not be collected on purchases of lumber made by the County Court from farmers for two reasons: first, that the counties are not liable for payment of such tax and; second, that farmers are not engaged in the business of selling lumber at retail.

Under section 11407 R. S. Mo., 1939, the term "person" is defined in subsection "a" thereof as follows:

"'Person' includes any individual, firm, co-partnership, joint adventure, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency (except the State Highway Department), estate, trust, business trust, receiver or trustee appointed by the State or Federal



Court, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number."

From this definition, it is apparent that counties are included within the term "person".

Section 11408 of said act, and amended by Laws of Missouri, 1941, page 701, requires sales tax to be imposed on each retail sale of tangible personal property. Section 11412 makes it the duty of every person making a purchase or receiving a service which is taxable under the act to pay the amount of the tax to the person making the sale. Since the act by the definition of the term "person" includes a county, then there is no question but that a county under the provision of said section 11412, would be required to pay the amount of the tax to the person making the sale or rendering the service.

On the question of whether or not the farmer, in selling his lumber to the county court is engaged in a business which is taxable under the act, we call your attention to the definition of the term "business" under subsection "C" of said section 11407 which reads as follows:

"'Business' includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect and the classification of which business is of such character as to be subject to the terms of this article. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business does not constitute engaging in business, within the meaning of this article."

It will be noted that the last sentence of this paragraph defining "business" states that the isolated or occasional sale of tangible personal property by a person not engaged in such business does not constitute engaging in business within the meaning of the sales tax act.

In volume 29 of the Permanent Edition of Words and Phrases, at page 120, we find where the term "occasional" was defined as follows:

February 6, 1942

"In the federal law, the carrying on of business within a state means something more than a casual or occasional purchase of goods; the business must be continuous or at least of some duration.' St. Louis Wire-Mill Co. v. Consolidated Barbed-Wire Co., 32 F. 802. The conclusion would have fitted the facts if the judge in writing that opinion had used the word 'isolated' instead of the words 'casual or occasional.' New Haven Pulp & Board Co. v. Downingtown Mfg. Co., 130 F. 605, 609."

Applying this rule to the facts which you have submitted it would not seem that a farmer would be classed as one who is engaged in the business of selling lumber to the County Court unless the business is continuous or of some duration. Of course, each particular case would have to be determined upon the facts as they apply. The fact that the County Court uses this lumber for the construction of roads and bridges would not be determinative of your question.

CONCLUSION

From the foregoing, it is the opinion of this department that the retail sales of tangible personal property, including lumber sold to a County are subject to the provision of the sales tax act, if the person making such sale is engaged in the business of selling lumber at retail. We are further of the opinion that if such seller, being a farmer who is selling surplus lumber from his premises, makes only occasional sales and if he is not engaged in the business of selling lumber at retail, then such transactions are not within the provision of the sales tax act.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General
TWB:AW