

SALES TAX - HOUSE BILL 198 - Sales made by merchants to persons on relief by orders obtained by the persons on relief, are not subject to the tax. Check or cash given to persons on relief, when purchases are made with the check or cash, such sales are subject to the tax.

8-28
August 28, 1935



Mr. Geo. E. Gayou
Executive Vice-President
Missouri Retailers Association
511 Locust Street
St. Louis, Missouri

Dear Sir:

This department is in receipt of your letter of August 26 wherein you make the following request:

"First, I understand Attorney General, Roy McKittrick has issued an opinion to Wallace Crossley that merchandise bought with orders issued to the client by the Missouri Relief and Reconstruction Commission are not subject to the sales tax.

As I telephoned you this morning, this is in conflict with the regulations in the State Auditor's rules.

A person applying for relief gets an order for groceries, or other merchandise, takes it to the store, receives the merchandise and the seller holding the order individually takes it to the Dispersing Officer of St. Louis and St. Louis County of Missouri Relief and Reconstruction Commission, who cashes these relief orders. They contend in the office of the Missouri Relief and Reconstruction Commission that these transactions are not subject to the sales tax.

Will you give us an opinion to advise our members what to do about these orders?"

The files of this department do not reveal that this precise question has ever been passed upon by this department in a written opinion. This question involves the applicability of House Bill 198, effective on this date, to the Federal Emergency Relief Act of 1933. In the administration of relief to those in need, Section 721 of the Federal Emergency Relief Act of 1933 declares an emergency in the following language:

"The Congress hereby declares that the present economic depression has created a serious emergency, due to widespread unemployment and increasing inadequacy of State and local relief funds, resulting in the existing or threatened deprivation of a considerable number of families and individuals of the necessities of life, and making it imperative that the Federal Government cooperate more effectively with the several States and Territories and the District of Columbia in furnishing relief to their needy and distressed people."

Section 723 of the Act sets up a Federal Emergency Relief Administration in the following language:

"There is hereby created a Federal Emergency Relief Administration, all the powers of which shall be exercised by a Federal Emergency Relief Administrator (referred to in this chapter as the "Administrator") to be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall receive a salary to be fixed by the President at not to exceed \$10,000, and necessary traveling and subsistence expenses within the limitations prescribed by law for civilian employees, in the executive branch of the Government. The Federal Emergency Relief Administration and the office of Federal Emergency Relief Administrator shall cease to exist upon the expiration of two years after May 12, 1933, and the unexpended balance

on such date of any funds made available under the provisions of this chapter shall be disposed of as the Congress may by law provide."

Section 724, sub-section (a), relates to the grants to states, terms and conditions thereof in the following language:

"Out of the funds of the Reconstruction Finance Corporation made available by this chapter, the Administrator is authorized to make grants to the several States to aid in meeting the costs of furnishing relief and work relief and in relieving the hardship and suffering caused by unemployment in the form of money, service, materials, and/or commodities to provide the necessities of life to persons in need as a result of the present emergency, and/or to their dependents, whether resident, transient, or homeless."

Section 725 relates to the manner in which the Governor of the state makes application from time to time to the Administrator for relief funds. Section 726 contains the duty of the Federal Administrator upon receipt and request for a grant to the state by the Governor and the Governor's duty as to disbursements and is in the following language:

"The Administrator upon approving a grant to any State shall so certify to the Reconstruction Finance Corporation which shall, except upon revocation of a certificate by the Administrator, make payments without delay to the State in such amounts and at such times as may be prescribed in the certificate. The Governor of each State receiving grants under this chapter shall file monthly with the Administrator, and in the form required by him, a report of the disbursements made under such grants."

Under the Federal Administrator's Executive Order Number 6442, the following rules are made with reference to the creation of State Emergency Relief Administration.

"(1) The Federal Emergency Relief Administrator is authorized to assume control of the administration of relief in any State where, in his judgment, more effective and efficient cooperation between the State and Federal authorities may thereby be secured in carrying out the purposes of said act.

(2) The Administrator is further authorized to create in any State in which he has assumed control of the administration of relief, a State emergency relief administration and such advisory committee or committees as he may deem necessary.

(3) Such State emergency relief administration, under the direction of the Federal Emergency Relief Administrator, shall be responsible for the distribution and expenditure of any and all funds granted to the State by the said administrator.

(4) Such State emergency relief administration shall appoint such personnel, volunteer or paid, as is required and shall fix the salary of all paid workers subject to the approval of the Federal Emergency Relief Administrator, provided that no salary shall be paid in excess of the amount fixed in section 3(b) of said act.

(5) Such State emergency relief administration shall appoint such local emergency relief administrations, organizations, or directors as may be necessary.

(6) All personnel appointed under paragraph (2) of this order shall serve at the pleasure of the Federal Emergency Relief Administrator and all personnel appointed under paragraphs (4) and (5) of this order shall serve at the pleasure of said Administrator and/or such State emergency relief administration."

We have set forth the section relating to the Federal Emergency Relief Act of 1933 for the purpose of determining the mechanics of the Act and the authority of the Federal Government over the funds which are granted to the states.

Honorable Corrington Gill, Assistant Administrator of the Emergency Relief Administration at Washington, wrote the Honorable Forrest Smith, State Auditor, stating in substance that the funds made available through the Federal Emergency Relief Act of 1933, are grants to the state and upon being granted become state money and subject only to the regulations and other conditions under which funds are made available from month to month. Granting that the same may become state funds, we are of the opinion that under the provisions quoted supra of the Act, that the Federal Government retains control and supervision of the funds, even after the funds have come into the hands of the state and that the funds are disbursed at the direction and under the supervision of the Federal Relief Administrator, and the funds in question in reality never lose their identity as Federal Funds.

You state in your letter "A person applying for relief gets an order for groceries, or other merchandise, takes it to the store, receives the merchandise and the seller holding the order individually takes it to the Dispersing Officer of St. Louis and St. Louis County of Missouri Relief and Reconstruction Commission, who cashes these relief orders." It is noted that the person never receives any funds or money, but an order which enables him to purchase groceries or other merchandise. The proprietor of the store takes the order to the Dispersing Officer of St. Louis or St. Louis County who cashes the relief orders. We think that when the state undertakes to impose a tax on such an order so received by the grocerman, it burdens or interferes with the exercise of federal power and makes the Federal Government a source of revenue and taxes the means used for the performance of Federal functions. The question of automobiles and trucks purchased with funds by the Federal Relief Administration being subject to a state license tax, and a tax on gasoline consumed in operating them, is discussed in the case of *Wiseman v. Dyess*, 72 S. W. (2d) 1. c. 518, in part as follows:

"It is unnecessary to consider or to decide what the state of the law would be if the funds apportioned to this state had become the property of the state, as, in our opinion, that result was not intended and has

not been accomplished. It is our opinion that these funds and the automobiles for which a portion of the funds had been expended were and are federal property, and as such are not subject to taxation by the state. It is true the act of Congress refers to the apportionment of these funds to the states "as grants to the several States," but it does not appear that such a donation thereof was made as to pass the title and control thereof from the federal government. They are, and continue to be, federal funds, subject to the supervision of the federal government in their disbursement. The state has no control over the expenditure of these funds. It does appear that for the convenience of the Federal Administrator, and to expedite the distribution of the federal government's bounty, application for the funds is made by the Governor of the state, who signs the receipt therefor and indorses the check used in remitting the funds, but when he has done so he delivers the indorsed check to the plaintiff State Administrator for distribution. The clerical acts mentioned comprise the full extent of the authority and duty of the Governor."

The facts as contained in your letter, show conclusively ^{if} that/the merchant or seller is to receive the cash for the order received from the person on relief, it must come from an agency or instrumentality of the federal government. The wide sweeping decision denying a state the right to tax any instrumentality or agency of the United States Government is that of *Panhandle Oil Company v. State of Mississippi ex rel Knox*, 277 U. S. 1. c. 858, in part as follows:

"A charge at the prescribed rate is made on account of every gallon acquired by the United States. It is immaterial that the seller and not the purchaser is required to report and make payment to the state. Sale and purchase constitute a transaction by which the tax is measured

and on which the burden rests. The amount of money claimed by the state rises and falls precisely as does the quantity of gasoline so secured by the Government. It depends immediately upon the number of gallons. The necessary operation of these enactments when so construed is directly to retard, impede and burden the exertion by the United States, of its constitutional powers to operate the fleet and hospital. *M'Culloch v. Maryland*, supra, 436 (4 L.ed. 608); * * * * * To use the number of gallons sold the United States as a measure of the privilege tax is in substance and legal effect to tax the sale. *Western U. Teleg. Co. v. Texas*, 105 U.S. 460, 26 L. ed. 1067; * * * * * And that is to tax the United States--to exact tribute on its transactions and apply the same to the support of the state.

The exactions demanded from petitioner infringe its right to have the constitutional independence of the United States in respect of such purchases remain untrammelled. *Osborn v. Bank of United States & Wheat*, 738, 867, 6 L. ed. 204, 234; * * * * * Petitioner is not liable for the taxes claimed."

CONCLUSION

In view of the foregoing it is the opinion of this department that if the funds in question be regarded as federal funds, the state cannot exact the tax of one per cent on purchases or orders by persons on relief for groceries or other merchandise, when the order is received by the relief agencies for payment, as it would constitute a tax on the federal government. Likewise, if the funds in question be considered as being state funds, this department has recently ruled in an official opinion to Honorable George C. Johnson, State Purchasing Agent, that sales to the state were exempt from the sales tax.

Mr. Geo. E. Gayou

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8-28-35

We are informed that in some instances in lieu of the order, the relief agencies give to those applying for relief cash or check. For your information, purchases made by check or cash would be subject to the sales tax inasmuch as the funds used for the purchases have lost their identity as state or federal funds.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, JR.
(Acting) Attorney General

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