

TAXATION:
SALES TAX:
RURAL ELECTRIFICATION
ASSOCIATIONS:

Rural Electrification Associations
which purchase current at wholesale
should collect the sales tax from
their members or consumers to whom
they sell current.

April 15, 1940

H-18



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Attention: Mr. John H. Hendren

Dear Sir:

This is in reply to yours of recent date where-
in you call our attention to an opinion of this depart-
ment dated September 10, 1937, written to Honorable Gray
Snyder, Attorney at Law, Palmyra, Missouri, in which
opinion we held that the City of Palmyra should collect
the 2% sales tax on electric current and energy that it
sells to the said Missouri Rural Electrification Co-
Operative Association and that said Association is the
user and consumer of such current and energy and is
liable for the payment of the tax.

In your statement you call our attention to
the recent ruling of the Supreme Court of Missouri in
the case of Berry-Kofron Dental Laboratory v. Forrest
Smith, et al., decided at the January Term, 1940,
which is not yet reported. On the question of use
and consumption, the court in that case said:

"* * * The tax is imposed only upon
sales 'for use or consumption and
not for resale in any form as tangible
personal property.' By statute, Sec.
655, R. S. 1929, Mo. St. Ann. Section
655, p. 4899, words and phrases are
to be taken in their ordinary and
usual sense, except that 'technical
words and phrases having a peculiar
and appropriate meaning in law shall
be understood according to their
technical import.' We have said,
'One of the cardinal rules of statu-
tory interpretation and construction

is that words in common use are to be construed in their natural, plain, and ordinary signification and acceptance.' *Bellerive Inv. Co. v. Kansas City*, 321 Mo. 969, 989, 13 S. W. 2d 628, 638 (14). The words 'use' and 'consumption' are not technical words having a peculiar meaning in law but words in common use and as employed in the statute must be given their plain, ordinary meaning.

"Webster's New International Dictionary, 2nd Ed., defines the noun 'use' as 'Act of employing anything, or state of being employed; application; employment, as the use of a pen; his machines are in use;' 'The fact of being used or employed habitually; usage, as, the wear and tear resulting from ordinary use.' Other suggestive definitions do not seem here appropriate. Consumption is defined as 'Act or process of consuming; waste; decay, destruction; also the using up of anything, as food, heat or time.' 'Consume' is defined as meaning to destroy the substance of--to use up, expend, waste,--to eat or drink up (food). Defining the word 'use' as employed in a statute imposing a retailers' occupation tax the Illinois Supreme Court said in *Revzan v. Nudelman*, 370 Ill. 180, 185, 18 N. E. 2d 219, 222, 'As employed in the statute here under consideration "use" means a long-continued possession and employment of a thing to the purpose for which it is adapted, as distinguished from a possession * * * that is merely temporary or occasional. The user or consumer contemplated by the statute is the ultimate user or consumer who will use the articles as long as they last or until he desires to do away with them.'"

The Missouri Sales Tax Act, which was reenacted in 1939, Laws of Missouri 1939, page 859, subsection (g) defines the term "sale at retail" as follows:

"(g) 'Sale at retail' means any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. Where necessary to conform to the context of this Act and the tax imposed thereby, it shall be construed to embrace:
* * * * *

This is the same definition of the foregoing term as was contained in the 1935 and 1937 Sales Tax Act.

The word "business" is defined at page 858, subsection (c) 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 Act. * * * * "

This is the same definition of the word "business" as contained in the 1935 and 1937 Sales Tax Act.

It will be noted that if the Rural Electrification Association engages in an activity with the object of gain, benefit or advantage to its members then under the Sales Tax Act it would seem the Act would include its transactions within its provisions providing it makes sales to the user or consumer of electrical current. It will be noted that under the definition of

the term "sale at retail" it was intended to apply to that transaction whereby the property is sold for final use or consumption and not for resale in any form as tangible personal property.

When the foregoing opinion was rendered, the State Auditor, by virtue of the Sales Tax Act, had promulgated Rule Number 38, which was to the effect that where a club, such as a country club and similar organizations, were not open to the general public, are deemed to be the users and consumers of the goods which they purchase and resell to their members and that sellers of such supplies to such clubs should collect and remit the tax thereon. The conclusion arrived at in the foregoing opinion was based on the theory that the Rural Electrification Association and its set-up was analogous to that of a club and, therefore, the person or firm which sold electrical current to the Rural Electrification Association to be distributed should collect the tax on that transaction.

Again referring to the definition of the term "business" and applying this definition for the purpose for which the Rural Electrification Associations are formed, it would seem that these associations are formed for a different purpose than that of an ordinary club in that they are formed for the purpose of gain, benefit and advantage.

And referring to the definition of the term "sale at retail" it would seem that the individual member of the association, in view of the ruling in the Berry-Kofron Dental Laboratory v. Smith et al., supra, would be classed as the ultimate consumer more appropriately than would the association itself.

In 1939 the General Assembly of this State, by House Bill 567, Laws of Missouri 1939, page 298, enacted legislation pertaining to the Rural Electrification Associations which authorized these associations to incorporate and do business very much in the same manner as other corporations do in this state. Their

April 15, 1940

activities, however, were limited to the sale and distribution of electrical current. From a reading of this act it will be seen that the lawmakers did not consider these organizations as clubs in the ordinary term as we refer to clubs but they considered them as a business corporation operating for gain, benefit or advantage.

Under our general law it cannot be successfully contended that a person who makes a purchase from a corporation of which he is a member would be exempt from paying sales tax on articles which he purchased for use and consumption. So applying the same rule the fact that a person is a member of the Rural Electrification Association, if he is the user and consumer of the current which he purchases and the electrical association is in the business for gain, benefit or advantage, then that transaction would be the taxable transaction under the Sales Tax Act.

We have made a diligent search of the reports of the various states for a case which is similar to the question here submitted and we think that the Supreme Court in the State of Washington in the case of Peninsula Light Co. v. Tax Commission of Washington, 56 P. (2d) 720, passed on a question similar to the one here under consideration. In that case the Peninsula Light Company purchased electrical power for wholesale from Tacoma and resold it to constituent members at retail. This is very similar to the transaction which takes place between the City of Palmyra and the Rural Electrification Association which was referred to in the foregoing opinion. In the Peninsula Light Company case, supra, the court said:

"* * * This is certainly an activity which is engaged in with the object of gain, benefit, or advantage, either direct or indirect, under the provisions of section 1 (7), supra."

The term "business", as defined under the Washington Act, is almost identical with the definition in the Missouri Act.

The Power Company in the Washington case purchased power at wholesale and distributed it to its members without profit over lines built by the members at a cost sufficient only to defray the cost of the distribution. Under the Missouri set-up the Rural Electrification Corporations purchase power at wholesale and distribute the same to their members and others over lines built by the corporation at a cost sufficient to defray the expense of distribution and to pay the operating expenses and to pay for the distribution system within a certain period of time. So it will be seen that the mode of operation of these two companies is quite similar in so far as they may be classed as doing business, that is, both of these companies would seem to be engaged in a commercial business and activity for gain, benefit or advantage as is defined in the two acts. While in the Peninsula Light Company Case the question as to where the retail sale took place was not directly before the court, yet as stated by the court in that case, l. c. 721, and as stated above herein:

"* * * This company buys electric power wholesale from Tacoma and resells it to its constituent members at retail. * * * * *"

which in effect is to say that the sale at retail of this current takes place when the Peninsula Light Company sells the current to its members who, under the Missouri Act and the ruling announced in the Berry-Kofron Dental Laboratory Case, supra, would be considered the user and consumer.

CONCLUSION.

From the foregoing it is the opinion of this department that when a Rural Electrification Co-operative Association purchases electrical current at wholesale and sells it to its various members and other parties to whom it is authorized to sell such current that such members and said other parties under the Missouri Sales Tax Act would be considered the users and consumers of

Hon. Forrest Smith

-7-

April 15, 1940

the same and that the sale at retail of such current occurs when the said electrical association sells the current and energy to its members and others to whom it is authorized to sell the same. Therefore, the transaction upon which the sales tax should be imposed is the one in which the Rural Electrification Co-operative Association sells current to its members or others to whom it is authorized to sell the same.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

TWB:DA