

AND REVENUE:
SALES TAX:

Consular officers and their employees, nationals of other foreign governments, not liable for payment of a sales tax.

July 15, 1937.

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Hon. Lloyd C. Stark,
Governor of Missouri,
Jefferson City,
Missouri.

Dear Governor:

This will acknowledge your request of recent date, wherein you submitted a letter received from Reinold Freytag, German Consul, concerning the liability of Consular officers and employees for the payment of a sales tax in view of the Treaty executed between the United States and Germany, which was signed at Washington December 8, 1923, and proclaimed October 14, 1925.

Your attention is respectfully directed to Article XIX of the Treaty above mentioned, which is set forth in hec verba United States Statutes At Large, Vol. 44, p.2132, 2149, which reads as follows: ✓

"Consular officers, including employees in a consulate, nationals of the State by which they are appointed other than those engaged in private occupations for gain within the State where they exercise their functions shall be exempt from all taxes, National, State, Provincial and Municipal, levied upon their persons or upon their property, except taxes levied on account of the possession or ownership of immovable property situated in, or income derived from property of any kind situated or belonging within the terri-

tories of the State within which they exercise their functions. All consular officers and employees, nationals of the State appointing them shall be exempt from the payment of taxes on the salary, fees or wages received by them in compensation for their consular services."

Article VI, Subdivision 2 of the Constitution of the United States reads, in part, as follows:

"* * * and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

In 63 Corpus Juris, p. 827, par. 3, this general statement is to be found:

"A treaty is in its nature primarily a contract between different nations, and not a legislative act; and, as a contract between nations, a treaty depends for its observance and performance upon the interest and the honor of the nations which are parties to it, and for its enforcement in case of infraction upon international negotiations and reclamations, or, ultimately, war. In the United States, however, a treaty is more than a contract between nations; by force of the provision of the federal constitution that this constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United

States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding,* * *."

And again at Page 844, Sec. 29, it is stated:

"In view of the provision of the federal constitution constituting treaties the supreme law of the land, a treaty is superior to a state law, including, of course, statutes otherwise within the legislative power of the state, or, as sometimes stated, the treaty power is independent of, and superior to, the legislative power of the states, and a state cannot by legislative act interfere with the proper observation of treaties nor destroy rights created by treaties. In view of the foregoing rules when the provisions of a state statute and a treaty conflict the latter will control, the application of the statute as to the subject matter covered by the treaty will be held in abeyance during the existence of the treaty,* * *."

In the case of *In re Ostrowski's Estate*, 290 New York Supplement, the court, in construing a state statute which conflicted with the treaty executed between the United States and a foreign government, at page 174, said:

"Since under the United States Constitution the power to make treaties with foreign governments is vested solely in the federal government (article 2, par. 2) and such treaties, when made

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are the supreme law of land (article 6, cl. 2), it follows that any conflicting law of a state must yield thereto. Hauenstein v. Lynham, 100 U.S. 483, 489, 25 L.Ed. 628; De Geofroy v. Riggs, 133 U.S. 258, 266, 10 S.Ct. 295, 33 L.Ed. 642; State of Missouri v. Holland, 252 U.S. 416, 434, 40 S.Ct. 382, 64 L.Ed. 641, 11 A.L.R. 984; Sullivan v. Kidd, 254 U.S. 433, 440, 41 S.Ct. 158, 65 L.Ed. 344; Assakura v. Seattle, 265 U.S. 332, 343, 44 S.Ct. 515, 68 L.Ed. 1041; Todok v. Union State Bank, 281 U.S. 449, 453, 50 S.Ct. 363, 74 L.Ed. 956; Matter of Anderson's Estate, 154 Misc.132, 134, 276 N.W.S. 966."

It has come to the attention of the writer that the State Auditor will issue certificates of exemption from the payment of a sales tax to persons entitled thereto.

CONCLUSION

From the above considerations, we are of the opinion that Consular officers, including employees in a consulate, nationals of the State by which they are appointed, when exercising their functions for their government, shall be exempted from the payment of a sales tax.

Respectfully submitted,

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RCS/LD