

TAXATION:
SALES TAX:

The fact that proceeds from a moving picture show are contributed to the Red Cross does not relieve the theatre from collecting the sales tax.

March 11, 1943



Mr. William H. Wessel
Prosecuting Attorney
Gasconade County
Hermann, Missouri

Dear Sir:

This is in reply to yours of recent date, wherein you submit the question of whether or not the sales tax should be collected on tickets sold at a local theatre where the proceeds from such sale are turned over to the Red Cross.

If these transactions are exempt from the provisions of the sales tax act it is by virtue of the provisions of Section 11453, page 713, Laws of Missouri 1941. This section reads as follows:

"In addition to the exemptions under section 11409, there shall also be exempted from the provisions of this article all sales made by or to religious, charitable, eleemosynary institutions, penal institutions and industries operated by the department of penal institutions or educational institutions supported by public funds or by religious organizations, in the conduct of the regular religious, charitable, eleemosynary, penal or educational functions and activities, and all sales made by or to a state relief agency in the exercise of relief functions and activities."

You will note that the exemptions apply to religious, charitable or eleemosynary institutions in the conduct of their regular religious, charitable, eleemosynary functions and activities.

The general rule on exemption from taxes is stated in State ex rel. v. Johnson, 214 Mo. 656. This rule has been applied and followed by the Missouri courts. It is that exemptions are in derogation of equal right and are not favored by the courts but

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should be construed strictly and confined to the subject specified, including such as are necessarily within the contemplation of the legislation creating the exemption.

The local theatre could not be classed as a religious or charitable institution. The fact that it makes a donation to charity occasionally would not put it in such a classification. You will also note that this exemption section applies to such organizations when they are conducting regularly religious or charitable functions and activities. We do not think that the transaction to which you refer in your letter would bring the theatre within that classification.

CONCLUSION

It is, therefore, the opinion of this department that the fact that the local theatre turns over to the Red Cross the receipts from the sale of tickets taken in on any one particular night would not relieve the theatre from the duty of collecting sales tax on the tickets sold.

Respectfully submitted,

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APPROVED:

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