

SALES TAX:  
CLASSIFICATION OF SALES TAX  
AS DEMAND AGAINST ESTATES:  
ESTATES:  
DECEDENTS' ESTATES:

Amounts due from decedent for sales tax collected by him should be classified as a demand of the third class rather than as a fifth class demand, but administrators should pay such amounts without demand.



January 19, 1955

Honorable J. Patrick Wheeler  
Prosecuting Attorney  
Lewis County  
Monticello, Missouri

Dear Sir:

This is in reply to your recent request for an opinion of this office wherein you ask:

"Is a Claim or Demand for State Sales Tax Collected by deceased from purchasers, but not reported and paid to the State a 'Debt, including taxes due the State' as defined in Section 464.010 of Revised Statutes of Missouri 1949, to entitle the claim to be classed as a third Class Demand, or should it be classed as a fifth class demand under this Statute?"

Section 144.390 RSMo 1949 provides that such amounts collected by the decedent as sales tax and due and unpaid to the state "shall constitute a debt due the state." Chapter 144 further provides for the collection of such sales taxes collected by the seller and unpaid to the State of Missouri from the seller. Section 144.410 provides that the remedies of the state in the matter of collecting such sums are cumulative.

Section 464.010 RSMo 1949 provides for the classification of demands against the estates of deceased persons, and class three includes "all debts, including taxes due the state." It thus appears that the amounts about which you ask are taxes due the state from the deceased, and that they would properly fall in Class No. 3. It is further provided that it is the duty of

Honorable J. Patrick Wheeler

the executor or the administrator to pay such taxes without any demand therefor being presented to the court for allowance. Thus, in the case about which you inquire, it would not only be proper for the administrator to pay these amounts without demand but the statute makes it his duty to do so. However, if demand is made, it should be classified in class three, which specifically covers such taxes, rather than in class five which covers all general demands.

CONCLUSION

It is, therefore, the conclusion of this office that demands for sales tax moneys collected by the deceased from purchasers should be classified in class three and not in class five.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Fred L. Howard.

Very truly yours,

John M. Dalton  
Attorney General

FLH:sm,lw