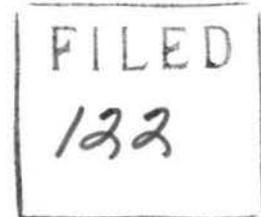


TAXATION (SALES & USE): The term "sale at retail" as defined  
TAXATION (EXEMPTION): by Section 144.010(8), RSMo 1969,  
does have the same meaning as the term  
"retail sale", used in Section 114.025. The term "retail sale"  
refers only to sales made by those engaged in business and not in  
transactions between individuals. When an individual trades his  
automobile to another individual the net difference after a trade-  
in is immaterial because the transaction is not a "retail sale"  
and the full value of the automobile purchased is used to calcu-  
late the tax.

OPINION NO. 122

October 11, 1972

Honorable Joe D. Holt  
State Representative  
808 Court Street  
Fulton, Missouri 65251



Dear Representative Holt:

Your recent opinion request asked the following question:

"Do the provisions of Section 144.025, RSMo 1969, which referred to '. . . retail sale . . .' have the same definition as the provisions of Section 144.010(8), as they refer to 'sale at retail.' If the provisions of 144.025 do not have the same meaning, what is the meaning of the provisions of Section 144.025?"

Your request also states that your question refers to the situation in which an automobile is traded to an individual by another individual in purchasing an automobile. In this transaction you state there was a cash payment of \$1,500 to purchase the automobile in addition to the trade-in. You inquire whether the provisions of Section 144.025 apply to sales between individuals as well as sales between an individual and one engaged in the business of selling automobiles.

Section 144.025, RSMo, states:

"Other provisions of law notwithstanding, in any retail sale where any article on which a sales or use tax has been paid to this state is taken in trade as a credit or part payment

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on the purchase price of the article being sold and the difference between the trade-in allowance and the purchase price exceeds five hundred dollars, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price in excess of the actual allowance made for the article traded in or exchanged."

Section 144.010(8), RSMo, defines "sale at retail" as:

". . . 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; provided, however, that for the purposes of sections 144.010 to 144.510 and the tax imposed thereby, purchases of tangible personal property made by duly licensed physicians, dentists and veterinarians and used in the practice of their professions shall be deemed to be purchases for use or consumption and not for resale. . . ."

Section 144.440(1), RSMo, the provision imposing a use tax on motor vehicles, states as follows:

"In addition to all other taxes now or hereafter levied and imposed upon every person for the privilege of using the highways of this state, there is hereby levied and imposed a tax equivalent to three percent of the purchase price, as defined in section 144.070, which is paid or charged on new and used motor vehicles and trailers purchased or acquired for use on the highways of this state which are required to be registered under the laws of the state of Missouri."

The problem of definition of terms used in tax acts is a recurrent one. As was observed in International Business Machines Corp. v. State Tax Commission, 362 S.W.2d 635, 638 (Mo. 1962):

". . . Each state employs its own definitions, particularly of 'sales at retail,' and in general these statutes enlarge upon both the dictionary and common acceptance of the

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term and thus may tax a variety of particular dealings and transactions. . . ."

In many jurisdictions, the terms "retail sale" and "sale at retail" are used synonymously. In each case, such use is based on a statutory definition that equates the terminology or uses it interchangeably. E.g., Calvert v. Marathon Oil Company, 389 S.W.2d 153 (Tex.Civ.App. 1965); Lakeside Truck Rental, Inc. v. Bowers, 180 N.E.2d 140 (Ohio 1962); Coca-Cola Bottling Plants v. Johnson, 87 A.2d 667 (Me. 1952); Kohn v. City of Philadelphia, 30 A.2d 672 (Pa. 1943) (citing appropriate statutory definitions). In a decision of City of St. Louis v. Smith, 114 S.W.2d 1017 (Mo. 1937) at 1019, the court quoted a statutory definition from the Laws of 1935 that, at least to the court, equated the term "retail sale" with the term "sale at retail." The definition of "sale at retail" in that act is essentially that carried forward in the currently valid section 144.010(8) defining "sale at retail." A use tax is imposed on sales of motor vehicles by one individual to another individual under the provisions of Section 144.440, supra.

In practical effect, your question asks whether or not the term "retail sale", as used in Section 144.025, RSMo 1969 includes the sale of automobiles between individuals or includes only a sale by a person engaged in business. Since the enactment of Section 144.025, the Department of Revenue of the State of Missouri has administratively applied its terms only to transactions in which a person engaged in the business of selling motor vehicles or other tangible personal property is involved. Specifically, the Department of Revenue has taken a position that the term "retail sale" in Section 144.025 applies only to sales by automobile dealers and does not apply to sales by one individual to another because the sale is not made by one engaged in business. The legislative history of Section 144.025 supports this conclusion. That section was enacted by Senate Bill No. 4 in 1963. Such senate bill also contained a reenactment of Section 144.020. Section 144.020 imposes a tax "upon every retail sale in this state of tangible personal property." Clearly the phrase "retail sale" in Section 144.020 refers to a "sale at retail" as defined in Section 144.010. When we find in the same senate bill the use of the term "retail sale" in Sections 144.020 and 144.025, it appears to be the legislative intent that the term "retail sale" is to be equated to the definition of "sale at retail", found in Section 144.010. Most probably, had the legislative intent been to exempt all sales involving a trade-in in which over \$500 cash was paid, the word retail would have been deleted. Therefore, the term "retail sale" as used in Section 144.025 refers only to sales made by those engaged in business and is not applicable to transactions between individuals.

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You also inquire how Section 144.025, RSMo 1969, is to be applied in transactions involving a trade-in. That provision has been explained by the Department of Revenue in Rule No. 36 of the Rules and Regulations applicable to the Missouri Sales/Use Tax Law (1967). Rule No. 36, in the examples given by the Department of Revenue, is as follows:

"Sales of automobiles at retail are taxable at full sales price thereof and said tax will be due and payable when applying for title. An exemption may be allowed for automobile traded-in provided Missouri Sales or Use Tax has been paid on the automobile being traded in and the net difference after trade-in exceeds \$500.00.

"Example. - If a new car is being purchased and the price of the new car is \$3,000.00 and an old car is being traded in and an allowance is made for the old car of \$1,000.00 and tax has been paid in Missouri on the old car at the time of purchase then the tax would apply to the net difference or \$2,000.00.

"Example. - If a new car is being purchased at the cost of \$2,000.00 and an old car is being traded in for \$1,800.00 then the tax would apply to the full \$2,000.00 as the net difference after trade-in is less than \$500.00.

"When the used car taken in on a trade is in turn sold at retail by such dealer, such sales are also taxable. The Act imposes a tax upon the sale or transaction to be paid by the purchaser. Therefore, the question of double taxation is eliminated."

Enclosed is a copy of Opinion No. 43, 1964, which more fully discusses the workings of Section 144.025, RSMo 1969.

Thus, in the fact situation presented in your request, the net difference after the trade-in is immaterial because the transaction between two individuals is not a "retail sale". When an individual trades in his automobile to another individual the net difference after such a trade-in is immaterial because the transaction is not a retail sale and the full value of the automobile purchased is used to calculate the tax.

CONCLUSION

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It is the opinion of this office that the term "sale at retail" as defined by Section 144.010(8), RSMo 1969, does have the same meaning as the term "retail sale", used in Section 144.025. The term "retail sale" refers only to sales made by those engaged in business and not in transactions between individuals. When an individual trades his automobile to another individual the net difference after a trade-in is immaterial because the transaction is not a "retail sale" and the full value of the automobile purchased is used to calculate the tax.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Peter H. Ruger.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 43  
4/3/64, Jones