

SALES TAX:  
TAXATION - SALES:

Liability of purchaser for state sales tax  
when sales contracts necessitate delivery  
of property outside Missouri.

April 18, 1951

Honorable G. H. Bates,  
Director of Revenue  
Department of Revenue,  
Jefferson City, Missouri.



Dear Sir:

This will acknowledge receipt of your letter requesting an  
opinion from this office on the following question:

"Re: Opinion of the Attorney General dated June 12,  
1950 - Applicability of the Missouri Sales Tax to  
sales by Missouri vendors to Missouri purchasers  
involving interstate transportation.

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"In the above named opinion it was held by your of-  
fice that materials sold under the circumstances  
named therein were subject to the Missouri Sales Tax,  
even though shipped out of state.

"Counsel for the Missouri Pacific Railroad Company  
suggests that your office may have been misled by  
the incorrect statement in the original question to  
the effect that the material was deadheaded by the  
railroad to the out of state destination.

"They contend that actually none of the material was  
deadheaded but every single shipment moved under the  
railroad's standard bill of lading, and the full tar-  
riff rate was paid on each shipment.

"In other words, that the railroad company accepted  
said shipment in its capacity as a common carrier,  
rather than as the parent company and agent of the  
purchaser.

"Brief raising the new point at issue is attached hereto.

"May we ask that you reconsider your opinion of June  
12, 1950, and advise us if the same rule would apply  
under the circumstances presented in the brief as sub-  
mitted."

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The opinion referred to above apparently was an opinion rendered by this office to Mr. W. H. Burke under date of December 16, 1949, the conclusion of which reads as follows:

"It is, therefore, the opinion of this department that the sale of bus and truck supplies to the Missouri Pacific Transportation Company and delivered to the Missouri Pacific Railroad Company as provided by the contract of sale constituted an intrastate transaction inasmuch as the entire contract of sale was completed within the borders of the State of Missouri and such transaction is not exempt from the payment of the Missouri Sales Tax under Section 11409 Mo. R. S. Ann. 1939."

The brief referred to in your letter, which was prepared by Glenn S. Givens, General Attorney and Tax Counsel of the Missouri Pacific Railroad Company, St. Louis, Missouri, states that as a matter of fact the transaction involved constituted a sale in interstate commerce.

The opinion of the Attorney General dated December 16, 1949, referred to herein, is correct in holding that goods sold or purchased in retail transactions in Missouri where the agreement for purchase and sale is to be completed and carried out wholly within this state is subject to the Missouri Sales Tax Act, and it is immaterial that after the goods are purchased they are moved out of this state, or pass into "interstate commerce". If the purchase is completed in Missouri the sale is subject to the sales tax. This is illustrated by the court in the case of Superior Oil Company v. Mississippi, 280 U.S. 390 at l.c. 395, wherein the court related the following example:

"\* \* \*If it (the purchaser) had bought bait for fishing, that it intended to do itself, the purchase would not have been in interstate commerce because the fishing grounds were known by both parties to be beyond the state line.\* \* \*"

However, if as a matter of fact the transaction referred to was not "completed and carried out wholly within the borders of" Missouri then the exemption provided in section 144.030 RSMo. 1949, would be applicable. Said section reads in part as follows:

"1. There is hereby specifically exempted from the provisions of this chapter and from the computation of the tax levied, assessed or payable under this chapter such retail sales as may be made in commerce between this state and any other state of the United States, or between this state and any foreign country, and any retail sale which

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the state of Missouri is prohibited from taxing under the constitution or laws of the United States of America, and such retail sales of tangible personal property which the general assembly of the state of Missouri is prohibited from taxing or further taxing by the constitution of this state."

In the opinion from this office dated December 16, 1949, a portion of Sec. 40 from 11 Am. Jur., Commerce, page 38, was quoted. This section discusses briefly the sale or exchange of goods in interstate commerce in the following words:

"The term 'commerce' includes the purchase, sale, and exchange of goods. In order for a sale or exchange of goods to constitute interstate commerce, there must be a transportation or shipment of commodities from one state to another. A contract of sale between citizens of different states is not a subject of interstate commerce merely because it was negotiated between citizens of different states or by the agent of a company in another state where the agreement itself is to be completed and carried out wholly within the borders of a state. On the other hand, if the element of transportation between the states is present, a sale of goods is universally held to constitute interstate commerce, regardless of which state the agreement of sale was entered into or of whether the goods were ordered by a sales agent or by a purchaser and even though the goods are transported across state lines for the purpose of evading local prohibitory laws. The interstate character of a transaction continues until termination of the shipment by delivery at the place of consignment; and it is the rule that the obligation to pay and the right to recover the amount due according to the contract arise pursuant to interstate commerce. In such transactions Congress has exclusive power to regulate the purchase, sale, and exchange. Conversely, a state is without power to burden, by prohibition, regulation, or taxation, the purchase and sale of commodities while they are the subjects of interstate commerce.\* \* \*"

Retail sales transactions necessitating the transportation of goods from Missouri into other states, and in which title and ownership to such goods pass either in another state, or while the goods are moving in commerce between the states, are exempt from the retail sales tax act. However, any transaction claimed to be exempted

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under the section quoted above as being in interstate commerce must be clearly shown by the taxpayer to be a bona fide sale involving interstate commerce and not merely a subterfuge to evade paying the tax. If it is found as a fact that the sales transaction is completed in this state, then such sale is subject to the tax. This is true even though as an incident of purchase the goods are to be shipped outside the state by the purchaser. However, if it is found as a matter of fact that the seller is obligated under his contract of sale to deliver the tangible personal property which was sold to a point outside the state, the sales tax does not apply, provided the property is not returned to a point within the state for use or consumption. In any event the Director of Revenue shall determine in any particular case whether the exemption claimed actually involved a transaction in interstate commerce or whether only a subterfuge is used to evade paying the tax.

The statement of the taxpayer in the brief filed by Glenn S. Givens, General Attorney and Tax Counsel for the Missouri Pacific Railroad Company, states that the transaction in question contemplated that the property was to be delivered outside the state of Missouri and that title and right to possession to the property passed to the taxpayer outside the state of Missouri or while the property remained in interstate commerce. Accepting this as a true statement of the contract of sale it is the opinion of this department that such a transaction is exempt from the retail sales act by the provision of section 144.030, RSMo. 1949, quoted supra.

#### CONCLUSION

It is the opinion of this department that a retail sale of tangible personal property by a Missouri seller to a buyer wherein the contract of sale provides for delivery within this state and the transaction is completed in Missouri the sale is subject to the State Retail Sales Act, Chapter 144, R. S. Mo. 1949. Such a sale constitutes an intrastate transaction if the entire contract of sale is completed within the borders of the State of Missouri, and it is immaterial that the purchaser or his agent may subsequently transport the property out of this state; the sales tax applies to such a transaction for the reason that interstate movement does not commence until after the taxable transaction has been completed.

It is further the opinion of this office that retail sales transactions necessitating the transportation of goods from Missouri into other states, and in which title and ownership to such goods pass either in another state, or while the goods are moving in commerce are exempt from the provisions of the retail sales tax act under section 144.030, RSMo. 1949; further, if the seller is obligated under his contract of sale to deliver to a point outside the state the

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sales tax does not apply, provided the property is not returned to a point within the state for use or consumption. It is the duty of the Director of Revenue, however, in any particular case in which the taxpayer claims exemption under the section 144.030 cited above to determine as a matter of fact whether a particular transaction involves an actual shipment in interstate commerce or whether such a subterfuge is used to evade payment of the tax. The burden is upon the taxpayer to establish the fact that such transaction is a bona fide sale in interstate commerce and not merely a medium used to evade the tax due.

Respectfully submitted,

JOHN E. MILLS  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
Attorney-General

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