

TAXATION (SALES AND USE):  
MOTOR VEHICLES:

The trade-in allowance in Section 144.025, RSMo Supp. 1967, does not apply to any article, including an automobile, on which a sales or use tax has not been paid to Missouri. Therefore, sales tax is due on the full purchase price of a new automobile purchased in Missouri when an automobile registered, purchased and driven for 90 days in good faith in another state is used as a trade-in.

March 18, 1970

OPINION NO. 138

Honorable A. Basey Vanlandingham  
Senator - 19th District  
12 Glennview Plaza  
P. O. Box 711  
Columbia, Missouri 65201



Dear Senator Vanlandingham:

This is in answer to your request for an official opinion of this office concerning the question whether sales tax is due on the full purchase price of a new automobile purchased in Missouri when an automobile registered, purchased and driven for 90 days in good faith in another state is used as a trade-in.

Section 144.440, RSMo Supp. 1967, imposes a use tax for the privilege of using the highways of Missouri and reads in part as follows:

"1. 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 per cent 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."

It is clear that if an automobile had been purchased, registered and regularly operated in good faith in another state for 90 days, said automobile could be registered in Missouri without payment of the Missouri use tax. Section 144.450, RSMo Supp. 1967.

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However, there remains the question of whether trade-in allowance for tax purposes is allowed on the outstate automobile.

Section 144.070.2, RSMo Supp. 1967, defines purchase price as follows:

"As used above, the term 'purchase price' shall mean the total amount of the contract price agreed upon between the seller and the applicant in the acquisition of said motor vehicle or trailer, regardless of the medium of payment therefor."

It appears from reading this section that no trade-in is allowed and tax must be paid on the list price of any automobile.

However, Section 144.025, RSMo Supp. 1967, specifically allows a trade-in as follows:

"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 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."  
(Emphasis added).

The question, then, is whether this trade-in is allowed for an article where a sales or use tax has not been paid to Missouri, whether paid to another state or not.

Section 144.025 is in the nature of an exemption section and thus should be construed strictly against one seeking the exemption. *Hern v. Carpenter, Mo., 312 S.W.2d 823.*

The clear language of Section 144.025, RSMo Supp. 1967, is that the trade-in allowance can only be given on articles on which a sales or use tax has been paid to Missouri. The fact that a sales or use tax has been paid to another state does not change the meaning of the statute.

#### CONCLUSION

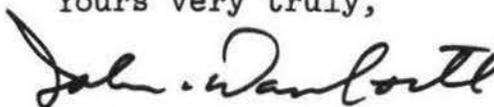
It is the opinion of this office that the trade-in allowance in Section 144.025, RSMo Supp. 1967, does not apply to any article, including an automobile, on which a sales or use tax has not been paid

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to Missouri. Therefore sales tax is due on the full purchase price of a new automobile purchased in Missouri when an automobile registered, purchased and driven for 90 days in good faith in another state is used as a trade-in.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth".

JOHN C. DANFORTH  
Attorney General