

TAXATION (INTANGIBLE): 1. Time charges in excess of the cash sale price under a retail charge agreement or a retail time contract, which establishes a time sale price as defined in Section 408.250, RSMo 1969, do not constitute "yield" within the meaning of the Intangible Personal Property Tax Law. 2. The full time sale price under a retail charge agreement or a retail time contract, including the cash sale price and the time charge as defined in Section 408.250, RSMo 1969, is subject to the Missouri sales tax provided in Chapter 144, RSMo 1969.

September 25, 1970

OPINION NO. 311

Honorable Charles S. Broomfield
State Representative - 87th District
4801 No. Lister
Kansas City, Missouri 64119



Dear Representative Broomfield:

This official opinion is issued in response to the request contained in your letter concerning the Missouri Intangible Personal Property Tax. More specifically, the question presented is:

"Question--are retail financial charges, carrying charges etc. subject to general intangible tax under Chapter 146?"

The question appears to have been prompted by the fact that many retail department stores are not filing intangible personal property tax returns covering money received from charges made in connection with credit sales of merchandise. A determination of this matter depends upon an interpretation of the provisions of the Intangible Personal Property Tax Law (Chapter 146, RSMo 1969) and the Missouri Retail Credit Sales Law (Sections 408.250 to 408.370, RSMo 1969).

Chapter 146, RSMo, in pertinent part reads as follows:

Section 146.020.

"1. Except as otherwise provided by law, intangible personal property having a taxable situs in the state of Missouri at any time

Honorable Charles S. Broomfield

during the calendar year shall be subject to a property tax for the calendar year following the year in which the property had such taxable situs in this state.

"2. The tax on intangible personal property shall be based on the yield of the property during the preceding calendar year, and the rate of tax shall be four percent of such yield.

"3. Any person whose total tax under the provisions of this section amounts to one dollar or less shall not be required to file a return."

Certain terms used in this section are defined in Section 146.010, as follows:

"1. 'Intangible personal property' means moneys on deposit; bonds, except those which under the constitution or laws of the United States may not be made the subject of a property tax by the state of Missouri; certificates of indebtedness, other than capital notes issued by banks or trust companies; notes, debentures; accounts receivable, conditional sales contracts, which have incorporated therein promises to pay; and real estate and chattel mortgages.

* * *

"4. The terms 'yield' or 'annual yield' mean the aggregate proceeds received as a result of ownership or beneficial interest in intangible property whether received in money, credits or property, exclusive of any return of capital, and less the amount of interest required to be credited by the owner thereof, during the preceding calendar year, to reserve liabilities of the owner maintained under the statutes of this state, and less proceeds set aside or accumulated by the owner thereof under contracts or agreements for pension or retirement or employee benefits."

Basically, the question is whether a person who receives finance charges, carrying charges or similar receipts as a result of credit sales, thereby has a "yield" on intangible personal property within the meaning of the statutes.

Whether or not a yield has been received by reason of such payments will ultimately depend upon the terms of the agreement. At

Honorable Charles S. Broomfield

the present time most retail sales transactions on a deferred payment basis will be made under the terms of (1) a retail charge agreement or (2) a retail time contract. Both of these types of credit agreements are controlled by the Retail Credit Sales Law.

The courts have held that a person selling personal property may establish both a "cash" and a "credit" or "time sale price" for such property. In such cases, where deferred payments are involved, the time sale price is the actual sale price and the transaction does not involve a loan of money or the collection of interest. *Wyatt v. Commercial Credit Corp.*, 341 S.W.2d 348 (Mo.App.1960); *General Contract Purchase Corp., v. Propst*, 239 S.W.2d 563 (Mo.App.1951); *Personal Finance Co. of St. Louis v. Endicott*, 238 S.W.2d 51 (Mo.App.1951); *Holland-O'Neal Milling Co. v. Rawlings*, 268 S.W.683 (Mo.App.1925).

On the basis of the rule set forth in these and other court decisions it is concluded that where the contract between the seller and purchaser of merchandise provides for a "time sale price", the difference between the established cash price and the time sale price does not constitute "yield" within the meaning of the intangible personal property tax law. In other words there is no yield by way of interest or otherwise because the time sale price is the actual sale price and the cash price is disregarded.

Section 408.250(10) defines a retail charge agreement as follows:

"Retail charge agreement" means an agreement entered into in this state between a retail seller and a retail buyer prescribing the terms of retail time transactions to be made from time to time pursuant to such agreement, and which provides for a time charge to be computed on the buyer's total unpaid balance from time to time."

Section 408.240(12) defines a retail time contract as follows:

"Retail time contract" means an agreement evidencing one or more retail time transactions entered into in this state pursuant to which a buyer engages to pay in one or more deferred payments the time sale price of goods or services. The term includes a chattel mortgage; conditional sales contract; and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their cash sale price and by which it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract."

Honorable Charles S. Broomfield

Both forms of agreement contemplate the use of a "time charge" which term is defined in Section 408.250(15) as follows:

"Time charge" means the amount, however denominated or expressed, in excess of the cash sale price under a retail charge agreement or the principal balance under a retail time contract which a retail buyer contracts to pay or pays for goods or services. It includes the extension to the buyer of the privilege of paying therefor in one or more deferred payments." (Emphasis supplied).

It should be observed that in both retail charge agreements and retail time contracts a "time sale price" is established. By statutory definition in Section 408.250(16) this price is as follows:

"Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor, and the amounts of the official fees, and the time charge."

Section 408.300 establishes the amount of time charges which may be made on retail time contracts and retail charge agreements. Subsection 1 relates to time contracts and subsection 2 covers time charge agreements. Both subsections 1 and 2 are effective "Notwithstanding the provisions of any other law . . .".

Thus it is apparent that in all agreements subject to the provisions of the Retail Credit Sales Law a statutory "time charge" is authorized which, when added to the cash price established for retail sales of property, will constitute the "time sale price." Accordingly it is our view that they are governed by the principle of law applicable where a seller and a buyer agree upon a time sale price and the difference between the cash sale price and the time sale price does not constitute yield. See Wyatt v. Commercial Credit Corp., supra.

Section 408.330, RSMo 1969, provides as follows:

"If a retail time contract so provides, the holder thereof may charge and collect: (1) A delinquency and collection charge on each installment in default for a period of not less than ten days in an amount to exceed five percent of each installment or five dollars, whichever is less; provided, however, that a minimum charge of one dollar may be made; or (2) interest on each delinquent payment thereunder at a rate which shall not exceed the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of

Honorable Charles S. Broomfield

attorney fees not exceeding fifteen percent of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs."

Therefore, in the case of retail time contracts where a delinquency is involved the holder of the contract, in addition to other charges, may charge interest at the highest legal rate. These charges, however, would be over and above the time sale price involved in the contract and to the extent that interest is received under this section of the law there would be a yield subject to taxation as provided in the intangible personal property tax law.

Although contracts and agreements of the character to which reference is made above do not involve "yield" (except in the case of delinquency) for the purposes of the Missouri Intangible Personal Property Tax Law, the entire amount of the time sale price would be subject to Missouri sales tax imposed by Chapter 144, RSMo 1969.

In connection with charge and time sales the statute in Section 144.100 states as follows:

" * * *

"3. In case of charge and time sales the amount thereof shall be included as sales in the returns as and when payments are received by the person, without any deduction therefrom whatsoever."

CONCLUSION

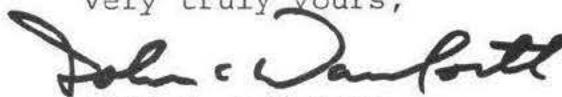
It is therefore the opinion of this office that:

1. Time charges in excess of the cash sale price under a retail charge agreement or a retail time contract, which establishes a time sale price as defined in Section 408.250, RSMo 1969, do not constitute "yield" within the meaning of the Intangible Personal Property Tax Law.

2. The full time sale price under a retail charge agreement or a retail time contract, including the cash sale price and the time charge as defined in Section 408.250, RSMo 1969, is subject to the Missouri sales tax provided in Chapter 144, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John E. Park.

Very truly yours,



JOHN C. DANFORTH
Attorney General