

SALES TAX:
USE TAX:
MOTOR VEHICLES:

The owner of a new or used motor vehicle in Missouri, who is not exempt from the payment of a sales tax or a use tax, is not entitled to retain three per cent of such sales tax or use tax.



September 22, 1952

9/23/52

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

Dear Sir:

This department is in receipt of your request for an official opinion. You thus state your opinion request:

"Section 144.140 of the Sales Tax Act permits the seller to retain three percent of the tax. It has been the ruling of our Department that the merchant engaged in business is entitled to three per cent for collecting and remitting the tax to the Department of Revenue.

"Section 144.140 requires the purchaser of a motor vehicle to pay the sales tax direct to the Department of Revenue before the certificate of title to said vehicle shall be issued.

"The question has been raised as to whether or not the purchaser of the car would be entitled to the three per cent deduction provided for in Section 144.140 when remitting the sales tax on his motor vehicle.

"Our Department has held that the purchaser of the car is not the seller or dealer within the meaning of the law and has, therefore, refused to allow this deduction.

"We have recently been asked to secure from your department an opinion as to

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whether or not our interpretation of these sections is correct."

In regard to your inquiry we would first direct your attention to Section 144.070, RSMo 1949, which section reads:

"1. That at the time the owner of any new or used motor vehicle which was acquired in a transaction subject to sales tax under the Missouri sales tax law makes application to the director of revenue for an official certificate of title and the registration of said automobile as otherwise provided by law, he shall present to the director of revenue evidence satisfactory to said director of revenue showing the purchase price paid by or charged to the applicant in the acquisition of said motor vehicle, or that no sales tax was incurred in its acquisition, and if sales tax was incurred in such acquisition, such applicant shall pay or cause to be paid to the director of revenue the sales tax provided by the Missouri sales tax law in addition to the registration fees now or hereafter required according to law, and the director of revenue shall not issue a certificate of title for any new or used motor vehicle subject to sales tax as provided in said Missouri sales tax law until the tax levied for the sale of the same under this chapter has been paid as herein provided.

"2. 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, regardless of the medium of payment therefor.

"3. In the event that the purchase price is unknown or undisclosed, or that the evidence thereof is not satisfactory to the director of revenue, the same shall be fixed by appraisement by the director.

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"4. The director of revenue shall endorse upon the official certificate of title issued by him upon such application an entry showing that such sales tax has been paid or that the vehicle represented by said certificate is exempt from sales tax and state the ground for such exemption."

We would next invite your attention to Section 144.080, RSMo 1949, which section reads:

"1. Every person receiving any payment or consideration upon the sale of property or rendering of service subject to the tax imposed by the provisions of this chapter, or required to make collection of the tax imposed by the provisions of this chapter, shall be responsible not only for the collection of the amount of the tax imposed on said sale or service, but shall, on or before the fifteenth day of the month following each calendar quarterly period of three months, make a return to the director of revenue of all taxes collected for the preceding quarter, or required to be collected for the preceding quarter, and shall remit the taxes so collected or required to be collected to the director of revenue.

"2. The seller of any property or person rendering any service, subject to the tax imposed by this chapter, is directed to collect the tax from the purchaser of such property or the recipient of the service as the case may be.

"3. The tax imposed by this chapter is a tax upon the sale, service or transaction and shall be collected by the person making the sale or rendering the service at the time of making or rendering such sale, service or transaction, provided, however, that the collection of the tax imposed by this chapter on motor vehicles shall be made as provided for in section 144.070.

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"4. It shall be unlawful for any person to advertise or hold out or state to the public or to any customer directly or indirectly, that the tax or any part thereof imposed by this chapter, and required to be collected by him, will be assumed or absorbed by the person, or that it will not be added to the selling price of the property sold or service rendered, or if added, that it or any part thereof will be refunded. Any person violating any of the provisions of this section shall be guilty of a misdemeanor."
(Underscoring, ours.)

From the above two sections it is clear that when the owner of a new or used motor vehicle which was acquired in a transaction subject to the Missouri sales tax law, applies to the Director of Revenue for a certificate of title and registration of said motor vehicle, he shall pay or cause to be paid to the Director of Revenue the sales tax due upon such motor vehicle.

A reading of Section 144.080, supra, also shows that this method of paying the sales tax on motor vehicles is an exception to the general practice, which in all other instances except that of motor vehicles, requires the seller to collect the sales tax from the purchaser at the time of sale, and at stated times to remit said sales tax to the Director of Revenue.

In your letter to us, you refer to Section 144.440, RSMo 1949, as a "sales tax." We do not believe this section to be a sales tax, but, as its title states, a "use tax."

That section, in the Missouri Revised Statutes of 1949, reads:

"Use tax on motor vehicles--duty of purchaser and director.-- 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 two per cent of the purchase price, as defined in section 144.070, which is paid or charged on new and used motor

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vehicles 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.

"2. That at the time the owner of any such motor vehicle makes application to the director of revenue for an official certificate of title and the registration of the same as otherwise provided by law, he shall present to the director of revenue, evidence satisfactory to said director showing the purchase price paid by or charged to the applicant in the acquisition of said motor vehicle, or that said motor vehicle is not subject to the tax herein provided and, if said motor vehicle is subject to the tax herein provided, such applicant shall pay or cause to be paid to the director of revenue the tax provided herein.

"3. In the event that the purchase price is unknown or undisclosed or that the evidence thereof is not satisfactory to the director of revenue, the same shall be fixed by appraisement by the director.

"4. No certificate of title shall be issued for such motor vehicle unless said tax for the privilege of using the highways of this state has been paid."

Section 144.450, Missouri Revised Statutes 1949, as amended by House Bill No. 119, reads as follows:

"Exemptions from use tax

"In order to avoid double taxation under the provisions of this act, any person who purchases a motor vehicle in any other state and seeks to register it in this state shall be credited with the amount of any sales tax or use tax shown to have been previously paid by him on the purchase

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price of such motor vehicle in such other state. The tax imposed by section 144.440 shall not apply to motor vehicles on account of which the sales tax provided by this act shall have been paid, nor to motor vehicles brought into this state by a person moving any such vehicle into Missouri from another state who shall have registered and in good faith regularly operated said motor vehicle in said other state at least ninety days prior to the time it is registered in this state, nor to motor vehicles acquired by registered dealers for resale, nor to motor vehicles purchased, owned or used by any religious, charitable or eleemosynary institution for use in the conduct of regular religious, charitable or eleemosynary functions and activities, nor to motor vehicles owned and used by religious organizations in transferring pupils to and from schools supported by such organization, nor where the motor vehicle has been acquired by the applicant for a certificate of title therefor by gift or under a will or by inheritance, and the tax hereby imposed has been paid by the donor or decedent, nor to any motor vehicle owned or used by the state of Missouri or any other political subdivision thereof, nor by an educational institution supported by public funds, nor to farm tractors."

From Section 144.450, supra, as amended, it is clear that the owner of a motor vehicle who has followed the procedure outlined in Sections 144.070 and 144.080, supra, is not subject to Section 144.440, supra. If the owner of a motor vehicle has not paid the sales tax he is subject to Section 144.440, supra, at the time he applies to the Director of Revenue for a certificate of title and registration, unless exempt by virtue of Section 144.450, supra. In either event, the question which we have to answer is whether, when the owner of a motor vehicle applies to the Director of Revenue for a certificate of title and registration, is he entitled to the benefit of Section 144.140, RSMo 1949, which section reads:

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"From every remittance to the director of revenue made on or before the date when the same becomes due, the person required to remit the same shall be entitled to deduct and retain an amount equal to three per cent thereof."

It is the opinion of this department that the purchaser is not entitled to retain the three per cent provided by the above section, whether his payment to the Director of Revenue be the sales tax which he is directed to pay by Section 144.070, supra, or the use tax set forth by Section 144.440, supra. We do believe that Section 144.140, supra, applies only to those persons who sell goods subject to a sales tax in those instances where the seller is charged with the collection of the sales tax from the purchaser which, as we pointed out, is not true of purchasers of motor vehicles according to Sections 144.070, 144.080 and 144.440, supra. We believe that the six sections, beginning with Section 144.080, which precedes Section 144.140, clearly show this to be the fact and the intention of the Legislature, as all of these sections are clearly intended to apply to those cases in which the seller is required to collect the sales tax from the purchaser at the time of sale, except the provision, noted above, in Section 144.080, which applies solely to motor vehicles.

There is, furthermore, a good and apparent reason why Section 144.140 should apply only to a seller who is charged with the collection of a sales tax from the purchaser. The collection of a sales tax by the seller from the purchaser upon every item sold, however large or small, and the refunding of that tax by the seller to the Department of Revenue, at fixed intervals, imposes an onerous burden upon the seller. It involves the handling of extra amounts of money in which the seller has no personal interest. It involves additional bookkeeping, and easily could, if the volume of sales were great enough, require the employment of additional clerical help. We assume that the Legislature enacted Section 144.140, supra, with the intent to compensate the seller for being, in effect, a tax collector for the state. Such compensation would appear to be wholly just and reasonable. But the same line of reasoning does not apply to the purchaser of a motor vehicle who is required to pay his sales tax, or use tax, as the case may be, directly to the Director of Revenue. No burden of tax collection is placed upon him and there is no apparent reason why he should be allowed to retain the three per cent provided for by Section 144.140, supra.

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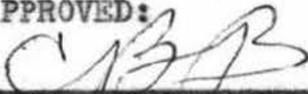
CONCLUSION

It is the opinion of this department that the owner of a new or used motor vehicle in Missouri, who is not exempt from the payment of a sales tax or a use tax, is not entitled to retain three per cent of such sales tax or use tax.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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