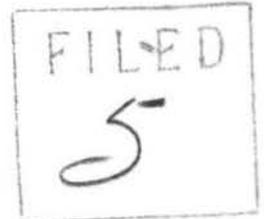


TAXATION: Sales and use tax under H.B. No. 258 of the  
SALES AND USE TAX: 64th General Assembly is applicable to  
MOTOR VEHICLES, ETC.: motorcycles and motorscooters; dealer who  
purchases car as demonstrator is subject to tax.

July 1, 1948



Mr. G. H. Bates  
Collector of Revenue  
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of recent date, wherein you submit a request for an official opinion on two questions, namely:

"1. Does motor vehicle as used in this Act apply to automobiles, busses and trucks alone, or does the wording also include motorcycles, motor scooters and such other vehicles which are required to secure titles from the Motor Vehicle Department?

"2. Frequently an automobile dealer will title a new car in the name of the firm and apply for individual license plates in order that he may use said car as a demonstrator, however, with the intention of selling said car within a period of not to exceed ninety days. When said car is titled in order to secure individual license plates, would the dealer be required to pay the sales and/or use tax, or should we hold that this is a departmental transfer not subject to sales tax?"

House Bill No. 258 of the 64th General Assembly, which will become effective on July 18, imposes a sales and use tax on motor vehicles in this state. Sub-section (b) of Section 11412 of the act provides that when an owner of a new or used motor vehicle makes application for a title or the registration of such motor vehicle to present evidence showing the purchase price paid or charged, and if the transaction was subject to tax to pay the tax to the Director of Revenue when he obtains his title. Sub-section (c) of this same section imposes a use tax on sales of such motor vehicles. The only exemptions that we find in this section, whereby motor vehicles are exempted from its provisions, are found in sub-section (d) of said Section 11412, which reads as follows:

"(d) The tax imposed by this section 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 into Missouri from another state who shall have registered 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 a motor vehicle, for which a certificate of title is sought by the applicant, which was acquired by him within the State of Missouri in an isolated or occasional sale as defined by subsection (c) of Section 11407 of the Missouri Sales Tax Act, nor to any motor vehicle owned or used by the State of Missouri or any political subdivision thereof, nor by an educational institution supported by public funds, nor to farm tractors or motor vehicles having a seating capacity of ten passengers or more."

The term "motor vehicle," as defined in the Missouri acts applicable to motor vehicles, reads as follows, Laws of Missouri, 1945, page 1196:

" \* \* \* 'Motor vehicle.' Any self-propelled vehicle not operated exclusively upon tracks, except farm tractors. \* \* \* \* \* "

Since motorcycles and motor scooters, and other motor vehicles that are required to secure titles from the Motor Vehicle Department are "motor vehicles," then they would be

subject to the provisions of the sales and use tax act as they do not come within the exempted class specified in sub-section (d), supra.

On the question of whether or not a dealer, who takes a car out of his stock to be used as a demonstrator, should pay this tax when he makes application for title, we find from an examination of this act that the tax seems to be imposed on the person who buys the car for use. There does not seem to be any provision in the act which makes an exception to a case in which the dealer takes the car out of his stock. Nor are there any provisions in the act which would authorize a departmental transfer. The tax is imposed on the person who makes application for the title, and it was on the theory that the tax is a use tax. Under those circumstances, we think that the dealer would be liable for the tax under this act.

#### CONCLUSION

From the foregoing, it is the opinion of this department that sales of motorcycles, motor scooters and other motor vehicles, which are required to secure titles from the Motor Vehicle Department, except such motor vehicles as are exempted under sub-section (d) of Section 11412 of the act, would be subject to the tax therein provided.

We are further of the opinion that a dealer who makes application for a title for a new car, which he proposes to use as a demonstrator, would be liable for the payment of the tax before he may obtain title.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

TWB:VLM