

SALES TAX: Liability for billboard rental.

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Mr. W. H. Burke
Assistant Supervisor
Sales Tax Unit
Department of Revenue
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Mr. C. F. Keebaugh in St. Louis, Missouri, is manufacturing agent for a Poster Company of Cincinnati, Ohio, who manufacture the big paper sheets that are used on billboards for advertising purposes.

"A concern in St. Louis contracts with an Advertising Agency for a certain amount of billboard space for a definite period of time, then the Advertising Agency makes up a design that they desire to use for their Client on these billboards and have Mr. Keebaugh send the order to Cincinnati and the posters are shipped to a third party, the General Outdoor Advertising Company of St. Louis, who warehouse them for the Advertising Agency and later apply them to the billboards specified by the Advertising Agency. In the mean time the Advertising Agency will lease from various owners certain billboards already erected or space on which the Advertising Agency will erect a board when it is determined just what boards are favorable for their Client, they will lease these boards to their client for a specific period of time and then order the General Outdoor Advertising Company to paste these paper sheets on the boards in question.

"Since the advertiser has a lease so that no other party can use these particular boards during the period of the lease, is this rental taxable and is the purchase of the sheets taxable?"

The determination of sales tax liability in a situation such as this is largely a factual matter, the fundamental legal problems involved being of relatively simple solution when the complete facts are at hand. On the basis of the facts which you have presented we cannot give you a categorical answer to your question concerning tax liability, but we will endeavor to point out what we consider the pertinent matters which must be ascertained by you in order to properly assess sales tax liability.

As for the question of liability for tax upon the billboard rental, the sales tax is imposed upon "every retail sale in this State of tangible personal property." Section 11408(a), Mo. R.S.A. Under Section 11407(d), Mo. R.S.A., in case of lease or rental of tangible personal property, when the right to continuous possession or use of the property is granted to the lessee and such transfer of possession would be taxable if an outright sale were made, the transaction is made taxable "as if outright sale were made and considered as a sale of such article and the tax shall be computed and paid by the lessee upon the rentals paid."

Rule 78, adopted under the Sales Tax Act, contains the following provision:

"When signs are sold under lease or rental contract and where the right to continuous possession and use is given to the lessee, rental charges are subject to sales tax.
* * *

This rule seems to cover the situation about which you have inquired, and therefore the matter which remains is determination of just who is the lessee and liable for the tax.

You state that the advertising agency first leases the billboards from the owners and then leases them to the client. If such is the case, the liability would be upon the client inasmuch as the sales tax is upon "sales at retail" for use by the purchaser and not for resale (Section 11407(g), Mo. R.S.A.), and the same rule would apply in case of a lease. If the original lessee

did not obtain the billboards for his own use but for the purpose of re-releasing them to its client, the final taxable transaction would be that between the advertising agency and its client.

Of course, the transactions may vary. In some cases the advertising agency may simply contract with a client to furnish a certain amount of billboard space, with the client never directly leasing the space in question. In such case the taxable transaction would likely be that between the advertising agency and the owner of the billboard, although the liability might be affected by the contract between the advertising agency and client. As we pointed out above, the facts of each situation would have to be known in order to properly determine tax liability.

As for the question of tax liability upon the sale of the poster sheets, Section 11409, Mo. R.S.A., provides, in part, as follows:

"There is hereby specifically exempted from the provisions of this article and from the computation of the tax levied, assessed or payable under this article such retail sales as may be made in commerce between this state and any other state of the United States, * * *"

In the case of *American Bridge Co. v. Smith*, 352 Mo. 616, 179 S.W. (2d) 12, 157 A.L.R. 798, the Supreme Court held that this provision exempted from the sales tax any transaction in interstate commerce, although the transaction might be such as the State of Missouri might tax without infringing the Commerce Clause of the Federal Constitution. Under the situation which you have presented, the transaction is one in interstate commerce, the property being processed in and shipped from Cincinnati, Ohio, to this state. Under the holding of *American Bridge Company v. Smith*, that is such transaction as is exempt under Section 11409, Mo. R.S.A.

Conclusion.

Therefore, it is the opinion of this department that the rental paid upon the lease of billboards for advertising purposes is subject to the Missouri sales tax, liability for the

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tax depending upon the facts of the particular transaction, the ultimate lessee being the person liable for the tax.

We are further of the opinion that the sale of billboard sheets, purchased through a manufacturing agent in St. Louis who forwards the order to Cincinnati, where the posters are prepared and shipped to St. Louis to an agent of the purchaser, is a sale in commerce between this state and another state and, under Section 11409, Mo. R.S.A., is not subject to sales tax.

Respectfully submitted,

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APPROVED:

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