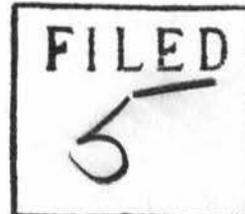


SALES TAX: Director of Revenue shall not issue a certificate of title for any new or used motor vehicle subject to sales tax until the tax levied for the sale of the same has been paid.

March 22, 1950

3/23/50

Hon. G. H. Bates
Director of Revenue
State of Missouri
Jefferson City, Missouri



Dear Mr. Bates:

We have your recent letter requesting an official opinion of this department. Your opinion request reads in part as follows:

"We have recently had several conferences with parties financing automobiles with relation to the collection of tax where the original purchaser did not title the car in his name although he gave a mortgage to the finance company. Later he fails to make the necessary payments and it becomes necessary for the finance company to repossess the car, but in order to do so they must secure title in the name of the original purchaser in order that their mortgage will be valid.

"We have taken the position that we can not issue title where tax is due until said tax has been paid, whether by the original purchaser or the finance company. In other words, I have contended that their mortgage is void unless title is issued in the name of the original purchaser.

"On the other hand, the finance companies contend that they are the innocent parties and can not be held liable for tax owed by the other party."

Your opinion request presents the following question:

May the Director of Revenue, under the provisions of Section 11412, Laws of Missouri 1947, Vol 2, page 431 (Sec. 11412, Mo. R.S.A.) issue a certificate of title for any new or used motor vehicle

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subject to sales tax when the tax levied for the sale of the same has not been paid?

Section 11412, Subsection (b) Laws of Missouri, 1947, Vol. 2, page 431, (Sec. 11412, Subsection (b) Mo. R.S.A.) provides for the collection of the sales tax on the purchase price of new or used motor vehicles and the issuance of a certificate of title for any new or used motor vehicle subject to the sales tax. Said section provides in part as follows:

"(b) 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 Act 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 Act 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 Act until the tax levied for the sale of the same under said Act has been paid as herein provided. * * * * *"

(Underscoring ours)

The language of the above quoted provision is clear and definite on the following propositions:

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1. That the owner of the motor vehicle and applicant for the certificate of title for said motor vehicle is liable for the payment of the said tax.
2. That the said tax shall be paid or caused to be paid by the owner at that time when the owner and applicant makes application for an official certificate of title and registration of said motor vehicle.
3. That the Director of Revenue is precluded from issuing a certificate of title for said motor vehicle until such time as the tax levied for the sale of the same has been paid.

It therefore follows that the Director of Revenue may not issue a certificate of title for any new or used motor vehicle subject to sales tax so long as there remains outstanding and due on such vehicle the sales tax levied for the sale of the same.

The contention of the finance companies, even if it were correct, could not serve to affect a release or excuse for the Director of Revenue from the duties expressly imposed upon the said Director by statute. We deem it sufficient, at this time, to state that the finance companies could pay the sales tax and recover such amount from the original purchaser. But these are private rights and liabilities personal to the purchasers and finance companies and should therefore be resolved by them in a separate and distinct transaction.

CONCLUSION

It is, therefore, the opinion of this department that the Director of Revenue may not, under the provisions of Section 11412, Laws of Missouri, 1947, Vol. 2, page 431 (Sec. 11412, Mo. R.S.A.) issue a certificate of title for any new or used motor vehicle subject to sales tax when the tax levied for the sale of the same has not been paid.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

PMS:A