

MOTOR VEHICLES: The "Retailers' Occupation Tax" levied in
SALES TAX: Illinois upon motor vehicle retailers is
USE TAX: not a "sales tax or use tax" which may be
credited to the purchaser of a motor vehicle
in Illinois who brings it to Missouri within
ninety days after the purchase.

*See Chapter 120
Sec 453.69
Ill. Statutes
effective
August 1953*

FILED
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June 11, 1953

Honorable R. Mason Link
Assistant Supervisor
Motor Vehicle Registration
Department of Revenue
Jefferson City, Missouri

Dear Mr. Link:

By your letter of May 27, 1953, you requested
an official opinion of this Department as follows:

"For the past several months we have
had numerous inquiries and complaints
concerning dealer's in the State of
Illinois representing the two per cent
tax as Sales Tax when we believe it is
actually an Occupational Tax.

"When a person purchases a vehicle in
the State of Illinois and is required
to pay a tax which is represented as
Sales Tax and is shown as such on the
Bill of Sale, he naturally feels that
it should be credited when he applies
for Missouri Certificate of Title.
The vehicle may or may not be titled
in the State of Illinois but in the
event he requests Missouri Certificate
of Title and the ninety days has not
elapsed from the date the vehicle was
titled in the State of Illinois, he
has no exemption from the Missouri
Sales or Use Tax as provided for in
Chapter 144.450, only to credit such
tax paid the State of Illinois against
any tax that might be due in Missouri.

"We respectfully request an opinion
from your office, if the Occupational
Tax represented as Sales Tax under

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Illinois Law could be allowed as referred to in Chapter 144.450."

The tax to which you refer is the "Retailers' Occupation Tax" provided for by Chapter 120, Paragraph 441, Smith-Hurd Illinois Annotated Statutes:

"A tax is imposed upon persons engaged in the business of selling tangible personal property at retail in this State at the rate of three per cent (3%) of the gross receipts from such sales of tangible personal property made in the course of such business prior to July 1, 1941, and two per cent (2%) of ninety-eight per cent (98%) of the gross receipts from such sales after June 30, 1941. However, such tax is not imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State."

The Supreme Court of Illinois in *People's Drug Shop, Inc., vs. Moysey*, 384 Ill. 283, 51 N.E. (2d) 144, affirming 317 Ill. App. 370, 45 N.E. (2d) 978, gave this discussion of the Retailers' Occupation Tax Act, l.c. 146:

"The purpose of the Retailers' Occupation Tax Act, reflected in its title and throughout the statute, is to impose a tax upon persons engaged in selling tangible goods at retail. The tax exacted is not a sales tax on the consumer and, so far as the statute is concerned, no duty rests upon him to pay the tax imposed upon the retailer. This court has repeatedly and consistently held that the tax imposed is a tax on the retailer measured by his sales to consumers. *Reif v. Barrett*, 355 Ill. 104, 188 N.E. 889, 896, sustaining the constitutionality of the statute, holds

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that the tax is an excise or occupation tax and not a property tax. Referring to retailers, this court said: 'They pay a tax for the privilege of engaging in the occupation of a retailer of tangible personal property sold for use or consumption by the purchaser.' In *People ex rel. Herlihy Mid-Continent Co. v. Nudelman*, 370 Ill. 237, 18 N.E. 2d 225, 227, 121 A.L.R. 1311, we said: 'The retailer's occupation tax is a tax on the privilege of engaging in the business of selling tangible personal property to purchasers for use or consumption and is not a tax on the property itself.' Again, in *Ahern v. Nudelman*, 374 Ill. 237, 29 N.E. 2d 268, 269: 'The tax is an occupation tax upon a class of vendors and is measured by the gross receipts from their sales. (Citations) It applies only to sellers and the sale made must be for use or consumption and not resale.' Later, in *Superior Coal Co. v. Department of Finance*, 377 Ill. 282, 36 N.E. 2d 354, 360, we declared: 'The plain purpose of the Retailers' Occupation Tax Law is to exact a tax from those engaged in the business of making retail sales in this State.' In *Mahon v. Nudelman*, 377 Ill. 331, 36 N.E. 2d 550, 552, we observed: 'The tax is on the occupation and not on the sale, though sales are utilized as a measure of the tax to be assessed.'

'*** the tax is imposed upon persons engaged in the business mentioned. They are the persons who are required to pay the tax. They are not made the agents of the state or of the department of finance to collect the tax from purchasers and pay it over to the department, but the tax is imposed on them, and they are the ones who are required to pay it.'***"

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A sales tax on retail sales in the State of Missouri is provided for by Section 144.020, RSMo 1949, as follows:

"1. From and after the effective date of this chapter, there shall be and is hereby levied and imposed and shall be collected and paid:

"(1) Upon every retail sale in this state of tangible personal property a tax equivalent to two per cent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to two per cent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange; "

The purchaser of a motor vehicle is required to pay either a sales tax or a use tax upon such motor vehicle. By Section 144.070, Paragraph 1, the purchaser is required to pay the amount of the sales tax to the Director of Revenue:

"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."

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Under Section 144.440, RSMo 1949, a use tax is levied for the privilege of using the highways:

"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 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."

Certain exemptions from this use tax are provided by Section 144.450, Vol. 10, V.A.M.S., as follows:

"144.450. 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 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, * * *."

There is a distinct difference in the type of tax which is required to be paid in Illinois under the Retailers' Occupation Tax Act, and the Sales and Use Tax of Missouri. That distinction is: That in Illinois the purchaser is in no manner liable for the payment of such tax, and that the tax is not on the consumer, but is instead, levied against the retailer for the privilege of doing business. On the

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other hand, the sales tax and use tax of Missouri are taxes which are levied upon and must be paid by the retail purchaser.

That this distinction is the turning point in the matter at hand, is obvious from an examination of that portion of Section 144.450, supra, stating that a purchaser of a motor vehicle in another State shall be credited with the amount of sales tax or use tax paid by him in another State. Since a purchaser in Illinois does not himself pay the two per cent Occupational Tax, such amount cannot be credited to him in this State.

CONCLUSION

It is, therefore, the opinion of this office that: The "Retailers' Occupation Tax" levied in Illinois upon motor vehicle retailers is not a "sales tax or use tax" which may be credited to the purchaser of a motor vehicle in Illinois who brings it to Missouri within ninety days after the purchase.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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