

4549.

SALES TAX—ELECTROTYPE SUBJECT TO SALES TAX WHEN
—MATS AND STEREOTYPES SUBJECT TO TAX WHEN.

SYLLABUS:

Where an electrotype is sold to a person for the purpose on the part of such person as the consumer to use such electrotype in manufacturing or processing some article such as a catalogue, book or calendar through the agency of a printer or publisher employed for the purpose, such sale is not a "retail sale" within the meaning of section 5546-1, General Code, and is not subject to the sales tax provided for by section 5546-2, General Code.

Where the purchaser of such electrotype, either in person or by others in his regular employ, uses the electrotype which he has purchased in the manufacture or processing of printed matter for himself, the sale of the electrotype to such purchaser is not subject to the tax provided for by the sales tax act.

Where an advertising agency purchases electrotypes, mats or stereotypes to be used by a printer or publisher in manufacturing or processing some article for such advertising agency who then becomes the owner of the article thus manufactured or processed, the sales to the advertising agency of the electrotypes, mats or stereotypes thus used are not subject to the tax; however, if the article or articles thus manufactured or processed by the use of the electrotypes, mats or stereotypes purchased by the advertising agency are not when manufactured the property of the advertising agency, but are the property of the client of such advertising agency, such sales are retail sales and are subject to the tax provided for in this act.

Sales of mats and stereotypes to a buyer for use by a newspaper in printing such buyer's advertisements, are retail sales and are subject to the sales tax.

COLUMBUS, OHIO, August 16, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You have requested my opinion with respect to the incidence of the sales tax provided for by Amended House Bill No. 134 to sales of electrotypes made in the manner indicated in your communication as follows:

“1. A sale directly to a buyer, who then delivers an electrotype to a printer or publisher to print something for such buyer.

2. A sale to a buyer, who, while not in the printing and publishing business, has his own printing plant, where he uses the electrotype in printing matter for himself.

3. Sales to advertising agencies, who then deliver the electrotypes, mats or stereotypes to a printer or publisher to print an advertisement for such advertising agency's principal.

4. Sales to buyers where the mats and stereotypes are delivered directly to a newspaper for printing such buyer's advertisement."

Amended House Bill No. 134, which was enacted by the 90th General Assembly in special session December 13, 1934, and which has been carried into the General Code as sections 5546-1 to 5546-23, inclusive, provides for the levy of an excise tax at the graduated rates therein specified "on each retail sale in this state of tangible personal property occurring during the period beginning on the first day of January, 1935, and ending on the thirty-first day of December, 1935." By section 1 of this act (sec. 5546-1, G. C.) the term "sale", as the same is used in this act, is comprehensively defined to include, among other things, all transactions whereby title or possession, or both, of tangible personal property is or is to be transferred for a consideration in any manner whether absolutely or conditionally. By this section the term "consumer" is defined to mean the person to whom the transfer effected by a sale is or is to be made.

As above noted, the tax levied by this act (sec. 5546-2, G. C.) is "on each retail sale". The term "retail sale" is likewise defined by the provisions of section 1 of this act, which, so far as they are material to the questions here presented, read as follows:

" 'Retail sale' and 'sale at retail' include all sales excepting those in which the purpose of the consumer is * * to use or consume the thing transferred in manufacturing (or) processing."

It is evident that each and all of the sales of electrotypes referred to in your communication are taxable unless they are excluded from the category of retail sales by the above quoted provisions in and by which this term is defined. Giving effect to all of the provisions by which the term "retail sale" is defined, it seems clear that before the sale of personal property is excepted from the meaning of this term, and therefore from the incidence of the tax, for the reason that the same is to be used in manufacturing or processing, the purchaser of such property as the "consumer" must have some connection with the manufacturing or processing in which the property purchased is used or consumed; that is, it must appear that the purchaser himself intends to use the property purchased in manufacturing or processing operations carried on by him, or that such property is to be used by another in manufacturing or processing some article for such purchaser.

The first question presented in your communication is with respect to

the sale of an electrotype to a buyer for use by a printer or publisher in manufacturing or processing some article such as a catalogue, book or calendar for such buyer. Applying the principles of the statutory provisions here in question according to their manifest intent, and keeping in mind the principle or rule that what one does through another he does for himself, it appears that in the transaction first noted in your communication the electrotype was purchased with the intent and purpose on the part of the buyer to use or consume such property in manufacturing or processing and that the sale of the electrotype in this case is not subject to the tax provided for by this act.

In the second case presented in your communication, it appears that the buyer himself, either in person or by his employes, is to use the electrotype which he purchased, in the manufacture or processing of printed matter for himself. It seems quite obvious that the sale of the electrotype in this case is not within the meaning of the term "retail sale", as the same is used in the act, and such sale is not subject to the tax.

Applying the principles above noted to the third transaction set out in your communication, it follows that if the advertising agency therein referred to purchases electrotypes, mats or stereotypes to be used by a printer or publisher in manufacturing or processing some article for such advertising agency who then becomes the owner of the article thus manufactured or processed, the sales to the advertising agency of the electrotypes, mats and stereotypes thus used are not subject to the tax. However, if the article or articles thus manufactured or processed by the use of the electrotypes, mats or stereotypes purchased by the advertising agency are not when manufactured the property of the advertising agency, but are the property of the client of such advertising agency, the sales above referred to are subject to the sales tax provided for in this act.

On the facts stated in your fourth question, it appears that although the mats and stereotypes therein mentioned are used in the "manufacture" of a newspaper, it does not appear that the purchaser of these articles is doing the manufacturing either directly or indirectly, and neither does it appear that the thing manufactured is being made for such purchaser. In this situation, I am unable to see how the sale of the mats and stereotypes to the purchaser in this case is excepted from the meaning of the term "retail sale"; and, in this view, it follows that such sale is taxable.

In the consideration of the several questions presented in your communication, I have been required, of course, to give effect to the provision found in section 2 of the sales act that for the purpose of the administration of this act and to prevent the evasion of the tax thereby levied, "it shall be presumed that all sales made in this state are subject to the tax hereby levied until the contrary is established." Giving effect to this provision in the construction of the definitive provisions of section 1 of the act in their application to the questions here presented, I am of the opinion, as above noted, that upon the

facts stated in your first two questions the sales therein referred to are not taxable, and that on the facts stated in your third and fourth questions the sales therein mentioned are taxable.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4550.

APPROVAL, LEASE TO LAND IN TOWNSEND TOWNSHIP,
SANDUSKY COUNTY, OHIO, FOR STATE GAME AND
BIRD REFUGE—BERNARD AND SADIE FULLER.

COLUMBUS, OHIO, August 16, 1935.

HON. L. WOODDELL, *Conservation Commissioner, Division of Conservation,
Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease No. 2311, executed by Bernard and Sadie Fuller of Townsend Township, Sandusky County, Ohio, on a parcel of land in said township and county, as described in said lease, containing three hundred (300) acres of land. By this lease, which is one for a term of five (5) years, this land is leased and demised to the state solely for state game refuge purposes; and it is noted in this connection that acting under the provisions of section 1435-1 and other related sections of the General Code, the Conservation Council, acting through you as Conservation Commissioner, has set this property aside as a state game and bird refuge during the term of said lease.

Upon examination of this lease, I find that the same has been properly executed and acknowledged by said lessors and by the Conservation Council acting on behalf of the state through you as commissioner.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.