OPINION
63-262

August 7, 1963 (OPINION)

TAXATION

RE: Sales Tax - Laundromats

This office acknowledges receipt of your letter of July 15, 1963, in which you ask our opinion relative to the applicability of sales tax to gross receipts derived from self-service laundries or dry-cleaning facilities.

Your two questions are as follows:

> Question No. 1. Did the gross receipts from self-service laundries and dry-cleaning plants, whether or not coin operated, become subject to the sales tax on July 1, 1963, because of the enactment of House Bill 559? See sections 1 and 2 of Chapter 399, S.L. 1963, which provide for taxing the gross receipts from 'Services furnished in repairing, altering, restoring, or cleaning any tangible personal property?'"
>
> Question No. 2. If the gross receipts from coin operated laundries and dry-cleaning plants are subject to sales tax, is the owner or operator who receives those receipts also liable for sales tax to the seller of the water, gas, electricity, supplies, etc., that are used in operation of the laundry or dry-cleaning plant?"

Subsection 1 of section 57-39-01 of the North Dakota Century Code, as amended by House Bill No. 559 (Chapter 399, S.L. 1963), defines a "sale" as including the furnishing of services relating to personal property. Subsection 3 of section 57-39-01, as amended, defines a "retail sale" or "sale at retail" as including services relating to personal property. This subsection excludes from the "retail sale" definition sales made for resale or processing and defines the term "processing" as "any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail."

Subsection 5 of section 57-39-01, as amended, defines a "retailer" as every person furnishing services relating to personal property.

Section 57-39-02 of the North Dakota Century Code, as amended by Section 2 of Chapter 399, S.L. 1963, imposes a two and one-fourth percent sales tax upon the gross receipts from all sales at retail of:

> 6. Services furnished in repairing, altering, restoring, or cleaning any tangible personal property provided that this subsection shall not apply to retailers who furnish such

> services to agricultural producers with respect to agricultural products; and"

By reason of recent growth and development of self-service laundries there are relatively few cases construing the taxation, regulations or licensing of these retail establishments, and attempts to avoid the various taxation or licensing requirements have been largely unsuccessful.

The courts generally hold that the operation of coin operated self-service laundries commonly referred to as "laundromats" or "launderettes" constitutes the rendition of a service. In this connection see Van Sciver v. Zoning Board of Adjustment 396 Pa. 646, 152 A.2d. 717; E-Con-O-Wash Corp of R.I. v. Sousa 164 A.2d. 851 (R.I.); People v. Gwyer 179 N.Y.S. 2d. 987 (N.Y.); Thrift Wash v. O'Connell 174 N.Y.S. 2d. 70 (N.Y.), and Overstreet v. E.G. Palter 125 S.2d. 122 (Florida).

In Francom v. Utah State Tax Commissioner, 11 Utah 2d. 164, 356 P.2d. 285, the Supreme Court of Utah in upholding a determination of the State Tax Commissioner assessing sales tax against the plaintiff who owned and operated an establishment furnishing the use of coin operated washing machines and driers to the general public stated:

> Regardless of the fact that the actual manual operation or labor is performed by the customer, we are of the opinion that the plaintiffs are performing a 'laundry service' within the meaning of the statute and thus the sales tax is applicable. The mere fact that the plaintiffs have no attendant at the establishment does not mean that the plaintiffs are not performing a 'laundry service.'"

Upon reviewing the rules and regulations of other states it is noted that most states regard the operation of laundries as the rendition of a service for sales tax purposes. Likewise it is noted that four states, namely, Louisiana, North Carolina, Pennsylvania and Utah, have issued either regulations or administrative rulings pertaining specifically to coin operated laundries. These rulings also regard the operators of laundromats as furnishing or rendering a service which is either taxable or exempt depending on whether the respective sales tax laws impose a tax on services.

In this connection reference is made to Rule No. 86 of the North Dakota Sales Tax Rules and Regulations. This rule was promulgated by the Tax Commissioner of the State of North Dakota on July 6, 1961, in accordance with section 57-39-17 of the North Dakota Century Code, and is based upon the sales tax law as it existed at that time. This regulation regards persons engaged in the business of operating laundries, including coin operated laundries, as rendering services; however, as the sales tax law, as it existed prior to July 1, 1963, did not impose a tax on services of that nature, the gross receipts from this service were not subject to sales tax.

In view of the above statutes and authorities, we conclude that the making available of laundromat facilities to customers, who utilize the same in laundering their clothing, constitutes a service furnished in cleaning tangible personal property. Therefore the

gross receipts derived from the sale of this service are subject to the two and one-fourth percent sales tax imposed by section 57-39-02 of the North Dakota Century Code, as amended.

As the operation of a self-service laundry is regarded as a furnishing of a taxable service, the laundromat customers would be considered the purchasers of the services when using the service facilities. Consequently, the customers would not be regarded as leasing or renting the laundromat equipment but at most would be considered as a licensee in using the machines in accordance with the terms prescribed by the owner thereof.

There is no express exemption in the sales tax law exempting items of tangible personal property used or consumed in rendering taxable services. It seems clear that water, gas, electricity and equipment used in rendering a laundry service would not be considered a sale for processing as that term is defined in the sales tax law, nor would the sale of these items be considered a sale for resale because there is no actual transfer of any of the items from the laundromat operator to the customer who purchases the service furnished.

It is therefore our opinion that the operator of the laundromat would be considered the incidental user or consumer of gas, water, electricity, equipment and other related supplies, used in rendering the service and as a result the sale of these items to the owner or operator of the laundromat would be subject to sales tax.

The sale of soap, bleaches and other items of tangible personal property, sold directly to the customer independent of the services rendered, whether sold by vending machines located in the laundromat or sold by the operator thereof, would be regarded as a sale at retail, and the gross receipts therefrom would be subject to sales tax; however, in purchasing these supplies the owner-operator would be regarded as making purchases for resale and as such, sales to him would not be subject to the sales tax.

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