

OPINION
67-297

March 16, 1967 (OPINION)

Mr. Edwin Sjaastad

Tax Commissioner

RE: Taxation - Sales Tax - Errors in Acts

This is in response to your letter in which you state the following:

"S.B. 403 as passed by the 1967 Legislative Assembly imposes an additional three quarters of one percent sales and use tax on the items of tangible personal property and services subjected to sales and use tax in H.B. 731.

"Section 1 of S.B. 403 pertains to the imposition of an additional three quarters of one percent sales tax. Lines 31 through 38 of S.B. 403 as engrossed provide as follows:

'All definitions of terms, provisions for collection and delinquency, exemptions, assessments, penalties, refunds, notices and appeals, and all other provisions contained and provided for in sections 1 through 26 of H.B. 731 of the Fortieth Legislative Assembly, and any other provisions of law now in effect or which may become effective relating to the retail sales tax shall apply and are hereby made applicable to the tax imposed under the provisions of this section.'

"Section 1 through section 25 of H.B. 731 relate to sales tax, whereas sections 26 through 42 of H.B. 731 contain use tax provisions. Therefore, it would appear that S.B. 403 for sales tax purposes has adopted all of the sales tax provisions of H.B. 731, and, in addition, has adopted for sales tax purposes the use tax definitions contained in section 26 of H.B. 731.

"Section 3 of S.B. 403 imposes an additional three quarters of one percent use tax on the items contained in the use tax portion of H.B. 731. Lines 74 through 81 of S.B. 403 as engrossed provide as follows:

'. . .All definitions of terms, provisions for collection and delinquency, exemptions, assessments, penalties, refunds, notices and appeals, and all other provisions contained and provided for in sections 27 through 41 of H.B. No. 731 of the Fortieth Legislative Assembly, and any other provisions of law now in effect or which may become effective relating to the use tax, shall apply and are hereby made applicable to the tax imposed under the provisions of this section.'

"By reason of the above, it would appear that S.B. 403 for use tax purposes has not adopted section 26, the use tax definition section of H.B. 731.

"S.B. 403, in the respective sections as quoted above, seems to be

quite clear as to what sections are adopted by reference under the bill. However, it would also seem that the reference to the improper sections may have been an error in drafting. I would assume the legislature did not intend to adopt for sales tax purposes the definitions in H.B. 731 applicable to use tax or to exclude for use tax purposes those same use tax definitions.

I respectfully request your opinion as to how S.B. 403 should be interpreted with respect to the section references."

To more fully understand and to obtain the legislative intent, it is necessary to consider the following bills which are, to a great degree, interrelated: H.B. No. 731 which provides for a sale and use tax at the rate of 2 1/4 percent; S.B. No. 403 which provides for a sale and use tax of three-quarters of 1 percent; and H.B. No. 943 which amends and reenacts certain sections of H.B. No. 731 and S.B. No. 403.

In examining the provisions of Section 1 of S.B. No. 403 and Section 3 of S.B. No. 403, in light of the legislative intent expressed in S.B. No. 403, H.B. No. 731 and H.B. No. 943, it becomes quite obvious that the Legislature intended to adopt certain definitions, terms and provisions relating to the sales tax and use tax as found in H.B. No. 731. From such examination it also appears obvious that either a mechanical, clerical or drafting error occurred in the reference to specific sections. The error is more pronounced in Section 3 of S.B. No. 403.

The North Dakota Supreme Court in *Dickinson v. Thress*, 69 N.D. 748; 290 N.W. 653, said: "Where it is manifest upon the face of a statute that an error has been made in the use of words, numbers, grammar or punctuation, the court, in construing and applying the statute, will correct the error in order that the intention of the legislature as gathered from the entire act may be given effect."

By examining the provisions of the three bills enumerated above, it appears manifest that the Legislature intended to adopt the definitions, provisions for collection, exemptions, etc., of the sales tax act in H.B. No. 731 for the administration of the three-fourths of 1 percent sales tax adopted in S.B. No. 403. Similarly, it appears manifest that the Legislature intended to adopt the definitions, provisions for collection, exemptions, etc., of the use tax as provided for in S.B. No. 731 for the administration of the three-fourths of 1 percent use tax adopted in S.B. No. 403. In this respect, Section 1 of S.B. No. 403, particularly in reviewing the provisions of Sections 29 and 38 of H.B. No. 731, must be construed to mean that the definitions and terms as applied to the administration of the sales tax in H.B. No. 731 are to be used and adopted in administering the three-fourths of 1 percent sales tax adopted in S.B. No. 403. Section 3 of S.B. No. 403 must be construed to mean that the definitions, etc., relating to the use tax as found in H.B. No. 731 shall apply to the administration of the three-fourths of 1 percent use tax as provided for and adopted in S.B. No. 403.

The reference to Section 27 in Section 3 of S.B. No. 403 is obviously an error, because Section 27 pertained to matters other than

definition. Section 27 was repealed by Section 9 of H.B. No. 943, but its provisions were incorporated in Subsection 2 of Section 3 of H.B. NO. 943.

Both Section 1 and Section 3 of H.B. No. 403 are substantially the same language, except the reference to section numbers is different. The full intent of these sections can be ascertained from the language itself without specific reference to the section numbers. Specifically, such language as " * * *and any other provisions of law now in effect or which may become effective relating to the use tax shall apply and are hereby made applicable to the tax imposed under the provisions of this section." The same language is found in Section 1, except reference is made to the sales tax instead of the use tax.

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