

OPINION
67-299

July 31, 1967 (OPINION)

Mr. Edwin Sjaastad

Tax Commissioner

RE: Taxation - Sales Tax - Exemptions for Residents of Other States

This is in response to your request for an opinion as to whether or not section 4, subsection 12, of chapter 459 of the 1967 Session Laws, which exempts gross receipts from North Dakota sales tax for sales made to Minnesota residents in North Dakota under certain conditions will continue to be in force after August 1st, 1967, which is the date the Minnesota Sales Tax Law goes into effect.

Section 4, subsection 12 of chapter 459 of the 1967 Session Laws, provides as follows:

"Section 4. EXEMPTIONS. There are specifically exempted from the provisions of sections 2 through 25 of this Act and from computation of the amount of tax imposed by them the following:

* * *

12. Gross receipts from all sales otherwise taxable under section 3 of this Act when made to persons who are residents of adjoining states which do not impose or levy a retail sales tax; provided that such persons are in the state of North Dakota for the express purpose of making such purchases, and not as tourists; and provided further that any such person furnish to the North Dakota retailer a certificate signed by him in such form as the tax commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless such certificate is furnished it shall be presumed, until the contrary is shown, that such person was not in the state of North Dakota for the express purpose of making such purchases; provided further that this exemption shall not apply to any sale to any person of the sales price is ten dollars or less. The deduction for this exemption shall not exceed one and one-half of the amount of the deduction for exempt sales in interstate commerce which the retailer was legally entitled to deduct on his sales tax returns for the calendar year 1964. If no deduction was taken for interstate commerce sales on returns filed for the calendar year 1964 or if no returns were required to be filed for the calendar year 1964, the deduction for this exemption shall not exceed the average interstate commerce deduction legally allowed by retailers conducting similar business, as determined by the tax commissioner.

* * *."

Exemptions in a statute are strictly construed and any doubts are

resolved in favor of the general provision rather than the exception. (C.J.S., section 382, pg. 892.) The same authority, on page 891, states that "* * * implied exemptions are not made by the legislature cannot be read into the Act and are not favored."

In order to find an implied exemption it would have to rest on public policy and a maximum of natural justice so as to avoid absurd and unjust consequences. The exemption in question is the first of its kind in North Dakota and came into being by the enactment of chapter 459 of the 1967 Session Laws. We are mindful that the State of South Dakota has had a sales tax for over twenty years and under its provisions some items are exempt which are not exempt under the North Dakota Act. The North Dakota Tax Department in implementing the provisions of section 4, subsection 12, did not give any instructions or specific consideration to the items which were not taxable under the South Dakota Act.

In fact, no exemption was made available to residents of South Dakota under the provisions of section 4, subsection 12. Quite obviously the position was taken, and logically so, that the exemptions applied only to residents of a neighboring state which did not impose or levy a retail sales tax. It is not whether certain items are exempt but whether or not the state has a retail sales tax.

The exemption under subsection 12, as quoted herein, is available only to residents of adjoining states which do not impose or levy a retail sales tax. The exemption is not on items which are not subject to a sales tax. The condition which gives rise to the exemption is where no retail sales tax or levy is imposed in the adjoining, neighboring state. Had the legislature intended to exempt from the North Dakota sales tax those items which are not taxed in the neighboring state, it could easily have employed such language. The language which is employed in section 4, subsection 12, is clear and unambiguous and as such is not subject to construction.

There is no language in the North Dakota Sales Tax Act which suggests that those items which are not subject to the sales tax in the neighboring state are exempt under the North Dakota Act.

The proviso in the exemption in section 4, subsection 12, does not provide for an exemption in itself but is merely a further limitation as to conditions under which the exemption is available after meeting the first requirement.

It is therefore our opinion that as of August 1st, 1967, the date upon which the Minnesota Sales Tax goes into effect, the exemptions from North Dakota sales tax to residents of the State of Minnesota will no longer be available.

It is our further opinion that the Legislature has not provided for exemptions for certain items that are not taxed and as such no exemptions are available under the North Dakota Act even though such items are not subject to the sales tax in Minnesota.

Because of the answer to the question submitted, there is no need to answer questions nos. 2, 3, and 4.

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