

**OPINION
67-315**

March 23, 1967 (OPINION)

Mr. Edwin Sjaastad

Tax Commissioner

RE: Taxation - Use Tax - Exemptions for Poor and Needy

This is in response to your letter dated March 8, 1967, in which you state the following:

"The office of the state tax commissioner has, pursuant to section 57-39-05 and section 57-40-16 of the North Dakota Century Code, received from the Florence Crittenton Home of Fargo, North Dakota, the attached request for refund of use tax paid to suppliers of merchandise purchased by the home.

"You will note that the Florence Crittenton Home is requesting a refund of taxes it has paid on the repair of tangible personal property owned by the home on office supplies and furniture purchased, and on a number of other items.

"You will further note that section 57-39-05 provides that a relief agency may apply to the commissioner for a refund of the amount of tax paid to its supplier on the purchase of 'any goods, wares or merchandise used for free distribution to the poor and needy.'

"I respectfully request your opinion as to whether the phrase 'goods, wares or merchandise used for free distribution to the poor and needy' requires that the merchandise purchased by the relief agency be actually distributed to the poor and needy, or whether any tax paid on merchandise purchased by the relief agency for use by the relief agency in rendering services to the poor and needy would be subject of a tax refund."

In examining section 57-39-05 of the North Dakota Century Code, it is observed that to obtain a refund of sales tax paid on the purchases of goods, wares or merchandise, the items must be "used" by the relief agency or local governmental unit for the free distribution to the poor and needy and a claim must be submitted by the agency or unit to the Tax Commissioner which must disclose the total amount or amounts expended "directly or indirectly" for goods, wares or merchandise used for free distribution to the poor and needy.

In researching this matter, I find that the above statute has not been interpreted by the courts of this state nor have I found any cases in other jurisdictions construing statutes similar to section 57-39-05.

The words "used", "directly" and "indirectly" are not defined in the sales - use tax laws and, consequently, the statutory rule of construction requires that they be interpreted in their common and ordinary sense. See section 1-02-02 of the North Dakota Century

Code.

The word "used" is defined as: "Employed in accomplishing something." See Webster's International Dictionary (unabridged). Also see Black's Law Dictionary (Fourth Ed.) and 43 W&P 479.

The term "directly" is defined as: "In a direct way without anything intervening, not by secondary, but by direct means." See Black's Law Dictionary (Fourth Ed.).

The term "indirectly" is defined as: "Not direct is relation or connection; not having an immediate bearing or application; not relating in the natural way." See Black's Law Dictionary. This term is also generally defined as an accomplishment by remote or roundabout means. See 21 W&P 367-370 and Webster's New International Dictionary.

Applying the above definitions, it would appear that the statute provides for a refund of sales-use tax expended by any relief agency or governmental unit for goods, wares or merchandise, actually distributed free of charge to the poor and needy as well as to tax expended on the purchase of those items to be used by the agency or unit in connection with or to accomplish the distribution of free goods, wares or merchandise to the poor and needy.

It is therefore my opinion that sales or use tax paid on the purchase price of office machines, repair thereto, furniture purchased, etc., if essential and if actually employed by the agency or governmental unit in the free distribution of goods, wares or merchandise to the poor and needy, would properly be the subject of a tax refund.

HELGI JOHANNESON

Attorney General