

Office of the Attorney General
State of North Dakota

Opinion No. 83-29

Date Issued: August 9, 1983

Requested by: Representative Mike Hamerlik

--QUESTION PRESENTED--

Whether a Minnesota resident must pay sales tax when purchasing a taxable item of tangible personal property in North Dakota even though that same item is exempt from the Minnesota sales tax.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a Minnesota resident must pay sales tax when purchasing a taxable item of tangible personal property in North Dakota even though that same item is exempt from the Minnesota sales tax.

--ANALYSIS--

The North Dakota Sales Tax Act has been codified as Chapter 54-39.2 of the North Dakota Century Code. Subject to certain constitutional limitations, a state may enact its own excise tax. 53 C.J.S. Licenses § 6 (1948). Generally, the sales tax is imposed on purchases made inside the state. *Boeing Company v. Omdahl*, 169 N.W.2d 696 (N.D. 1969).

Section 57-39.2-04, N.D.C.C., exempts certain transactions from the sales tax. Section 57-39.2-04(12), N.D.C.C., provides the following exemption:

57-39.2-04. EXEMPTIONS. There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

12. Gross receipts from all sales otherwise taxable under this chapter when made to persons who are residents of adjoining states which do not impose or levy a retail sales tax or are residents of Canada; 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 who is a resident of another state if the sales price is twenty-five dollars or less to any person who is a resident of Canada if the sales price is twenty-five dollars or less. (Emphasis supplied.)

The State of Minnesota has imposed a sales tax. Chapter 297A of the Minnesota Statutes Annotated.

In general, exemption from sales taxes must be expressed in clear and unambiguous language. They are not to be implied or presumed. 53 C.J.S. Licenses § 316 (1948). Also see *Mills v. Board of County Commissioners*, 305 N.W.2d 832 (N.D. 1981). Furthermore, if the words of a statute are clear and free of ambiguity, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit. Section 1-02-05, N.D.C.C.

South Dakota has also imposed a sales tax so Montana is the only adjoining state that does not impose or levy a sales tax. Chapter 10-45 South Dakota codified Laws. With this in mind, the Tax Commissioner, with the approval of the Attorney General, has promulgated Administrative Rule Section 81-04-02-28. This Rule serves to facilitate the administration of Section 57-39.2-04(12), N.D.C.C., and specifically refers to the fact that the exemption only applies to residents of Montana and Canada.

Therefore, it is my opinion that a Minnesota resident must pay sales tax when purchasing a taxable item of tangible personal property in North Dakota even though that same item is exempt from the Minnesota sales tax.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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