

Office of the Attorney General
State of North Dakota

Opinion No. 85-35

Date Issued: October 3, 1985

Requested by: Kent Conrad
North Dakota Tax Commissioner

--QUESTIONS PRESENTED--

Whether the sales tax of one percent imposed by the City of Grand Forks must be based upon the gross receipts from all sales regardless of the amount of tax collected by a retailer from a consumer under a bracket system adopted by the City.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the sales tax of one percent imposed by the City of Grand Forks must be based upon the gross receipts from all sales regardless of the amount of tax collected by a retailer from a consumer under a bracket system adopted by the City.

--ANALYSIS--

Article 3 of the Grand Forks Home Rule Charter grants the City the authority to impose a one percent retail sales tax, subject to certain conditions. The Grand Forks City Council implemented this provision of the City's charter by enacting an ordinance which imposes a city sales tax. Grand Forks Ordinance No. 2607.1. With only a few exceptions, the City sales tax is drafted in language that is identical to that of the State's sales tax law. N.D.C.C. Ch. 57-39.2.

In particular, the pertinent part of the imposition language of N.D.C.C. § 57-39.2-02.1 reads as follows:

. . . there is imposed a tax of four percent upon the gross receipts of retailers from all sales at retail. . . .

Likewise, the pertinent part of the imposition language of Section 2 of the City Ordinance reads as follows:

. . . there is imposed a tax of one percent (1%) upon the gross receipts of retailers from all sales at retail. . . .

Section 1(4)(7)(8) of the City Ordinance defines 'gross receipts', 'sale at retail', and 'retailer'. These definitions are adopted directly from N.D.C.C. § 57-39.2-01(3)(7)(8).

It is a rule of statutory construction in North Dakota that when a law is adopted from another jurisdiction, the contemporaneous construction of its provisions by the courts of that jurisdiction are also adopted. *Bartels v. City of Williston*, 276 N.W.2d 113, 118 (N.D. 1979); *Federal Land Bank of St. Paul v. State*, 274 N.W.2d 580, 582 (N.D. 1979); *Hermanson v. Morrell*, 252 N.W.2d 884, 889 (N.D. 1977).

In *F.W. Woolworth Co. v. Gray*, 46 N.W.2d 295 (N.D. 1951), the North Dakota Supreme Court held that the retail sales tax must be based on the gross receipts from all sales regardless of the amount of the tax collected by the retailer from the consumer under a bracket system authorizing the retailer to collect the tax.

In *Woolworth*, *supra*, the Court held as follows:

While the act contemplates that the burden of the tax shall be imposed upon the purchaser, the obligation to pay the tax is laid upon the seller, not upon the purchaser. See, *In re Atlas Television Co.*, 273 N.Y. 51, 6 N.E.2d 94. The obligation of the purchaser is to the retailer who has made the sale, and added the tax to the sales price or charge, in which case the tax so added becomes a part of the sales price or charge, and a debt from the consumer or user to the retailer and recoverable at law as such in the same manner as other debts.

Id. at 304-305.

Therefore, the sales tax of one percent imposed by the City of Grand Forks must be based upon the gross receipts from all sales regardless of the amount of the tax collected by a retailer from a consumer under a bracket system adopted by the City.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until the questions presented are decided by the courts.

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