

OPINION
54-117

June 12, 1954 (OPINION)

TAXATION

RE: Use Tax on Equipment Television Materials

We have your request of June 8, 1954, for an opinion on the question as to whether or not the interstate commerce exemption found in section 57-4003(3) of the North Dakota Use Tax Act is applicable to materials and equipment used in transmission of television programs.

The tangible property which makes up telecasting facilities is used by North Dakota stations in telecasting programs which originate from network sources located outside this state and reception of telecasts by North Dakota stations is received outside this state.

The interstate commerce aspects of radio, and, it follows, television, are stated in 44 American Jurisprudence 186 et sec, citing extensive authorities. "The interstate broadcasting and reception of radio communications are a species of interstate commerce."

In the cases of Southern Pacific Company v. Gallagher 306 U.S. 167, 59 S.Ct. 389; and Pacific Telephone and Telegraph Company v. Gallagher 306 U.S. 182, 59 S.Ct. 396, decided by the Supreme Court of the United States in 1939, the California use tax was held not violative of the interstate commerce clause of the federal constitution on the theory that there was a taxable moment when goods had reached the end of their interstate transportation and had not begun to be consumed in interstate commerce.

Section 57-4003(3) N.D.R.C. 1943 exempts "Tangible property used in interstate transportation and interstate commerce" from the provision of the use tax law. Such exemption is not included in the use tax law of the State of California.

Therefore, in view of the general recognition of interstate broadcasting and reception of radio communications as a species of interstate commerce and the specific exemption of tangible property used in interstate commerce in our use tax law, it is the opinion of this office that television transmission material and equipment purchased for use in North Dakota is not subject to the North Dakota use tax when such material and equipment are used in the transmission of television programs which originate from network sources located outside this state and reception of such telecasts is received outside this state.

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