

*Attorney General*

CHEYENNE, WYOMING 82002

V. FRANK MENDICINO  
ATTORNEY GENERAL

March 24, 1976

OPINION NO. 76-01

TO: Rudolph Anselmi, Chairman  
State Tax Commission and  
Board of Equalization

BY: V. Frank Mendicino  
Attorney General

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QUESTION: Are sales made by weed and pest control districts  
subject to a Wyoming sales tax?

ANSWER: Yes.

DISCUSSION

The Wyoming Weed and Pest Control Act of 1973, provides, in W.S. 11-69.10(b), that boards of directors of weed and pest districts may sell agricultural chemicals which are registered with the Wyoming Department of Agriculture. The Act also authorizes application of chemicals by a district under specific circumstances commonly known as "force control" programs. This opinion, however, is limited to "sales" of chemicals pursuant to W.S. 11-69.10(b). Applications of chemicals by districts under "forced control" programs under W.S. 11-69.10(a) are considered "charges" as distinguished from "sales". See page 858, Official Opinions of Attorney General 1948-1953.

A sale is defined by W.S. 39-287(b) of the Selective Sales Tax Act of 1937 as:

"[A]ny transfer of title or possession or both, exchange, barter, ... in any manner or by any means whatsoever, of tangible personal

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property, for a consideration..."

Further, a retail sale is declared by W.S. 39-287(e) to be:

"All sales made...to a consumer or user or to any person for any purpose other than resale..."

Tangible personal property is set forth by W.S. 39-287(1) as:

"Personal property which may be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses."

These definitions of "sale", "retail sale" and "tangible personal property" are extremely broad. A basic rule of taxation expressed by the Wyoming Supreme Court is that exemptions are not favored and taxation is held to be the rule and the exemption the exception. There is a presumption against exceptions to taxation and in favor of the taxing power. State Board of Equalization v. Wyoming Auto Dealers, Association, 395 P.2d 741 (Wyo.), Chicago and Northwestern Railway Co. v. City of Riverton, 246 P.2d 789 (Wyo.). This rule, of course, means that exemptions must be clearly expressed and specifically provided.

A search of the Wyoming statutes has revealed no exemption for sales of chemicals by weed and pest control districts. The transfer of title or possession of the chemical from the district to the consumer or user is clearly a retail sale on which an excise tax is levied by W.S. 39-291(a).

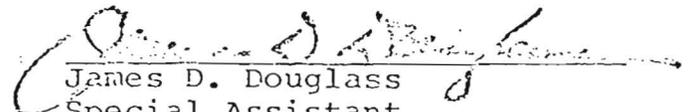
The fact that weed and pest districts could be construed to be political subdivisions does not ipso facto exempt their sales from taxation. The Wyoming Sales Tax Act in W.S. 39-287(a) declares that the term "person" shall include political subdivisions of the State. A "retailer" is defined in subparagraph (e) of the same statute as a person doing a retail business and selling to the user or consumer. Thus when the districts sell chemical, pursuant to W.S. 11-69.10(b), the districts are by the terms of the Sales Tax Act, "persons" making "retail sales" to consumers or users. Such sales are taxable pursuant to W.S. 39-291(a).

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This opinion expressly overrules the opinion dated September 29, 1954, by Robert A. McKay, Assistant Attorney General, Official Opinions Attorney General of Wyoming 1953-1956.

Respectfully submitted,

  
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