

DATE: December 13, 1977
TO: Charles Carroll
FROM: Larry J. Bourret
SUBJECT: Tax Exemption (sales tax) for Conservation Districts

You will recall that we were asked about this subject at the WACD meeting last week.

Would you review past opinions on this and advise me if an opinion has been issued previously?

Thank you.

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January 4, 1978

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V. FRANK MENDICINO
ATTORNEY GENERAL

Larry J. Bourret
Commissioner
Wyoming Department of Agriculture

RE: Wyoming sales tax and Conservation Districts

Dear Larry:

This is in reply to your letter of December 13, 1977, concerning whether Conservation Districts within the State of Wyoming are exempt from sales tax.

The only previous Attorney General Opinion pertaining to taxes involving conservation districts that I am aware of is Opinion No. 83 dated July 18, 1956, which held that the real property owned by such districts was subject to taxation. This conclusion was based on the fact that the legislature in 1955 took away the exemption for such taxes as provided in the 1945 Act.

However, with respect to sales taxes, Attorney General Opinion No. 76-01 dated March 24, 1976, which held that sales made by weed and pest control districts are subject to the Wyoming sales tax, is applicable to conservation districts.

As stated in both the 1956 and 1976 Opinions, a statutory grant of exemption from taxation is never presumed, but must be clearly conferred in plain terms and strictly construed. Consequently, any sales (as that term is defined in the Weed & Pest Opinion) made by a conservation district under the authority conferred upon it, and specifically under the provisions of W.S. 11-245(G) and (L), would be subject to sales tax, as the current Act (Wyoming Conservation Districts Law, W.S. 11-234 through 11-249) does not specifically exempt a district's sales from the collection and remittance of such tax.

Larry J. Bourret
January 4, 1978
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On the other hand, sales to conservation districts are specifically exempt from sales tax and the district does not have to pay the same since they are a governmental subdivision of the State. (W.S. 39-6-405(a)(xi) effective January 1, 1978.) This district exemption was contained in prior law but recodified by the 1977 Legislature.

This letter of advice is strictly for your use and the agency involved; it does not nor should it be construed to be a formal Attorney General's opinion and accordingly, it is not to be disseminated, cited, published or reprinted as an Attorney General's opinion. ✓

Very sincerely yours,

A handwritten signature in black ink, appearing to read "Charles J. Carroll", written over a circular stamp or seal.

Charles J. Carroll
Deputy Attorney General
Civil Division

CJC:gs
enc:



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

James D. Douglass
Special Assistant
Attorney General

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

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).

Mr. Anselmi
March 24, 1976
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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,



V. Frank Mendicino
Attorney General



James D. Douglass
Special Assistant
Attorney General

JDD:VFM:rkk