

October 26, 1950
Op. No. 50-236

Mr. Wilford R. Richardson
County Attorney
Graham County
Safford, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Richardson:

We have your letter of October 14, 1950 in which you
state:

"The Gila Valley Soil Conservation District has requested my opinion as to whether they are liable for sales tax on seed purchased from the Northrup King Co. of Phoenix for individual members of the district.

* * * * *

I will appreciate your assistance in this matter."

The excise Revenue Act of 1935, as amended, reads in part as follows:

"Imposition of tax.--From and after the effective date of this Act, there is hereby levied and shall be collected by the tax commission for the purpose of raising public money to be used in liquidating the outstanding obligations of the state and county governments, to aid in defraying the necessary and ordinary expenses of the state and the counties, to reduce or eliminate the annual tax levy on property for state and county purposes, and to reduce the levy on property for public school education to the extent hereinafter provided, annual privilege taxes measured by the amount or volume of business done by the persons on account of their business activities and in the amounts to be determined by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, in accordance with the following schedule:

* * * * *

(c) At an amount equal to two per cent of the gross proceeds of sales or gross income from the business upon every person engaging or continuing within this state in the following businesses:

1. Selling any tangible personal property whatsoever at retail, except bonds and stock. * * *
(Section 73-1303 ACA 1939, Chap. 57, 19th Legislature, First Special Session)

The word "person" is defined by the Act to include any

" * * * individual, firm copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context."
(Section 73-1302 ACA 1939, Laws 1937, First Special Session, Chap. 2, Sec. 1)

The Gila Valley Soil Conservation District is not exempt from the application of the Act, so its tax liability for the transaction you relate must be ascertained the same as that of any other "person".

The terms "sale" and "sale at retail" are defined as follows:

" 'Sale' means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration, and includes any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; it also includes the fabrication of tangible

personal property for consumers who furnish either directly or indirectly the materials used in the fabrication work and the furnishing, preparing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

'Retail sale' or 'sale at retail' means a sale for any purpose other than for resale in the form of tangible personal property, but the expressions 'transfer of possession,' 'lease,' and 'rental' as used in the definition of 'sale' means only such transactions as are found upon investigation to be in lieu of sales as defined without the words 'lease or rental';"
(Section 73-1302 ACA 1939, supra)

It follows that if the District acted in its own right in purchasing the seed, its activity was a retail sale within the meaning of the Act.

The next question which confronts us is whether or not the District was in the business of selling such property. The term "business" is defined as:

" 'Business' includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage either direct or indirect, but not casual activities or sales;"
(Section 73-1302 ACA 1939, supra)

The Arizona Supreme Court has held that a sale by a co-operative to one of its members, which sale is made with the object of benefit or advantage to the member, makes such co-operative subject to the tax in spite of the fact that such sale was not a direct benefit or advantage to the corporate entity as such. O'Neil v. United P. & C. Co-operative, 57 Ariz. 295, 113 P. 2d 645.

We believe that, assuming the District actually purchased the seed in its own right, it is subject to the retail

tax, irrespective of any profit or gain to the District itself.

However, from your statement of the fact situation, we are not certain whether the District made the purchase in its own right or merely as agent for the various members. As you can see, this would depend upon numerous factors, one of which is the intent of all parties concerned, including the Northrup King Co.

If the sale by the Northrup King Co., was made to the District as agent for the members for their consumption, that was the only sale which took place and would necessarily fall within the definition of "retail sale". In this event, the District, not having made any sale whatsoever, would not be liable for the tax; however, the Northrup King Co., would then be liable for 2% of the gross proceeds of the transaction. In short, there was a retail sale made, and the "person" who made it is liable for the tax; whether such retail sale was made by the Northrup King/Co., or the District depends upon facts which we do not have before us.

Specifically answering your inquiry, it is our opinion that:

1. If the District made a purchase and resale of seed, it is subject to the retail tax.
2. If the District acted merely as an agent in purchasing seeds in the name and right of its members, it did not make a sale and is not subject to a tax for such transaction.

Trusting the foregoing will assist you in this matter,
we are

Very truly yours,

FRED O. WILSON
Attorney General

WILBERT E. DOLPH, JR.
Assistant Attorney General

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