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September 14, 1955
Opinion No. 55-190

REQUESTED BY: State Tax Commission

OPINION BY: ROBERT MORRISON, The Attorney General
MELVIN J. MIRKIN, Assistant Attorney General

QUESTION: 1. Are optometrists required to take out a sales tax license and pay tax on the sale of glasses to consumers?

2. If so, should the tax be applied on the gross income from the sale of a pair of glasses, if the customer is billed a total amount of the sale, or a flat charge, which would include the examination and manufacture of the glasses?

CONCLUSION: 1. Yes.

2. If an optometrist keeps his books in a manner that separates the gross proceeds from the sale of eyeglasses from his gross income from services, then the tax will only be imposed upon the gross proceeds from the sale of spectacles; otherwise, a tax will be imposed upon the total of his gross proceeds and gross income.

"Sale" is defined by statute as:

"...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,..."
Sec. 73-1302, ACA, 1939.

"Retail sale" is defined as:

"...a sale for any purpose other than for resale in the form of tangible personal property,..."
Sec. 73-1302, supra.

Section 73-1303(c) 1b, ACA, 1939, as amended, exempts from taxation professional or personal service occupations in which sales of personal property are only inconsequential elements thereof. However, the furnishing of spectacles is somewhat more than an inconsequential element of the services provided by an optometrist. Therefore, this section would not apply.

Section 73-1303(c) 1c, ACA, 1939, as amended, provides as follows:

"Services rendered in connection with or in addition to the sale of tangible personal property at retail by businesses or occupations other than those to which subsection (b) of this section is applicable.

"When any person is engaged in a business or occupation to which subsection (c) of this section is applicable, his books must be kept so as to show separately his gross proceeds from the sale or tangible personal property and his gross income from his sale or services, and if not so kept this tax shall be imposed upon the total of his gross proceeds of sales of tangible personal property and gross income from services."

It is the opinion of this office that optometrists come within this section. Therefore, if the optometrist keeps his books in a manner that separates his gross proceeds from the sale of eyeglasses from his gross income from services then the tax will only be imposed upon the gross proceeds from his sale of spectacles. Otherwise, a tax will be imposed upon the total of his gross proceeds and gross income.

Section 73-1312(a), ACA, 1939, as amended, provides that every person having a gross proceeds of sale upon which a privilege tax is imposed shall obtain a privilege sales tax license. As the optometrist is one of these persons, he must secure a license.

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