OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-3681
Re: Amount of gross receipts tax to be paid upon sale of radio where customer trades in old radio as part of purchase price, and whether carrying charges and installation charges are to be figured in arriving at the amount of such tax.

In your letter of June 10, 1941, you request our opinion in response to the following question:

"A radio dealer has in his stock a radio that retails for $100.00. In the sale of this particular radio the dealer allows $50.00 trade-in for the customer's old radio and finances the remaining $50.00 by adding $5.00 as carrying charges and $5.00 for installation charges.

"On what amount will the dealer be required to report to this department and pay the gross receipts tax as levied by Article X of House Bill No. 8, Acts of the Regular Session of the Forty-Seventh Legislature?"

Section 1 of Article 10, House Bill No. 8, Forty-Seventh Legislature, reads in part as follows:

"Each person, partnership, association, or corporation selling at retail new radios or new cosmetics, shall make quarterly on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the owner, manager, or if a corporation, an

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> officer thereof, showing the aggregate gross receipts from the sale of any of the above-named items for the quarter next preceding; and shall at the same time pay to the Comptroller a luxury excise tax equal to two (2) per cent of said gross receipts as shown by said report.
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> "Nothing herein shall be construed so as to require payment of the tax on gross receipts herein levied more than once on the proceeds of the sale of the same article of merchandise. A retail sale as used herein, means a sale to one who buys for use or consumption, and not for resale. Gross receipts of a sale means the sum which the purchaser pays, or agrees to pay for an article or commodity bought at retail sale."

While it may be said that generally the word "sum" is used to denote money, such is not necessarily its meaning. The second-hand article taken in as a part of the purchase price is unquestionably a part of the receipts for the new radio. It is noted that in the first paragraph of Section 1 the tax is fixed at an amount equal to 2% of the "gross receipts" for the sale of the new radio. It seems rather clear to us that to give the word "sum," as used in the last sentence of Section 1, the meaning "value" would come nearer comporting to the intention of the Legislature than to limit the meaning of the word to money and allow the sale to go tax free insofar as the purchase price is represented by goods instead of money. In construing a Transfer Tax Law providing for a tax "at the rate of 1% on any amount in excess of $5,000.00 up to the sum of $50,000.00," a Surrogate's Court, in the case of In re Elleton's Estate, 136 N. Y. S. 455, said:

> "The use of the words 'amount' and 'sum' in the statute is unfortunate, as these words are popularly used to denote money, but, as

> applied in this statute, they must be taken to mean 'value,' as the tax is upon all kinds of property. If a parcel of real estate is transferred, the statute must be made to read 'value,' instead of 'amount' or 'sum,' and the phrase fixing the rates of tax must be interpreted to read 'one per centum on any transfer of property of the value in excess of five thousand dollars up to the value of fifty thousand dollars, etc.' * * * "

We presume that the item of $5.00 carrying charges mentioned by you is for interest. If so it is not a part of the "gross receipts" for the radio, it is compensation for the use of money. Nor is the installation charge a part of such receipts, it being a charge for a service.

Our answer to your question is that the amount upon which the tax will be calculated is the sum of $100.00 in the fact situation submitted by you.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JUN 17, 1941

By Glenn R. Lewis
Glenn R. Lewis
Assistant

GRL:ej

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN