

Subject FILE
Opinion
Sales Tax General
Copy to _____



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 8, 1974

Opinion No. 74-267

Mr. Edward R. Moses, Esq.
City Attorney
City Building
Great Bend, Kansas 67530

RE: K.S.A. 1973 Supp. 79-3603

Dear Mr. Moses:

You have requested from this office an interpretation of K.S.A. 1973 Supp. 79-3603 (referred to in your letter as Senate Bill No. 439--1973 Session). Essentially you ask three questions: (1) is a three percent (3%) tax imposed upon the gross receipts from the service of renting or leasing machinery, equipment or other personal property owned by a city and which was purchased from the proceeds of industrial revenue bonds (K.S.A. 12-1740, et seq., and as amended) issued subsequent to July 1, 1973; (2) if this three percent tax (3%) is to be levied in such case then what effect will a lease-purchase agreement have upon the levying of this tax; and, (3) does the term "gross receipts" as defined by K.S.A. 1973 Supp. 79-3602(h) include both payments for principal and interest?

K.S.A. 79-3603 provides in pertinent part:

"From and after the effective date of this act, for the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby

Mr. Edward R. Moses, Esq.
Page Two
August 8, 1974

levied and there shall be collected
and paid a tax as follows:

(h) a tax at the rate of three per-
cent (3%) upon the gross receipts from
the service of renting or leasing
of tangible personal property except
such tax shall not apply to the renting
or leasing of machinery, equipment or
other personal property owned by a
city and purchased from the proceeds
of industrial revenue bonds issued
prior to July 1, 1973, in accordance
with the provisions of K.S.A. 12-1740
to 12-1749, inclusive, and acts amend-
atory thereto, . . ."

Clearly since an exception is not provided, a city which leases
or rents equipment, machinery or other personal property pur-
chased with the proceeds of industrial revenue bonds issued
subsequent to July 1, 1973 may not escape paying a three per-
cent (3%) tax upon the gross receipts from such leases or
rentals.

The question next presented is what effect does a lease-
purchase agreement have upon this sales tax where the equip-
ment, etc., is to be sold to the lessee pursuant to the
industrial revenue bond act. K.S.A. 1973 Supp. 12-1741
authorizes a city to enter into leases or lease-purchase
agreements by ordinance which inter alia covers equipment,
machinery and other personal property necessary to implement
the express objective of the act. K.S.A. 1973 Supp. 12-1742
places the following qualifications on these agreements:

"Such agreements shall provide a rental
sufficient to amortize the cost of
facilities to be constructed and equip-
ment, plus the fair market value, on the
date of the agreement, of the site, if it
is necessary to purchase a site . . ."

Absent a specific definition of the term "lease-purchase
agreement" its generally accepted usage anticipates a lease
agreement with an option to purchase (see, Ballantines Law

Mr. Edward R. Moses, Esq.
Page Three
August 8, 1974

Dictionary). A lease-purchase agreement drawn pursuant to K.S.A. 1973 Supp. 12-1742 must therefore provide a lease arrangement to cover sufficiently amortization of the facility and equipment along with the necessary interest and any other obligations assumed under the agreement. The option to purchase in such agreements does not become operative until the leasing provisions have been complied with. Accordingly the lessee does not in fact purchase the facility and equipment until the leasing terms have been fulfilled and the option to purchase is exercised. Therefore, while the leasing takes place a tax must be paid.

In order to determine precisely what represents gross receipts for the purpose of computing the tax due where lease-purchase agreements have been entered into, it is necessary to examine K.S.A. 1973 Supp. 79-3602(h) which provides:

"'Gross receipts' means the total selling price or the amount received as defined in this act, in money, credits, property or other consideration valued in money from sales at retail within this state; and embraced within the provisions of this act: . . ." (Emphasis added)

This definition applied to the question here presented leads this office to the conclusion that "total amount received" must accurately reflect that amount charged lessee for the lease or rental of equipment or machinery. This must necessarily include therefore both that amount representing principal and that representing interest. Thus it is the opinion of this office that a municipality having purchased equipment, machinery or other tangible personal property with proceeds from industrial revenue bonds issued after July 1, 1973 and which leases the same must collect from the lessee a three percent (3%) tax upon the total amount received from said lessee which represents both the principal and interest appertaining directly to the items leased.

If we may be of further assistance please feel at liberty to contact us.

Very truly yours,



VERN MILLER
Attorney General

VM:JPS:bw