Opinion No. 74-267

Mr. Edward R. Moses, Esq.
City Attorney
City Building
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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
levied and there shall be collected and paid a tax as follows:

(h) a tax at the rate of three percent (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 amendatory thereto, . . . ."

Clearly since an exception is not provided, a city which leases or rents equipment, machinery or other personal property purchased with the proceeds of industrial revenue bonds issued subsequent to July 1, 1973 may not escape paying a three percent (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 equipment, 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 equipment, 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
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

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