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STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

September 11, 1974

Opinion No. 74-315

Colonel W. L. Albott
Superintendent
Kansas Highway Patrol
State Office Building
Topeka, Kansas 66612

RE: Sales tax on motor vehicle inspection charges and certificates; K.S.A. 1973 Supp. 79-3603 and Chapter 42, Laws of 1974.

Dear Colonel Albott:

You have requested an opinion from this office relative to the application of sales tax to certain charges for motor vehicle inspections by qualified inspecting stations and the fee charged by the superintendent of the highway patrol for each inspection certificate all pursuant to the provisions of Chapter 42, Laws of 1974.

Chapter 42, Laws of 1974 in pertinent part provides:

"In addition to other powers and duties prescribed by this act, the superintendent [of the Kansas highway patrol] shall:

"(e) establish the fee to be retained by an inspection station for inspecting a motor vehicle, including the issuance of the certificate of approval or rejection, which shall be a uniform fee for each class of

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vehicle throughout the state and shall be a reasonable and just charge based upon the average cost and time necessary to perform the inspection, but in no event shall such fee for any class of vehicle exceed five dollars (\$5).

"Upon completion of an inspection and determination that its equipment is in good condition and proper adjustment, the inspection station shall issue an official certificate of approval for such vehicle.

"(e) Official certificates of approval or rejection shall be purchased by inspection stations from the superintendent at a cost of fifty cents (.50) per certificate."

The specific question posed by your request is whether sales tax as prescribed by K.S.A. 1973 Supp. 79-3603 (a), (p) and (q) is applicable to: (1) the fee charged by the superintendent for the inspection certificate, and; (2) the charge for the actual inspection by an inspecting station.

K.S.A. 1973 Supp. 79-3603 provides in 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:

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"(a) A tax at the rate of three percent (3%) upon the gross receipts received from the sale of tangible personal property at retail within this state:

"(p) a tax at the rate of three percent (3%) upon the gross receipts received from the installation, maintenance, servicing and repairing of tangible personal property not held for sale in the regular course of business, whether or not any tangible personal property is transferred in conjunction therewith, except services rendered in installing property in connection with the original construction of a building or structure, which when installed will become a part of such building or structure;

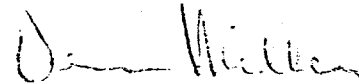
"(q) a tax at the rate of three percent (3%) upon the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are, taxable under the provisions of subsection (p) of this section."

It is the opinion of this office that the fee to be charged by the superintendent for each inspection certificate is not subject to the retail sales tax as prescribed, supra. We find no intent manifest in Chapter 42, Laws of 1974 which would indicate that the legislature desired the superintendent to engage in the business of selling at retail the referenced certificate. Accordingly, we must conclude that since the highway patrol does not qualify as a retailer within the meaning of the act and does not seek the privilege of engaging in the business of selling tangible personal property at retail then the fee for the certificates does not fall within the purview of the retail sales act.

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Further, those charges made by the inspecting stations are not subject to sales tax under the provisions of K.S.A. 1973 Supp. 79-3603 (p) or (q). Absent specific definitions within the statute, general employment of the term "installation", "maintenance", "servicing" or "repairing" does not per se encompass the act of inspection. While the former expressions normally anticipate or embrace the performance of work altering or maintaining the monetary value of tangible personal property not held for sale, the latter does not. Accordingly, it is our opinion that the legislature intended to tax the monetary value change resulting from work performed, and insofar as an inspection does not affect the value of such property it is beyond the scope of the retail sales act.

Very truly yours,



VERN MILLER
Attorney General

VM:JPS:bw