

March 13, 1951

395.0940

Dear Mr.

This is in answer to your letters of January 9 and March 1, addressed to Mr. J. H. Leam, Supervisor of Collections, in which you request an opinion concerning the application of the tax to a sale of tangible personal property at retail by the executrix of the above estate, which has been referred to this office for attention.

A review of our file indicates that this executrix operated the estate during the course of administration of the estate and that she made sufficient sales to constitute her a seller of tangible personal property, for purposes of the Sales and Use Tax Law. Accordingly, it appears that the tangible personal property sold at retail in connection with the sale of the business was held or used in the course of an activity for which a seller's permit was required and that it was one of a series of sales sufficient in number, scope, and character to require the holding of a seller's permit.

As indicated by Ruling 81, copy enclosed, the tax applies to the sale of tangible personal property at retail as there is no specific exemption in the Sales and Use Tax Law relating to sales by an executrix or an estate during the course of probate proceedings.

The report of field audit indicates that the book value of the plant machinery and equipment was regarded as the sales price of the tangible personal property which was sold. As the total sales price for the realty and tangible personal property was considerably higher than the appraised value of such realty and personal property, it appears that the use of the book value did not result in attributing more than a just proportion of the total sales price to the sale of tangible personal property.

As indicated above, upon the basis of the information which we have, it appears that there are no grounds for adjustments to our determination against the executrix.

Very truly yours,

R. G. Hamlin
Associate Tax Counsel

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