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## COMMENT ON SALES TAX\*

RICHARD W. ERVIN \*\*

The legislature of this state, at its extraordinary session in 1949, enacted chapter 26319, laws of Florida, acts of 1949, therein designated as the "Florida Revenue Act of 1949" and now referred to generally as the "Florida Sales Tax Act." As used in the enactment the term "sale" means any transfer of title or possession or both, exchange, barter, lease or rental (conditional or otherwise), in any manner or by any means whatsoever of tangible personal property for a consideration (Section 2(b) of the act). The said term includes the rental of living quarters, sleeping or housekeeping accommodations in hotels, apartment houses or rooming houses, tourist or trailer camps, for less than six months. From these observations it is noted that the enactment includes not only sales of tangible personal property but also the use thereof as well as certain transactions in connection therewith; in other words, we have a limited sales, use and transaction tax. A review of the authorities shows that courts have designated sales taxes as license taxes, privilege taxes, occupational taxes and excise taxes (47 Am. Jur. 196, section 2 and authorities there cited). The legislature of Florida seems to have intended said chapter as an excise tax when it recited (see sections 3, 4 and 5 of said act) "that it is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in" (the businesses described in said sections 3, 4 and 5). Although the amount of the tax is measured by the quantity of the merchandise or services handled, and the rate is based upon the compensation to be paid for the merchandise or services, these are administrative features which do not take the tax out of the category of an excise tax on business engaged in within the state (see *Smith v. City of Miami*, 160 Fla. 306, 34 So. 2d 544, text 548 and 549). The view seems to be almost uniform that taxes of the nature of those imposed by said chapter 26319 are not property taxes but excise taxes (47 Am. Jur. 197, section 2). Such taxes have usually been upheld against the contention that they violate constitutional provisions (47 Am. Jur. 199, section 4 and authorities there cited) for which reason we shall presume that said chapter 26319 is constitutional in most if not all of its provisions and impositions of taxes.

The said Florida Revenue Act of 1949 levies excise taxes against those en-

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\* This short commentary is presented in answer to requests that some information be presented to the bar concerning the Florida Sales Tax Act. Though not intended as a complete article, the staff felt that it would serve as an aid in familiarizing the members of the bar with the phraseology of the act as well as a few of the problems which may arise under this act.

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gaging in the business (1) of operating hotels, apartment houses, rooming houses and tourist and trailer camps where living quarters or sleeping or house-keeping accommodations are rented, leased or let to persons residing therein for periods of less than six months (section 3 of act) ; (2) of selling admissions to places of amusement, including admissions to theatres, outdoor theatres, shows, exhibitions, games, races and similar places of amusement, where the price of admission is forty-one cents or more exclusive of federal taxes (section 4 of the act) ; (3) of selling tangible personal property at retail in this state, or renting, leasing or otherwise furnishing such personal property for a consideration to others (section 5 of the act). Reference is made to said sections 3, 4, and 5, for more particulars as to what is taxed by the act.

The rate of taxation in all three of the above classes is three per cent of the compensation received ; however the act provides that notwithstanding such rate of taxes, in order to avoid fractions of pennies, the following brackets are applicable to such taxable transactions :

(1) On single sales of less than 9¢ no amount shall be added for taxes.

(2) On single sales in amounts from 9¢ to 40¢, both inclusive, 1¢ shall be added for taxes.

(3) On sales in amounts from 41¢ to 70¢, both inclusive, 2¢ shall be added for taxes.

(4) On sales in amounts from 71¢ to \$1.00, both inclusive, 3¢ shall be added for taxes.

(5) On sales in amounts of more than \$1.00, 3% shall be charged upon each dollar or price, plus the above bracket charges upon any fractional part of a dollar in excess of even dollars.

Single sales are to be considered as the total sales of tangible personal property, admissions or rentals made to a customer or combination of customers at any one time, inclusive of total sales made on any one visit to a place of sale.

The statute requires that the dealer or other person paying the sales tax pass it on to the purchaser, user or lessee of the property or services (section 7 of the act) and the use of tokens in connection with the payment and collection of the tax is expressly prohibited by the statute (section 18 of the act). Where property is purchased by tradeins, exchanges and the like the difference between the value of the property acquired and that given as a tradein or in exchange is subject to the sales tax (section 9 of the act). Passes granting free admission to places of amusement are subject to the sales tax on the basis of the price charged for like or similar admissions to the place of amusement. Municipalities are prohibited by section 4 of the act from levying an excise tax on amusement admissions.

The following properties, services and things appear, from the act, to be

exempt from taxation, such exemptions except where otherwise expressly indicated being allowed under section 8 of the act :

*Admissions* to places of amusement operating under the supervision of the state racing commission (this does not extend to other admissions) ; admissions to other places of amusement where the price of the admission is less than forty-one cents, exclusive of federal taxes (Sec. 4) ; *advertising* (see radio stations) ; *agricultural motor propelled equipment* (see motor vehicles) ; *alcoholic beverages*, including beer ; *artificial eyes* ; *artificial limbs* ; *beer* (see alcoholic beverages) ; *books, school* ; *bread* (see general groceries) ; *butter* (see general groceries) ; *canned foods* (see general groceries) ; (*carbonated water* is not exempt, see water) ; *caskets*, when the sales price is less than five hundred dollars ; *cereals and cereal products* (see general groceries) ; *charitable institutions* (see churches) ; *cheesecloth*, when used for shading tobacco ; *churches*, or other religious, educational or charitable institutions, articles sold or leased to or by, in the course of their customary religious, educational or charitable activities. No tax is levied by the act upon shows, pageants and plays where the entire proceeds are to be used solely by a religious, educational or charitable institution (Secs. 4 and 6) ; *cigarettes* ; *clothing*, including shoes, hats and underwear, where the price at which the same is sold is ten dollars or less, on any single item thereof ; provided, that sales of articles of clothing ordinarily sold or offered for sale in a pair, or as a suit or ensemble, shall be considered as single items under this exemption, provided fabrics by the yard classified as wearing apparel fabrics shall be included in the term articles of clothing ; *coal* ; *cocoa* (see general groceries) ; *coffee and coffee substitutes* (see general groceries) ; *coffins*, when the sale price is less than five hundred dollars ; *coke* (see fuels) ; *common household remedies* (see medicines) ; *communication services* ; *containers* used for processing farm products ; *cordwood* (see fuels) ; *crude oil* (see fuels) ; *crutches* ; *cultivating machinery* (see machines and equipment) ; *dentures* ; *diesel oil* (see fuels) ; *detergents* (see soap) ; *educational institutions* (see churches) ; *eggs* (see general groceries) ; *electric power and energy* ; *eyes, artificial* ; *eye glasses* ; *farmers*, produce and livestock raised and sold by section 7 ; *fabrics for clothing* (see clothing) ; *feeds* ; *fertilizers* ; *field seeds* ; *film rentals* ; *fish and fish products* (see general groceries) ; *fish nets and other equipment* (see ships, nets, etc.) ; *flour* (see general groceries) ; *foods and food products* (see general groceries) ; *fruit and fruit products*, including fruit juices (see general groceries) ; *fuels*, including crude oil, fuel oil, gasoline, kerosene, naphtha, lubricating oil, diesel oil, coal, coke and cordwood ; *fuel oil* (see fuels) ; *fungicides* ; *garden seeds* ; *gas* (natural, liquefied and artificial) ; *gasoline* (see fuels) ; *general groceries*, including particularly, food and food products ; *food products* as used herein shall mean and include cereal and cereal products, milk and milk products, oleomargarine, meat and meat products, fish and fish products, fruit and fruit products, spices,

salt, sugar, coffee and coffee substitutes, teas and cocoa, *but shall not* include meals served on or off the premises of the dealer, or drinks or foods furnished, prepared or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes or other table ware, provided by the dealer, or served in restaurants, drug stores, cafeterias, hotels or like places of business, milk, butter, eggs, meat (fresh, cured and salt), flour, meal, cereals, bread, vegetables and vegetable juices, fruit and fruit juices and canned foods. (General groceries does not include gum and soft drinks, or articles that are not edible); *glasses, eye; governmental units* (state and federal) all sales made to or by, and all sales made to or by the United States Government, the State of Florida, or any county or municipality within the State, including sales made to contractors of tangible personal property going into and becoming a part of public works and projects owned by any such government or governmental unit; (*gum* is not exempt, see general groceries); *harvesting machinery* (see machines and equipment); *hats* (see clothing); *hearing devices; ice; insecticides; insurance service transactions* (see service transactions); *kerosene* (see fuels); *limbs, artificial; lubricating oils* (see fuels); *lunches, school; medicines*, compounded in a retail establishment by a pharmacist licensed by the State of Florida according to an individual prescription or prescriptions written by a practitioner of the healing arts licensed by the State of Florida, and *common household medicinal remedies* recommended and generally sold for the relief of pain, ailment, distress and disorders of the human body according to a list prescribed and approved by the State Board of Health which said list shall be certified to the comptroller and from time to time be included in the rules and regulations prescribed by the comptroller; (*mineral water* is not exempt, see water); *motion picture film*, rental of the established businesses (sec. 5); *motor vehicles*, and motor propelled agricultural equipment, but not including parts thereof when sold as separate transactions; *naphtha* (see fuels); *nets used for fishing* (see ships, nets, etc.); *newspapers; oleomargarine* (see general groceries); *orthopedic appliances; personal service transactions* (see service transactions); *prosthetic appliances; planting machinery and equipment* (see machinery and equipment); *plowing machinery and equipment* (see machinery and equipment); *professional service transactions* (see service transactions); *radio stations*, all charges for services rendered by, including advertising, line charges, talent fees or charges, and charges for all services of every kind, character and description made by radio stations doing business in the State of Florida; *religious institutions* (see churches); *salt* (see general groceries); *school books and school lunches; service transactions*, professional, insurance and personal, which involve sales as inconsequential elements for which no separate charges are made; *ships, nets and other equipment* used directly in and by licensed commercial fisheries and fishermen; *shoes* (see clothing); (*soft drinks* are not

exempt, see general groceries) ; *soap and soap powders and detergents* ; *spices* (see general groceries) ; *sugar* (see general groceries) ; *suits* (see clothing) ; *teas* (see general groceries) ; *underwear* (see clothing) ; *water*, not exempting mineral water and carbonated water, or any water put up in bottles, jugs or other containers ; *wearing apparel* (see clothing).

The above list of articles entitled to exemption under the Florida Revenue Act of 1949 is not intended as exhaustive but is only intended to embrace a majority of such articles.