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November 30, 1945

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Honorable Edwin W. Mills
Prosecuting Attorney
St. Clair County
Osceola, Missouri

Dear Sir:

Reference is made to your letter of November 20, 1945, requesting an official opinion of this office, and reading, in part, as follows:

"Has the county court the right to return to a merchant a proportionate part of the ad valorem tax he has paid in, upon his selling out or closing out?

"Or can such proportionate part of said tax be credited upon the ad valorem tax of his purchaser who proceeds to sell the same stock of goods at the same location?

* * * * *

"I hold that the first merchant must lose that part of the ad valorem tax he has paid in, and that the purchaser must make return for and pay the full tax on the stock of goods.

"However, the county court will appreciate an opinion from your office, as some of the members consider such course would result in double taxation."

The taxation of merchants is provided for by the provisions of Section 11305, R. S. Mo. 1939, reading as follows:

"Merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares and merchandise which they may have in their possession or under their control, whether owned by them or consigned to them for sale, at any time between the first Monday in March and the first Monday in June in each year: Provided, that no commission merchant shall be required to pay any tax on any unmanufactured article, the growth or produce of this or any other state, which may have been consigned for sale, and in which he has no ownership or interest other than his commission."

After determination of the total amount of tax due by such merchants in accordance with the further provisions of Article 18 of Chapter 74, R. S. Mo. 1939, relating to the taxation of merchants, the taxes are then certified to the county collector and thereafter by him collected as are other state and county taxes. Upon such certification to the collector, the amount thereof becomes fixed, and a duplicate of the total amount of such taxes to be collected by such collector is certified to the state auditor.

Your question then resolves itself into the jurisdiction of the county court to abate on a pro rata basis any portion of such tax so determined and certified. We do not find any cases directly construing the merchants' taxation statutes with respect to this precise point and must, in the premises, rely upon general rules of construction to determine whether or not such action may be taken.

First, we may say that we have examined all of such merchants' taxation statutes and the statutes relating to the duties of the county court in connection with the imposition and collection of such taxes and the correction of erroneous assessments made with respect thereto, and we do not find that any statutory provision has been made for remission of any portion of such taxes found to be due. We do find that provision has been made for the imposition of a merchant's tax upon a merchant engaging in business subsequent to the first Monday in June in any year, such provision being found in Section 11329, R. S. Mo. 1939, reading as follows:

"When any person or corporation shall commence the business of merchandising in any county in this state after the first Monday in June, in any year, he shall execute a bond as provided for in section 11306, conditioned that he will, on the first day of January next succeeding, furnish to the collector of his county a statement, verified as herein required, of the largest amount of goods, wares or merchandise which he had on hand or subject to his control, whether owned by himself or consigned to him for sale, on the first day of any month between the time when he commenced business as a merchant, and the said first day in January next succeeding; upon which statement he shall pay the same rate of tax as other merchants, to be estimated as the time from the day on which he commenced business to the first Monday in June next succeeding shall be to one year."

We further find that judicial construction of the statutes imposing the annual tax upon merchants indicates that such taxes are due for the full year in the event any person engaged in the business of a merchant at any time between the first Monday in March and the first Monday in June in any year, even though such business be discontinued prior to the first Monday in June.

In this regard, we direct your attention to the case of State ex rel. Fisher v. Rodecker, 145 Mo. 450, l. e. 461, from which we quote:

" * * * if at any time between the first Monday in March and the first Monday in June of that year, Rodecker and Cohen were engaged in selling goods, wares, and merchandise at Bates county it was their duty on the first Monday in June in that year to file in the office of the clerk of the county court of that county a statement of the greatest amount of goods, wares, and merchandise which they may have had on hand at any time between those dates, whether they were in fact engaged in the mercantile business on the first Monday of June, 1894, or not.

" * * * And it is provided by section 6905, Revised Statutes, that every person or co-partnership of persons, who shall fail to file the statement, and at the time and in the manner required by section 6899, Revised Statutes, shall be deemed to have forfeited the bond given by him or them, and judgment shall be rendered for the plaintiff in damages for three times the amount of revenue which shall be found to be due for the year, * * * "

Here, at least, seems to be authority for the opinion that the taxes involved under the statutes relating to merchants are for an annual period and that, upon liability being determined, the whole sum is due without regard for the period of time in the particular year that the merchant may continue in business.

In discussing the jurisdiction of county courts, the Supreme Court, in the case of State ex rel. School District v. Jackson, 84 S. W. (2d) 938, said:

"The answer to that question depends upon the statutory powers of the county court. Such court is a creature of the Constitution, and its powers are limited by the terms of the various statutes defining its powers. It has no common-law or equitable jurisdiction."

As stated above, we do not find any specific authority in the statutes for the county court to remit any portion of a merchant's taxes, even though such merchant discontinue business during the calendar year. The only statute which might be thought to have any bearing upon the situation is Section 10998, R. S. Mo. 1939, which reads as follows:

"The county court of each county may hear and determine allegations of erroneous assessment, or mistakes or defects in descriptions of lands, at any term of said court before the taxes shall be paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the county board of equalization or court of appeals for

the purpose of correcting such errors or defects or mistakes; and where any lot of land or any portion thereof has been erroneously assessed twice for the same year, the county court shall have the power and it is hereby made its duty, to release the owner or claimant thereof upon the payment of the proper taxes. Valuations placed on property by the assessor or the board of equalization shall not be deemed to be erroneous assessments under this section."

However, upon reading the statute, it becomes apparent that the duties of the county court are restricted to the correction of erroneous assessments or mistakes or defects in descriptions of lands. This not being the situation involved in the matter under consideration, we do not believe that the provisions of such statute are applicable, nor that they are such as to empower the county court to remit any portion of the merchant's tax found to be lawfully due.

CONCLUSION

In the premises, we are of the opinion that the county court has no jurisdiction nor authority to return to a merchant any portion of the taxes imposed upon such merchant under the provisions of Article 18 of Chapter 74, R. S. Mo. 1939, regardless of whether or not such merchant continues in business throughout the calendar year for which such taxes were assessed and levied.

We are further of the opinion that any merchant engaging or commencing in business prior to the first day of June in any calendar year must pay a merchant's tax in accordance with the provisions of Section 11305, R. S. Mo. 1939, such tax to be determined upon the basis of a statement to be filed in accordance with Section 11309, R. S. Mo. 1939.

We are further of the opinion that any merchant commencing in business subsequent to the first day of June in any calendar year must pay a merchant's tax to be determined in

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accordance with the provisions of Section 11329, R. S. Mo.
1939.

Respectfully submitted,

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APPROVED:

W. O. JACKSON
(Acting) Attorney General

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