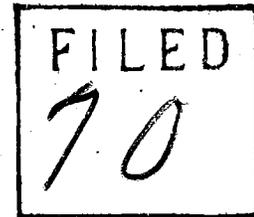


MERCHANT'S TAX:

Corporation which consignes goods to a second corporation for storage and delivery only is liable under Section 11305, R.S. Mo. 1939, for a merchant's tax.

March 18, 1946



Honorable Elmer Peal  
Prosecuting Attorney  
Pemiscot County  
Caruthersville, Missouri

Dear Mr. Peal:

This Department is in receipt of your request for an official opinion, which reads as follows:

"We have in Pemiscot County some large storage tanks owned by the Refiners Relay Corporation, used for the storage of gasoline, which is shipped by river to this terminal and owned by the Texaco Products Co., but consigned to the Refiners Relay Corporation for storage and distribution over South East Missouri and North East Arkansas by its trucks, and is billed to the customers by Texaco.

"The refiners Relay only gets delivery or dray tickets signed upon delivery of the gasoline. Refiners Relay maintain that they act as carrier and storage for the Texaco Company. They also contend that they are liable for any Merchant's Tax.

"Should the gasoline be assessed to Texaco with office in Chicago, for this merchandise, or should the Refiners Relay be assessed to whom the gasoline is consigned?

"I wish you would give me an opinion on this matter as we want to be sure of our procedure. I am, "

Section 11305, R.S. Mo. 1939, provides 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."

A merchant is defined by Section 11303, R.S. Mo. 1939, as follows:

"Every person, corporation or co-partnership of persons, who shall deal in the selling of goods, wares and merchandise, including clocks, at any store, stand or place occupied for that purpose, is declared to be a merchant."

From the facts presented in your request it appears that the gasoline is owned at all times by the Texaco Products Company, and all gasoline sold is paid for by the customers direct to said company. The Refiners Relay Corporation at no time exercises any ownership over the gasoline but only store it for the Texaco Company, and deliver it to the customers of the Texaco Products Company.

This tax is one upon the stock in trade not upon the occupation, and it is, therefore, a personal property tax. State ex rel. The Board of President and Directors of the St. Louis Public Schools vs. Tracy, 94 Mo. 217, 6 S.W. 709.

In *City of Troy vs. Harris*, 102 Mo. App. 51, 76 S.W. 662, the city of Troy, Missouri, had enacted ordinances which are identical with Sections 11303 and 11305, *supra*. The facts in issue, as shown by the opinion, l.c. 55, were as follows:

"The evidence of various persons tended to prove that the Standard Oil Company, a corporation of the State of Indiana, but authorized to do business in this State, owned tanks of oil near a railroad station in the limits of the city of Troy, of which oil the defendant Harris was in charge. He had the keys to the premises and opened and locked the gate. As the agent of the Standard Oil Company, he sold oil to different persons within the time charged in the complaint, both from stationary tanks and from a wagon-tank which he drove about town. When Harris was paid he gave a receipt for the money in the name of the Standard Oil Company. There was no proof as to the scope of his agency, the extent of his authority, or whether he worked for a salary or for a commission."

The Court, l.c. 58, held that: "The business carried on by the Standard Oil Company is shown by the testimony to be such as brings it within the definition of a merchant contained in the first section of the ordinance, which is similar to the statutory definition. R.S. 1899, c. 89, sec. 8540; *State v. Vindquest*, 36 Mo. App. 584; *Kansas City v. Lorber*, 64 Mo. App. 604; *Kansas City v. Guest*, 151 Mo. 128. It is therefore amenable to any reasonable requirement in regard to a license and a license tax."

In *Town of Canton vs. McDaniel*, 188 Mo. 207, 86 S.W. 1092, the defendant, McDaniel, had shipped goods to one Ray, who was a grain merchant in the city of Canton, and Ray was to hold the goods until they were called for by the persons to whom they had been sold. The Court held that McDaniel was a merchant under ordinances identical to the statutes here involved, and was liable for an ad valorem tax upon his goods, and that Ray was only an agent even

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though in this case Ray had collected the money for the goods.

It will be seen therefore, that the Texaco Products Company is the owner of the goods in question, and is a corporation dealing in the selling of goods, wares and merchandise, and that the Refiners Relay Corporation is merely an agent of the Texaco Products Company for the purpose of storing and delivering the gasoline.

CONCLUSION.

It is, therefore, the opinion of this Department that a corporation who ships gasoline into the state to a person for storage and for delivery to customers of the corporation who are billed by said corporation, is a merchant within the meaning of Section 11303, R.S. Mo. 1939, and must pay the ad valorem tax upon the merchandise as required by Section 11305, R.S. Mo. 1939.

Respectfully submitted,

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APPROVED:

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