

MERCHANTS' TAX) A merchant doing business in more than one county
AND LICENSE:) must obtain a license and pay an ad valorem tax
in each county.

September 10, 1951

9-11-51

Mr. Robert G. Kirkland
Prosecuting Attorney
Clay County
Liberty, Missouri



Dear Mr. Kirkland:

We have given careful consideration to your recent request for an official opinion, which request is as follows:

"Please furnish this office for the use of the Clay County Collector and Clay County Assessor your official opinion on the following situation:

"On April 23, 1951, a certain corporation opened a branch warehouse for business in North Kansas City, Clay County, Missouri for the purpose of selling and delivering merchandise to customers in the State of Missouri and in other states. Previous to this date and in 1951 the warehouse and business had been maintained and conducted at 1201 Union Avenue, Kansas City, Jackson County, Missouri. The company had previously listed their property for assessment for 1951 in Jackson County and they had obtained a 1951 Merchants and Manufacturers license in Jackson County and furnished a merchants bond in Jackson County. Under Section 150.160 and Section 150.-180 Missouri R.S. 1949, it appears that it will be necessary for this company to obtain a new license in

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Clay County and furnish a new bond. Is it your opinion that they must pursuant to these statutes not only do this but also pay state and county personal and property and ad valorem taxes for 1951 in Clay County as well as in Jackson County?"

The statute governing merchants' licenses and taxes is embodied in Chapter 150, RSMo 1949. Section 150.100 provides that no person or business firm "shall deal as a merchant without a license first obtained according to law." Merchants, under Section 150.040, "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 January and the first Monday in April in each year." Section 150.160 provides that a merchant, before he shall receive a license, shall execute a bond to the state, conditioned that he will "pay to the collector of the proper county all merchants tax due" before the end of the year.

Section 150.120 is as follows:

"No license granted in virtue of this law shall authorize any person, corporation or co-partnership of persons, to deal in the selling of goods, wares or merchandise in any other county than the one in which said license was granted, nor at more than one place within the proper county at the same time, nor for a longer period than twelve months."

Section 150.180 is as follows:

"When any merchant shall commence the business of merchandising in any county in this state after the first Monday in January, in any year, he shall execute a bond as provided for

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in section 150.160, conditioned that he will 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 a tax based upon the same rate as other merchants, to be determined by the number of months in business in any calendar year."

These two sections are applicable to the situation explained in your request. A license obtained in one county is not valid in any other county, and a merchant who commences the business of selling goods in another county after the first Monday in January must secure a license in that county and pay the ad valorem tax in accordance with Section 150.180.

This may seem to work a hardship and cause some merchants to complain of double taxation. The law in Missouri may not be entirely equitable, as pointed out by the Supreme Court of Missouri in the case of DeArman v. Williams, 93 Mo. 158. In the course of that opinion, page 162, the court said:

"The assessor is required to make the assessment between the first of June and January (Acts of 1883, p. 134), and, from the oath prescribed by section 2, Acts of 1881, p. 179, it is clear that the list must include all property owned on the first day of June. Plaintiff, being a resident of Johnson County from June 1 to December 1, 1882, his personal property was liable to taxation in that county for the year known as the tax-year of 1883. His subsequent removal to Bates county did not prevent the officers of Johnson county from extending and

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collecting the tax, nor does the fact that he, in 1883, invested the money in a stock of goods, and paid a merchant's license in Bates county for 1883, relieve him from the payment of the Johnson county tax. Had he remained in Johnson county, and there conducted a mercantile business, he would have had to pay a merchant's tax, though it is a tax for revenue. In the case of City of Kansas v. Johnson, 78 Mo. 661, the law required every person owning property on the first of January to pay a tax thereon for the fiscal year beginning on the third Monday of April thereafter. Johnson had paid a merchant's-license tax for the year ending April 15, 1878, and another on an entirely different stock of goods, for the year ending in 1879. He sold the first stock of goods in March, 1878, and the goods were then removed from the state; still it was held that he must pay a tax for that stock, also, for the fiscal year of 1878, because he owned the goods on and after January 1, 1878. Perfect equality in taxation is not attainable, and we do not regard either of the taxes in question in this case as violative of section 3, article 10, of the constitution, which declares that taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

The law pertaining to the assessment and taxation of tangible personal property, other than merchandise, belonging to a business corporation is contained in Section 137.095, RSMo 1949, which is as follows:

"All tangible personal property of business and manufacturing corporations shall be taxable in the county in which such property may be situated on the first day of January of the year for which such taxes may be assessed, and

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every business or manufacturing corporation having or owing tangible personal property on the first day of January in each year, which shall, on said date, be situated in any other county than the one in which said corporation is located, shall make return thereof to the assessor of such county or township where situated, in the same manner as other tangible personal property is required by law to be returned."

The assessment year begins on the first day of January, and the property of a corporation, tangible personal property as well as real estate, is taxable on that date in the county in which such property is situated at said time. Property acquired in any county after the first day of January is not taxable for the current year.

CONCLUSIONS

It is the opinion of this office that the said corporation, having commenced the business of merchandising in Clay County in April of the present year, must obtain a merchant's license in said county and execute a bond and pay an ad valorem tax in said county in accordance with Section 150.180, RSMo 1949.

It is also the opinion of this office that the said corporation is not liable for taxes on real estate or tangible personal property, other than merchandise, in Clay County for the current year unless said corporation owned or held such property in said county on the first day of January.

Respectfully submitted,

B. A. TAYLOR
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

BAT/fh