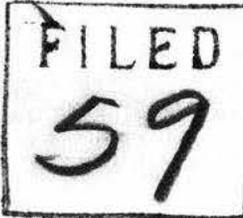


TAXATION:
RETAIL DEALER IN NEW
AUTOMOBILES A MERCHANT:
AUTOMOBILES TAXABLE:

Retail dealer in ~~new~~ automobiles at fixed place of business, a merchant within meaning of Section 150.010, RSMo 1949, for tax purposes, and new automobiles are "merchandise" Not being exempt under any statutes, said automobiles are liable for taxation. Duty of dealer to list stock of ~~new~~ automobiles in statement to county assessor, as provided by Section 150.050, RSMo 1949.



February 6, 1952

2/19/52

Honorable Roy W. McGhee, Jr.
Prosecuting Attorney
Greenville, Missouri

Dear Sir:

Your request for a legal opinion of this department has been received, which reads as follows:

"re: Applicability of Section 150.050,
R.S. Mo. 1949, to retail automobile dealers.

"I would like an opinion on whether the above statute requires automobile dealers to include in their list of taxable property automobiles held by them for resale during the period prescribed by the statute, i.e., the highest number held by them between the first Monday in January and the first Monday in May (at any one time).

"Apparently it has been the belief of the local dealers for some time that their stock of automobiles was exempt. I can find no authorization in the statutes for such exemption. Hence my letter to you.

"My thanks for the many services rendered me by your office in the past."

In the case of State v. Union Electric Company, 220 S.W. (2d) 1, it was held that all property, except such as is specifically exempted by the Constitution and statutes, is subject to taxation. At l.c. 3, the court said:

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"* * * all property, except such as is specifically exempted by the Constitution and the statutes enacted pursuant thereto, is subject to taxation. State ex rel. Ziegenhein v. Mission Free School, 162 Mo. 332, 337, 62 S.W. 998, 999; 2 Cooley, Taxation, Secs. 550-551. 'It is the well-settled policy of our law that taxes shall be levied and collected for public purposes on all property within the territorial jurisdiction of the state, except that expressly enumerated as exempt' [316 Mo. 853, 293 S.W. 401] even though all such property must be subjected to the various specific taxes by law. State ex rel. Union Electric L. & P. Co. v. Baker, supra. In that case it was specifically held, as the statutes then and now plainly provide, that all the property of the Union Electric Light and Power Company, including all its distributable property, had been designated for and subjected to taxation, and, that there were no exemptions,--'and all property, real and tangible personal, owned by * * * electric power and light companies, * * * shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons.' Mo. R.S.A. § § 11295, 11280.1. The mere fact that distributable property, unlike the ordinary property of private persons, is assessed and apportioned by the State Tax Commission does not mean that such property is withdrawn from the county's taxing power."
(Underscoring ours.)

Section 137.100, RSMo 1949, provides what property shall be exempt from taxation, and reads as follows:

"Certain property exempt from taxes.--The following subjects shall be exempt from taxation for state, county or local purposes:

"(1) Lands and other property belonging to this state;

"(2) Lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments and on public squares and lots kept open for health, use or ornament;

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"(3) Lands or lots of ground granted by the United States or this state to any county, city or town, village or township, for the purpose of education, until disposed of to individuals by sale or lease;

"(4) Nonprofit cemeteries;

"(5) The real estate and tangible personal property which is used exclusively for agricultural or horticultural societies heretofore organized, or which may be hereafter organized in this state;

"(6) All property, real and personal actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable, and not held for private or corporate profit shall be exempted from taxation for state, city, county, school, and local purposes; provided, however, that the exemption herein granted shall not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom be used wholly for religious, educational or charitable purposes."

It is readily seen that the new automobiles in the dealers' stock, referred to in your letter, do not fall within any of the classes of property exempt from taxation under the last quoted section of the statute.

Section 150.010, RSMo 1949, defines the term, "merchant", and reads as follows:

"Every person, corporation, copartnership, or association of persons, who shall deal in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose, is declared to be a merchant. Every person, corporation, copartnership or association of persons doing business in this state who shall, as a practice in the conduct of such business, make or cause to be made any wholesale or retail sales of goods, wares and merchandise to any person, corporation, copartnership or association of persons, shall be deemed to be a merchant whether said sales be accommodation sales,

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whether they be made from a stock of goods on hand or by ordering goods from another source, and whether the subject of said sales be similar or different types of goods than the type, if any, regularly manufactured, processed or sold by said seller."

Under the provisions of Section 150.020, RSMo 1949, the term "merchant" is construed to mean all merchants, except physicians as to medicines used in their practice; and farmers as to the products raised and sold by them under Section 150.030.

Section 150.040, RSMo 1949, provides the amount of taxes to be paid by merchants and reads 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 January and the first Monday in April 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."

Section 150.050 (1), RSMo 1949, provides the procedure to be followed by the merchant in listing merchandise in his statement of taxable property given to the assessor each year, and reads as follows:

"On the first Monday in May, 1946, and on the same date each year thereafter, it shall be the duty of each person, corporation or copartnership or persons, as provided by sections 150.010 to 150.290, to furnish to the assessor of the county in which said license may have been granted, a statement of the greatest amount of goods, wares, and merchandise, which he or they may have had on hand at any one time between the first Monday in January and the first Monday in April next preceding; said statement shall include goods, wares, and merchandise owned by such merchant, and consigned to him or them for sale by other parties."

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Automobiles offered for sale by an automobile dealer are merchandise within the meaning of the terms "goods, wares and merchandise" and such was the holding of the court in the cases of Associates Discount Corporation v. C. E. Fay Co., 30 N. E. (2d) 876, and Jeffery v. M. W. Leahy & Co., 155 N.E. 638. We quote from the first case (30 N.E. (2d) 1.c. 880) as follows:

"The so called factor's act, G.L. (Ter.Ed.) c. 104 in § 1, provides 'A factor or other agent intrusted with the possession of merchandise or of a bill of lading consigning merchandise to him with authority to sell the same shall be deemed the true owner of such merchandise, so far as to give validity to any bona fide contract of sale made by him.' One who is the so called trustee under a trust receipt, with authority to sell * * * * * is a 'factor or other agent' within that section. * * * * * Of course the automobile was 'merchandise.' * * * * *"

It is assumed that the retail dealers referred to in the opinion request conduct their business at a building or other fixed place of business occupied for that purpose, and that, since their stock of goods, wares and merchandise consists of new automobiles, in the retail selling of which said dealers are engaged, it is our thought that for the purposes of taxation, said dealers are merchants within the meaning of Section 150.010, and that since new automobiles in such a dealer's stock of merchandise have never been declared exempt by any Missouri statutes, that said automobiles are liable for taxation, and that such dealers must follow the procedure provided in the above-mentioned statutes, particularly that in Section 150.050 (1), RSMo 1949, in reporting said automobiles to the county assessor for assessment.

CONCLUSION

It is therefore the opinion of this department that one engaged in the retail selling of ~~new~~ automobiles at a building or other fixed place occupied for that purpose is a merchant within the meaning of Section 150.010, RSMo 1949, defining the term, "merchant," for the purposes of taxation; that the ~~new~~ automobiles constituting such dealer's stock are goods, wares and merchandise within the meaning of said section, and, since

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no Missouri statutes specifically exempt merchandise of this kind, said ~~new~~ automobiles are liable for taxation, and it is the duty of such retail automobile dealer to furnish the county assessor with a statement each year, showing the greatest number of ~~new~~ automobiles he may have had on hand at any one time between the first Monday in January and the first Monday in April, owned or consigned to him for sale, as provided by Section 150.050, RSMo 1949.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
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PNC:ba