

MERCHANDISE:
ASSESSMENT:
TAXATION:

Merchant's stock of goods should be taxed
at the place where it is located.

JOHN M. DALTON
XXXXXXXXXXXX

January 29, 1953

1-29-53

Honorable James E. Curry
Prosecuting Attorney
Douglas County
Ava, Missouri



John C. Johnsen
XXXXXXXXXX

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"I am writing this letter to you at the request of the Douglas County Court, which has asked me to advise them with reference to the taxation of merchants' stock. More specifically, we have a merchant who owns and operates his business within the city limits of Ava, Missouri, but he resides outside the city limits and in an adjoining school district. Of course, personal property is assessed at the residence of the owner, and the rate applied is that existing at the residence of the owner. If a merchant's stock is classified for tax purposes as personal property, then the taxing situs would be the residence of the owner. Would you please advise."

In regard to this matter, we would first direct your attention to Section 150.040, RSMo 1949, which section reads:

"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 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

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his commission."

The above section establishes the fact that merchants shall pay a tax upon their stock of goods, which is generally referred to as merchandise.

Furthermore, it is definitely established that such a tax is a personal property tax. American Law Reports, Annotated, Vol. 173, page 1332, Section 9, states:

"According to the statements contained in a group of Missouri cases, a so-called merchants' license tax imposed by a statute requiring a merchant to apply for a license to trade as such, to give a bond conditioned for the payment of the tax, and to pay an ad valorem tax equal to that which was levied upon real estate, on the highest amount of all goods, wares, and merchandise which he might have in his possession at any time between certain dates, constituted a tax upon the stock in trade as personal property, and not upon the occupation pursued. See State ex rel. St. Louis Public Schools v. Tracy (1887) 94 Mo. 217, 6 SW 709; Aurora v. McGannon (1897) 138 Mo. 38, 39 SW 469; State ex rel. Carleton Dry Goods Co. v. Alt (1909) 224 Mo. 493, 123 SW 882; and American Mfg. Co. v. St. Louis (1917) 270 Mo. 40, 192 SW 402."

Our next concern is in regard to the place where personal property is taxed. The general rule on this point is stated in the case of State ex rel. v. Shepherd, 218 Mo. 656. At l.c. 663, the court states:

"It is conceded by counsel for both appellant and respondent that personal property is taxable at the domicile of the owner and in the school district in which he resides. (Stephens v. Mayor of Boonville, 34 Mo. 323; State ex rel. v. McCausland, 154 Mo. 185; State ex rel. v. Brown, 172 Mo. 374.)

"And it is equally well settled that if a person is taxed in the wrong district or county, then it is illegal and its collection cannot be enforced. (State ex rel. v.

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Brown, supra, l.c. 380; State ex rel. v. Railroad, 135 Mo. l.c. 630; State ex rel. v. Railroad, 110 Mo. 265.)"

However, the courts of Missouri have distinguished between personal property generally and that kind of personal property which is merchandise. In the case of State ex rel. v. Alt, 224 Mo. 493, at l.c. 507, the court states:

" * * * In this State merchandise is not listed for taxation as other personal property, but instead the merchant must apply for a license to trade as such, and without which he subjects himself to a forfeiture to be recovered by indictment. He must give bond conditioned for the payment of the tax. It is, however, provided that merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of goods, wares and merchandise which they may have in their possession at any time between the first Monday of March and the first Monday of June in each year. It is this amount, furnished by a sworn statement of the merchant, that forms the basis upon which the various state, county, school and municipal taxes are levied."

In the case of State ex rel. v. Timbrook, 145 Mo. App. 368, at l.c. 371, the court stated:

" * * * The question of the place where personal property may be assessed for taxation has given rise to much perplexing litigation. In the absence of statutory regulations, the presumption is indulged that the situs of personal property is that of the domicile of the owner, but this presumption, it is said, must give way when the truth appears that the personalty has an actual situs apart from the domicile of the owner. * * * "

In the instant case, the personal property, which was merchandise, was not, as we note by your letter, located at the domicile of the owner.

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Paragraph 1 of Section 137.115, RSMo 1949, states:

"After receiving the necessary forms the assessor or his deputy or deputies shall, except in the city of St. Louis, between the first day of January and the first day of June, 1946, and each year thereafter, proceed to make a list of all real and tangible personal property in his county, town or district, and assess the same at its true value in money in the manner following, to wit: He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable real and tangible personal property in the county owned by such person, except merchandise which may be required to pay a license tax and except all other property which may be exempted by law from taxation."

The above section would appear to be in conformity with Section 150.040, supra.

In the case of City of Monett v. Hall, 128 Mo. App. 91, at l.c. 94, the court stated:

" * * * It has been frequently adjudged to be perfectly competent for the State to collect an ad valorem tax on property used in a calling and at the same time to impose a license tax on the pursuit as a condition to the right to carry it on, and this power may be delegated to municipal corporations, as was done by the Statutes above referred to. (City of Springfield v. Smith, 138 Mo. 645, 40 S.W. 757; City of Aurora v. McGannon, 138 Mo. 38, 39 S.W. 469; City of St. Joe v. Ernst, 95 Mo. 360, 8 S.W. 558; City of Troy v. Harris, 102 Mo. App. 50, 76 S.W. 662; City of Farmington v. Rutherford, 94 Mo. App. 328, 68 S.W. 83.)
* * * "

In the case of State ex rel. v. Kingsbury, 105 Mo. App. 22, at l.c. 25, the court stated:

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"Chapter 129, Revised Statutes 1899, provides that merchants shall be licensed and prohibits them from doing business as such until they have obtained a license therefor, and in order to obtain such license they must give bond with approved security for the payment on the first day of November, next thereafter, to the collector of the county, of all taxes which may then be due from them for the twelve months ending on the first day of November, next, upon his license as such merchant. Section 8542 provides that merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods which they may have on hand at any time between the first Monday in March and the first Monday in June, in each year. The ordinances of the city have a similar provision. Section 8 thereof provides that, 'the ad valorem tax equal to that which is levied upon real estate on the amount of goods on which merchants shall be required to pay shall be ascertained from the sworn statements filed in the office of the clerk of the county court of Howard county.' And it is made the duty of the city clerk, 'to procure a list of all the names of the merchants of the city from said clerk together with the amount of the stock as shown by the statements and enter the same on a merchants' tax book and extend the same upon the calculation as shown by his statement at the rate per cent fixed by the board of aldermen on real and personal property.'

"Section 8546 of the statutes requires each merchant on the first Monday of June of each year, as stated, to furnish to the assessor of the county a statement of the highest amount of merchandise he may have had on hand at any one time between the first Monday of March and the first Monday of June, next preceding, which statement the assessor is required to enter in a book kept for the purpose and that said book shall be returned by the assessor to the county board of equalization on the first Monday in September in each year for the purpose of equalizing the

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valuation of merchants' statements. Section 8542 fixes the rate of taxation as equal to that which is levied upon real estate.

"Thus, we see merchants are assessed, their assessments are equalized and their taxes are levied. And that is not all, for in order to do business as such merchants they are required to give bond to pay the taxes. It is true that the method pursued in the assessment of their goods and the levying of their taxes is different from that pursued in the imposition of taxation upon other property, but the result is the same."

Upon this point, we note the following in Corpus Juris, Vol. 61, page 524, Section 637:

"In view of statutory provisions fixing the place of taxation, personal property constituting the stock in trade of a merchant or the raw or finished material of a manufacturer or tradesman is not necessarily taxable at the place of domicile or residence of the owner, and, in giving effect to varying statutory provisions, it has been held or recognized that personal property such as is here considered is taxable at the place where it is located or stored, where the owner's business is carried on, where the owner is doing business, where the property is kept for sale, or where it is employed in trade or in the mechanical arts, where stock in trade involved is employed, where real property, in connection with which the personal property involved is connected in a business enterprise, is taxable, where the owner hires or occupies manufactories, stores, hotels, offices, shops, or wharves,
* * *"

Since a merchant is required to pay a tax on his merchandise, and is also required to obtain a license to do business, it would appear to be an empty gesture if his merchandise were not assessed for taxation in the place where the license to do business was obtained, otherwise the license would be meaningless.

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CONCLUSION

It is the opinion of this department that a merchant's stock of goods should be taxed at the place where it is located.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General