

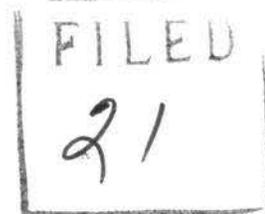
TAXATION AND REVENUE:

Method of assessing property of
manufacturing corporations.

OPINION NO. 21

November 21, 1945

Honorable Wilbur F. Daniels
Prosecuting Attorney
Howard County
Fayette, Missouri



Dear Sir:

Reference is made to your letter of November 7, 1945, requesting an official opinion of this office, and reading, in part, as follows:

"I respectfully request an opinion on behalf of Howard County on the following question: Is a manufacturing concern, operating and doing business in Howard County, liable and required to pay tax on their property so owned in Howard County by reason of 10958 and may they also be required to pay a merchant manufacturers tax by reason of 11339?"

We have examined the statutes referred to in your letter, namely, Sections 10958 and 11339, R. S. Mo. 1939.

Section 10958, R. S. Mo. 1939, reads as follows:

"All personal property of business and manufacturing corporations shall be taxable in the county in which such property may be situated on the 1st day of June of the year for which such taxes may be assessed, and every business or manufacturing corporation having or owning personal property on the 1st day of June 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 where situated, in the same manner as other personal property is required by law to be returned. This section shall not apply to railroad or banking corporations."

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You will notice that this statute appears in juxtaposition to other statutes relating to the situs of property of individuals and estates for taxation purposes. It does not by its own terms purport to provide a scheme for the assessment of such properties, but only establishes the place where taxable. In effect, this statute is merely a portion of the general scheme of taxation of manufacturers provided in Article 20 of Chapter 74, R. S. Mo. 1939.

Such scheme for the taxation of manufacturers appears generally in Section 11339, R. S. Mo. 1939. The pertinent parts of said section read as follows:

"All manufacturers in this state shall be licensed and taxed on all raw material and finished products, as well as all the tools, machinery and appliances used by them, in the same manner as is or may be provided by law for the taxing and licensing of merchants; and no county, city, town, township, or municipal authority thereof, shall ever levy any greater amount of tax against a manufacturer than is levied against merchants for the same period. On the first Monday in June in each year it shall be the duty of each person, corporation or copartnership of persons, as provided by this article, to furnish to the assessor of the county in which such license may have been granted a statement of the greatest amount of raw material and finished products, as well as all the tools, machinery and appliances used by him or them, which he or they may have had on hand at any one time between the first Monday in March and the first Monday in June next preceding; said statement shall include raw material and finished products owned by such manufacturer, as well as all the tools, machinery and appliances used by him or them. * * * After the county board of equalization shall have completed the equalization of such statements, the clerk of the county court shall extend on such book all proper taxes at the same rate as assessed for the time on real estate, and he shall, on or before the first day of October thereafter, make out and deliver to the collector a copy of such book, properly certified and take the receipt of the collector thereof, * * * Provided further, that nothing in this article be so construed as to apply to manufacturers whose raw material,

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finished products, tools, machinery and appliances, in the aggregate amount, be less than one thousand dollars. Licenses issued under this article shall be for one year, ending on the first day of June of the then current year, and no other or greater amount of tax of any kind, whether state or local, shall be assessed, levied, or collected by the state, or any county or municipality, on such raw material, finished products, tools, machinery and appliances, then is levied for the same year upon merchandise, under the law regulating merchants' licenses."

The licensing and taxing statutes relating to merchants which are referred to in Section 11339, R. S. Mo. 1939, quoted above, appear as a part of Article 18, Chapter 74, R. S. Mo. 1939, and the pertinent statutes are Sections 11304, 11305 and 11309. Briefly summarized, Section 11304 imposes a penalty for engaging in the business of a merchant without a license; Section 11305 imposes an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares and merchandise in the hands of merchants at any time between the first Monday in March and the first Monday in June in each year, and Section 11309 provides for the filing of a statement by such merchants disclosing the amount of such taxable property, and further provides for the equalization of such values and extension of the taxes upon the tax rolls by the county clerk, based upon such valuations as finally equalized.

Upon comparison of the statutes relating to merchants and manufacturers, it becomes apparent that the privilege of engaging in the business of either merchant or manufacturer is one extended upon payment of a license fee. The license fee for each year is to be determined by levying a tax at the rate applicable to real property upon the highest valuation of property pertaining to such business held, owned or under control of such merchant or manufacturer at any one time during the period specified by statute. The complete scheme for the taxation of manufacturers is that appearing in Article 20, Chapter 74, R. S. Mo. 1939, portions of which are quoted and discussed above. From this, we conclude that no taxes are ever imposed by virtue of the provisions of Section 10958, R. S. Mo. 1939, only the place where such taxes are to be paid being determined thereby, and that the sole taxes to which manufacturing corporations are subject upon the raw materials and finished products, and the tools, machinery and appliances used in connection with such business, are those provided by the provisions of Section 11339, R. S. Mo. 1939.

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The nature of the tax imposed upon manufacturers under the provisions of this section has been declared by the Supreme Court in the case of American Mfg. Co. v. St. Louis, 192 S.W. 402, 270 Mo. 40, from which we quote:

"It is evident that the ad valorem tax levied under our State laws upon merchants and manufacturers, is a tax upon property, as distinguished from taxes upon business. The same property would be subject to taxation while its situs is within the State, whether employed in any activity or not. * * * This imposition has every element of a property tax, and is held to be such by this court. (Jarman v. Unionville School District, 264 Mo. 646; * * *)."

From the above, it is quite clear that to subject the raw materials and finished products of a manufacturer, and the tools, machinery and appliances used in connection with such manufacturing business, to additional taxes, would amount to duplicate taxation.

CONCLUSION

In the premises, we are of the opinion that the only taxes which may be validly imposed upon manufacturers are those which are provided for by Section 11339, R. S. Mo. 1939, and that Section 10958, R. S. Mo. 1939, merely provides for the place where such taxes may be levied and collected.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

W. O. JACKSON
(Acting) Attorney General

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