

MERCHANT'S TAX:
TAXATION:
NURSERIES:

Owners of plant nurseries who maintain sales facilities on the nursery premises and who do not have a regular stand or place of business away from such premises are not merchants subject to the merchant's tax as provided in Section 150.040, RSMo 1949.



April 18, 1956

Honorable Jimmie B. Trammell
Prosecuting Attorney
Stoddard County
Bloomfield, Missouri

Dear Mr. Trammell:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"The County Court of Stoddard County, Missouri, has asked me to contact your office regarding a question which has arisen in this County under our tax laws.

"We have two Plant Nurseries within this county. Both of these Nurseries have land upon which they grow their stock. They maintain offices in buildings upon this land and employ salesmen who sell this nursery stock. The question has arisen whether the owners of these nurseries are 'Merchants' under the provisions of Section 150.040."

Section 150.040, RSMo 1949, 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, 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 of each year.

Section 150.010, RSMo 1949, defines a merchant 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.

Honorable Jimmie B. Trammell

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, 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 theytype, if any, regularly manufactured, processed or sold by said seller."

Said term is further defined in Section 150.020, RSMo 1949, as follows:

"The term 'merchant' as used in sections 150.010 to 150.290, shall be construed to include all merchants, commission merchants, grocers, manufacturer and dealers in drugs and medicines, except physicians for medicines used in their practice, whether trading as wholesale or retail dealers."

Section 150.030, RSMo 1949, provides that a farmer who sells any article of farm produce or farm products which are grown or processed on his farm shall not be considered a merchant, provided he does not have a regular stand or place of business away from his farm. Said section more fully provides:

"Any farmer residing in this state who shall grow or process any article of farm produce or farm products on his farm, is hereby authorized and permitted to vend, retail or wholesale said products, free from license, fee or taxation from any county or municipality, in any quantity he may choose, and by doing so shall not be considered a merchant; provided, he does not have a regular stand or place of business away from his farm; and provided further, that any such produce or products shall not be exempted from such health or police regulations as any community may require."

Honorable Jimmie B. Trammell

We are of the opinion that under facts stated the owner of a plant nursery, even if considered a merchant under the provisions of Sections 150.010 and 150.020, supra, would be exempted from taxation as such, under the provisions of Section 150.030, supra. Said latter section exempts from the provisions of Sections 150.010 and 150.020, supra, a person engaged in the operation of farming. Farming means the act of devoting land to the processes of agriculture and agriculture includes horticulture and floriculture.

In the case of DeWeaver vs. Jackson & Perkins Co. 63 N.Y.S.(2d) 593, the Appellate Division of the Supreme Court of New York at l.c. 596, said:

"* * *Broadly stated, farming, or the verb to farm, includes and means the act of devoting land to the processes of agriculture and in its broad sense the noun agriculture includes horticulture, floriculture, etc. * * *"

In the case of Hill vs. Georgia Casualty Co., 45 S.W.(2d.) 566, 567, the Commission of Appeals of Texas said:

"* * *The specific branch of agriculture to which the nursery industry belongs is denominated 'horticulture,' * * *Horticulture is a branch of plant production, which is one of the main divisions of agriculture."

See also In re Slades Estate, 55 Pac. 158, l.c. 159, wherein the Supreme Court of California, said:

"* * *the followers of this ancient and honorable occupation may call themselves 'horticulturists' or viticulturists' or 'gardners' but they are farmers and their occupation is that of farming, * * *."

We believe that it is clear from the foregoing noted authorities that a person who engages in the occupation of horticulture or floriculture is actually engaged in farming and would be exempt from the payment of a merchant's tax under the provisions of Section 150.040, RSMo 1949, so long as such person does not have a regular stand or place of business away from his farm.

Honorable Jimmie B. Trammell

CONCLUSION

Therefore, it is the opinion of this office that owners of plant nurseries who maintain sales facilities on the nursery premises and who do not have a regular stand or place of business away from such premises are not merchants subject to the merchant's tax as provided in Section 150.040, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

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