

TAXATION: Accounts receivable indentified as personal property
subject to assessment for purposes of taxation.

11.23
November 21, 1933



Honorable T. H. Harper
Prosecuting Attorney
Stone County
Galena, Missouri

Dear Sir:

On September 25, 1933 you requested an opinion from this office and on October 2, 1933 an opinion was rendered in response to that request. Since rendering the opinion it has been brought to our attention that the laws of 1927, pages 472 and 473 should be considered in determining the question presented in your request. We are by this writing supplementing this original opinion as follows, and are asking you to strike out and hold for naught that portion of the next to the last paragraph on page 4, which reads as follows:

"And this purported exception of accounts receivable as it appears in the Revised Statutes is not a true copy of the law as passed, and is an error which should be charged against those who revised the Statutes."

SUPPLEMENTAL OPINION.

In the laws of 1927, pages 472 and 473, we find that the law upon which the Gehner case was decided was amended by adding to existing exceptions of assessable personal property other items of exception. By the existing law "merchandise" was already excepted from assessment as personal property, but by the amendment of 1927 the assessor was allowed to except from his assessment lists the following, "merchandise, bills and accounts receivable and other credits of a merchant arising out of the sale of goods which have been returned for taxation under the provisions of Sec. 10081 and Sec. 10111 R. S. Mo. 1929."

The Gehner case settled the law before this amendment to mean that "accounts receivable" were properly assessable as personal property are yet assessable as personal property then, their assessability now depends on what the Legislature intended by the provisions of the amendment.

It is true that the merchants' and manufacturers' license tax is a property tax and as such his goods, wares and merchandise should not be doubly assessed, hence the limitations in the eleventh enumeration of taxable property in Sec. 9759 and the further provision of the law that the County Board of Equalization is authorized by these sections providing for the merchants' and manufacturers' license tax to equalize the tax when occasion demands. There was a disposition on the part of the Legislature to see to it that no unreasonable burden be placed on the merchant taxpayer.

The present law, Sec. 9756, as amended in 1927 makes it the assessors' duty, in a prescribed manner, to make his list of the personal property in his county and township and assess its value. As before the amendment the prescribed manner requires him to make a correct list of all taxable property except "merchandise which may be required to pay a license tax". As before the amendment, this section provides that the personal listing his taxable property make a correct statement of such property, and that he sign and swear to the same "as elsewhere provided in the chapter". The section as amended does not render meaningless the oath of the taxpayer to which the section in controversy refers, nor does it expressly or by implication repeal all other sections not consistent with its provisions. As before the amendment, the taxpayer under the provisions of section 9759 takes oath under pain of punishment by a treble assessment for delivering to the assessor a false list of his property under the provisions of section 9762, that his tax return contains a true and correct statement of all taxable property and all other property including money or property due "on notes, accounts or otherwise". Then too, the law provides in Sec. 9795 that the taxpayer list that portion of his credits which he believes will be "received or can be collected", which means that he must list his accounts receivable if he complies with the law. By excepting accounts receivable in provision eleven of Sec. 9756, what did the Legislature have in mind? In the light of the provisions of this chapter can it be reasoned that it was their intention to exempt accounts receivable by the merchant as a proper subject of his personal property tax? We think not. If they meant such they would have said so, and would have expressly repealed all inconsistent law. If they meant to exempt they would not have used the word except, which has a different legal meaning.

It is our aim to give meaning to all of the provisions of the law relating to taxation and revenue, and hence the opinion of this department is that accounts receivable are personal property and should be returned to the assessor as such under the provisions of Sec. 9756 for the purpose of taxation. That duty

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is on the party making the return, and the exception of Sec. 9756 was not intended to apply to him. Upon a careful reading of this section it is apparent that what the Legislature were excepting when they amended the law was the duty of the assessor of including in his assessment list a duplicative assessment. That is to say, that when he discovers while making an assessment that the taxpayer is a merchant or manufacturer who has fully complied with Secs. 10081 as amended, and 10111 R. S. Mo., and has subjected his accounts receivable to a merchant's license tax, then the law accepts the assessor from the duty of listing all property, so that since the amendment he can strike from his list accounts receivable as a subject of personal property assessment under such circumstances, and in so doing not be subject to ouster under the provisions of Sec. 9755 R. S. Mo., 1929. It is our opinion that accounts receivable are not exempt from taxation as personal property, but merely excepted from the required list of personal property, when they are shown to be already assessed in a manner provided by law. The assessor had this privilege, in dealing with articles of exception, before the recent amendment when "merchandise" alone was subject to exception on his personal property list, within the limitations stated. Where the merchant or manufacturer has not complied with the license tax law the assessor is not privileged to make exception to his personal property list either as to accounts receivable or to any other item of exception.

These exceptions in the law were intended to provide a means of assisting the assessor in legally avoiding a double taxation in cases brought to his attention. Exception to the law did not begin in 1927, but have been on the books for sometime, and when presented to the Supreme Court as a means of avoiding the personal property assessment our court has consistently treated them as exceptions made to avoid a duplicative tax and never have they been treated as exemptions because one happens to be liable for a merchant's license.

Respectfully submitted

WM. OUR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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