

2-12-33
"Answer"
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TAXATION AND REVENUE:--LAWS OF MISSOURI 1933, pages 255-267 of the Beer Act does not exempt beer from general property taxes. The prohibition contained in Section 13139z10 only forbids cities and counties from levying license and occupation taxes against holders of permits.



10-23
October 19, 1933.

Rolla Creamery and Ice Company,
Rolla, Missouri.

Copy to Assessor
of Phelps Co.

Gentlemen:

We are acknowledging receipt of your letter in which you inquire as follows:

"The County Assessor has called on us for advalorem tax covering beer on hand. We cited him to Section 13139z10 which states no additional tax should be levied. Please advise your opinion as to whether we should be subject to merchants advalorem tax on beer."

Section 13139z10, R. S. Mo. 1929, provides as follows:

"No county or municipality in this state shall impose any tax on the holder of any permit authorized by this article, for the sale of non-intoxicating beer within its borders. No municipal corporation shall increase any occupation tax which it now levies, upon any holder of such permit over the amount of such tax imposed upon merchants and dealers in the same or similar lines of business, and not holding any such permit."

Prior to the passage of the Beer Act, Laws of Missouri, 1933, pages 255-267, every municipal corporation, under the general statutes, authorized to license merchants would have had a right to have exacted a license tax on any person engaged in the business of selling beer, either as a distributor, wholesaler or retailer. The Legislature, under Section 13139z10, has plainly expressed its intention that no county or city shall exact a license tax from any holder of a permit, nor should any such county or city increase any occupation tax upon any holder of such permit over the amount of such tax imposed upon merchants in the same or similar lines of business. By the Act the Legislature has reserved to itself the right to issue or withhold the permit to sell non-intoxicating beer, and has provided for fees and licenses in connection therewith. It is apparent, however, that all the Legislature sought to do by said Section was to restrict to itself the complete authority in the licensing of people in selling non-intoxicating beer. This tax is by no means a property tax, nor does the Legislature any place in the

Act seek to exempt from property tax any tangible property, beer or otherwise, owned by a holder of a beer permit.

Section 6 of Article X of the Constitution of Missouri provides as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real and personal, as may be used exclusively for agricultural or horticultural societies: Provided, that such exemptions shall be only by general law."

Section 7 of Article X of the Constitution of Missouri provides as follows:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

Section 6 above provides what property shall be exempt from taxation, and Section 7 provides that no property other than that enumerated in Section 6 shall be exempted from taxation, and that any attempt to exempt any other property shall be void. Under the foregoing constitutional provisions, we believe that an attempt by the Legislature to exempt from taxation the tangible property owned by a holder of a beer permit would have been unconstitutional.

Section 9742, R. S. Mo. 1929, provides as follows:

"For the support of the government of the state, the payment of the public debt, and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section."

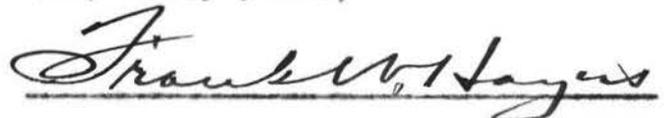
Under that section the Legislature has provided that all personal property shall be subject to taxes, except property enumerated in the succeeding section, which section makes no exemption in favor of non-intoxicating beer. The Beer Act itself does not exempt from general property taxes beer owned by a holder of a permit any more than it exempts trucks or other personal property owned by the beer dealer. Such trucks and other personal property may be an absolute necessity in carrying on the business authorized under the beer permit. So, also may be the building in which the holder operates. No one would contend, however, that the truck of the holder of a beer permit should be exempt from registration fees because he hauls beer any more than

trucks used by persons in other lines of business. It would be an unjust discrimination to exempt from property taxes trucks and other tangible property owned by the holder of a beer permit because he is engaged in the business of selling beer, and at the same time to tax trucks and other tangible property owned by the person engaged in selling gasoline.

The merchants advalorem tax is a property tax and is assessed according to the value of the property. As a merchant you are required to pay the merchants advalorem tax. Even though your stock of goods may include some beer we believe that the value of that beer should be included in the valuation made for the purpose of arriving at the merchants advalorem tax.

It is therefore our opinion that while the Legislature in Section 13139z10 did withdraw from the counties and cities the right to impose upon the holder of any non-intoxicating beer permit a license or occupation tax for the privilege of conducting such business, yet the Legislature did not attempt to exempt such holder from taxation on real or personal property held by him which is assessable under the Constitution and general laws of this state. Beer is personal property. We think, therefore, that the holder of a beer permit should not be permitted to eliminate beer on hand from his stock of goods in arriving at the valuation of said stock of merchandise for the purpose of the merchants advalorem tax. We are of the opinion that beer on hand at the time when assessments are made is subject to a property tax for general taxation purposes. As we interpret the Constitution and the Beer act, the Legislature only prohibited the exaction of a license or occupation tax from the holder for the purpose of doing business.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWH:8