

IN RE: Remitting Merchants Tax by collector - Duty of

March 16, 1933.



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Hon. Ray E. Watson,
Prosecuting Attorney,
Jasper County,
Webb City, Missouri.

Dear Sir:

You ask me the following questions:

"Is the County Collector required to remit payment in full for all merchants' tax charged against him on his books as of November 1st, 1932, irrespective of whether such tax has been paid, or is he required to remit only for those taxes which have been paid to him?"

When do Merchants' Tax become delinquent, and does it draw interest at the rate of 1% per month the same as other delinquent taxes?"

The provisions of the statutes, Secs. 10075 to 10102, inclusive, R.S. Mo. 1929 have been on the statute books in substantially the same form for many years. These statutes constitute the Missouri code of laws for taxation of merchants, together with applicable sections in general revenue laws.

Section 10076 prohibits dealing as a merchant without a license and attaches heavy penalty for violation of sections' provisions.

Section 10084 directs the County Clerk to issue as many blank licenses for merchants as the County Court shall order and provides the form therefor.

Section 10085 provides the County Clerk shall deliver to the County Collector all the licenses so issued and charge him therewith in a book kept for that purpose.

Section 10078 is as follows:

"BOND TO BE GIVEN--Any person, corporation or copartnership of persons applying for a license to vend merchandise shall, before he or they shall receive such license, execute a bond to

the state, with good and sufficient surety, conditioned that he will, on or before the first day of November next following, pay to the collector of the proper county the tax due upon such license; which bond shall be approved by the collector, and his approval indorsed thereon."

It will be observed bond must have the approval of the Collector and same must be endorsed on the bond. The Collector cannot be compelled to endorse his approval unless the bond legally furnishes complete indemnity against default of merchant in payment of the tax. This places the matter of protection of the Collector in his own hands. The statute provides the form of the bond.

The tax is ad valorem and levied on highest value of stock in possession whether owned or consigned between first Mondays in March and June of each year.

Section 10079 makes it an offense for Collector to fail to require merchant to file a bond.

Section 10081 makes it duty of merchant to file on June 1 statement showing greatest amount of goods on hand between first Mondays in March and June, and the statement must be verified.

Section 10087 provides every person filing a correct statement and failing to pay the tax shall be deemed to have forfeited the bond given and judgment shall be rendered for plaintiff in damages for double the amount of revenue and costs.

Section 10088 provides every person failing to file a statement shall forfeit his bond and is mulcted three times the amount of revenue due and costs.

Section 10089 imposes penalty of four times amount of revenue for the year and costs for filing a false statement.

Section 10090 makes it duty of Collector on bond forfeiture for any of the causes named to employ an attorney and institute suit upon the bond, and provides reasonable counsel fees shall be taxed as costs to pay Collector's attorneys. These provisions are rigorous, direct and enforcement thereof left wholly in hands of the Collector and it should here be borne in mind these suits are not for the taxes, but for damages for breach of the bond.

State ex rel v. Land Co., 161 Mo., 664

Section 10093 provides as follows:

"Each Collector at each regular term of the County Court shall return on oath: first, all blank licenses not granted by him; second, a list of all licenses granted by him and not before accounted for, showing the name of to whom granted, the amount of tax collected, on each and the commencement and termination

of each license granted by him; third statements of the bonds taken by him as required by this chapter, and the penalty, date and obligors in each bond."

These reports are evidently required with a view to keeping a close watch on the administration of the Merchants Tax Law to protect the state, city, school, and county, and to protect Collector's bondsman and the bondsman of the merchant and the intent of the law evidently is as rapidly as these merchants' taxes are collected, same shall reach the proper official treasury.

Section 10094 reads:

"The county court at each regular term thereof shall settle and adjust the accounts of the Collector for licenses delivered to him, giving him credit for all blank licenses returned, and charging him for all licenses not returned, according to the statement required to be filed by the person having license and the statement of the bonds required to be returned."

We see here the statement filed each term of County Court by the Collector is checked against the statements required to be filed by the person having the license and the statement of the bonds required to be returned.

Section 10095 provides:

"If the Collector shall fail to return a number of such statements of the bonds corresponding with the number of the licenses not returned the court shall for each license not returned above the number of such statements returned charge him, in such settlement, a sum of not less than two hundred dollars nor more than five hundred dollars. "

You will observe the statute says these quarterly reports to and adjustments with the County Court are settlements. So the Collector is making practically a quarterly settlement on these merchants' licenses as to number outstanding and as to number of bonds given and number of licenses he has issued and number returned.

Section 10096 provides that at each term of court the County Court shall cause the County Clerk to certify to the amount so charged against the Collector as account of licenses not returned.

The operation of this system is in practical effect that the state through its local governmental agencies, the County Clerk and the County Court, delivers these licenses to the Collector, a bonded agent of the state and county, and tells him, "You are going to be held responsible for the amount due on every license you issue and to protect you we empower you to require a bond which you yourself alone shall approve and be the sole judge of the sufficiency thereof before you issue a license to any one, as a merchant, which bond shall

bind the signers thereof to pay you the full amount of Merchants Tax due under the license so issued by you; and in case default is made, we empower you to select your own attorney and sue on this bond at once, and you are also authorized to recover from two to four times the amount of the penalty for any failure to comply with the condition of the bond, and also to have judgment for your counsel fees and have same taxed as costs. " These duties and obligations are imposed on any one who seeks, secures and takes the oath of office and qualifies as County Collector.

Section 9927 R.S. of Mo. 1929 provides:

"Every county collector and ex officio county collector, except in the City of St. Louis, shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit, of all state, county, school, road and municipal taxes, and of all licenses by him collected during the preceding month, and shall, on or before the fifteenth day of the month, pay the same less his commissions, into the state and county treasuries, respectively. It shall be the duty of the county clerk, and he is hereby required, to forward immediately a certified copy of such detailed statement to the state auditor, who shall keep an account of the state taxes with the collector."

Section 9928 provides if collectors fail to pay collections into state and county treasuries, they shall be penalized 10% of amount withheld by them, and within thirty days prosecuting attorney shall proceed to collect on official bond of defaulting collector the taxes so unpaid into state and county treasuries.

Section 9929 provides a penalty of two hundred dollars for each withholding of taxes collected by collectors to be recovered by suit on collector's bond and State Auditor shall direct prosecution thereof immediately in addition to issuing a distress warrant.

Section 9932 provides upon payment by Collector after settlement according to law the County Court shall grant him a full quietus under the seal of the court. It is true where a statute creates new rights and remedies the statutory remedy is ordinarily exclusive.

City of Clinton vs. use of Thornton vs.
Henry Co., 115 Mo., 557

While many new rights and remedies are created by the Merchants Tax Code, yet there are many provisions of the General Revenue law applicable to administration and enforcement of rights and remedies in instances not provided for in Article XVII, Chapter 69, R.S. of Mo. 1929.

If there are any Missouri decisions bearing directly on the question of whether or not Collector is required to remit in full

for all merchants licenses with which he is charged under Section 10094-10095 and 10096, R.S. of Mo. 1929; I have been unable to find same. Neither have I been able to find decisions on this exact question in courts outside of our state.

But considering all the various provisions of the Merchants License Tax Code in Article XVII, Chapter 59, and considering other provisions of our general revenue laws all as one related code on taxation, I am of opinion that the Collector must remit in full all licenses not returned and charged to him under Article XVII, Chapter 59, and for each license not returned above the number of such statements returned as shown by the records of the County Court, County Clerk and State Auditor on November 1 of each year of his incumbency in the office of County Collector, and this includes November 1, 1932.

From my interpretation of the statute, there are no delinquent merchant ad valorem taxes.

I call your attention to the fact that long continued interpretation of a statute by public officers charged with its execution should be considered in construing a statute.

State ex rel Barrett vs. First Nat'l. Bank, 297 Mo., 397

The state executive officials administering this merchants tax law have given the statute same construction I do. In my construction of the statute there are no delinquent taxes and hence no one per cent per month penalty.

Yours very truly,

EDWARD C. CROW

APPROVED:

ATTORNEY GENERAL

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