

TAXATION:- Personal Property and Merchant Taxes.

Clause 11, Section 9756, R.S. Mo. 1929, excludes only such merchandise from personal property tax as shall have been actually returned for taxation under the merchants tax law. (Section 10081, R.S. Mo. 1929).

9-12
September 6, 1934.

Honorable Nat W. Benton,
Prosecuting Attorney of Greene County,
Springfield, Missouri.



Dear Sir:-

We have your letter of July 5, 1934, in which was contained a request for an opinion as follows:

"The L. E. Lines Music Company of this city returned for personal property tax assessment as of June 1, 1932, certain notes and chattels covering the installment sale of musical instruments in the sum of about \$24,000. They now seek to have this item of their assessment stricken under the exception of enumeration "eleventh" of Section 9756, R. S. Mo. 1929, upon the ground that the same were returned for taxation theretofore as merchants tax, under Section 10081, R. S. Mo. 1929.

"The merchants tax return for the year 1932, for which year the personal property tax assessment was made, lists \$9,000 as the highest amount of stock on hand between the periods indicated in Section 10081. You will observe that the merchants tax was therefore less than half of the notes receivable returned in the personal property tax assessment. The taxpayer is taking the position that these notes arising out of the sale of musical instruments and the like are within the exception although not arising out of merchandise in stock during the period mentioned in Section 10081. This office, on the other hand, has tentatively taken the position that the exception is not so broad as to include any notes or accounts receivable unless a merchants tax was actually paid on the merchandise from which these accounts arose. The merchants tax is paid on the "greater amount of goods, wares, and merchandise which he or they (merchants) may have on hand at any one time between the first Monday of March and the first Monday of June next preceding."

"With the merchants tax levied only on the highest amount at any one time, it is obvious that much of a moving stock of goods, such as the merchant in this case has, presses

September 6, 1934.

through his store without the levy of any merchants tax on it, or that if the payment of the merchants tax exempts from personal property tax all notes taken in payment of merchandise sold, then a large amount of merchandise sold is not in fact taxed under the merchants tax law or the personal property tax law.

"I would appreciate your view of this exception, under clause "Eleventh" of Section 9756, as it relates as to such notes receivable."

Section 9756, Revised Statutes of Missouri, 1929, provides in part, at line twelve, as follows:

"Sec. 9756. Time of making assessment*what lists shall contain*""and shall require such persons to make a correct statement of all taxable property owned by such person, or under the care, charge or management of such person, except merchandise which may be required to pay a license tax, being in any county of this state in accordance with the provisions of this chapter,*""."

Clause 11 of section 9756, Revised Statutes of Missouri, 1929, provides farther on as follows:

"eleventh, all other property not above enumerated except merchandise, bills and accounts receivable, and other credits of a merchant or manufacturer, arising out of the sale of goods, wares and merchandise which have been returned for taxation, under sections 10081, and 10111, R. S. 1929, and its value;*"""

Section 10081, Revised Statutes of Missouri, 1929, with reference to taxation of merchants, provides in part as follows:

"Sec. 10081. Statement to be filed, when.--On the first Monday in June, in each year, it shall be the duty of each person, corporation or co-partnership 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 goods, wares and merchandise, 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:*"""

A reasonable and unbiased construction of the above sections and in their relation to one another can lead to but one conclusion. Exemption clauses, under our laws and the decisions of our courts, are to be strictly construed, particularly where, as here, the language is plain and the legislative intent both evident and reasonable.

Hon. Nat W. Benton--#3

September 6, 1934.

The language of section 9756, quoted in two places above, explicitly by its terms exempts only such merchandise as shall be required to pay a license tax or such merchandise as shall have been returned for taxation under the merchant tax sections. There is nothing in these exemption clauses which could possibly give any weight to the contention that such merchandise was exempted as a whole. We have been unable to find any cases construing that particular point, but, when the matter is so obvious, it is not surprising that it has not been before our courts.

The purpose of the exemption clauses was to obviate the possibility of having certain merchandise taxed twice but was certainly not to render other merchandise tax free.

Very truly yours,

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

CMHjr-MB

APPROVED:

Attorney-General.