

TAXES:- An individual may be doing business as a merchant  
MERCHANTS AND of a peddler or both at the same time, depending  
PEDDLERS:- upon the manner in which his business is conducted,  
and may be required to pay merchant's tax or secure  
secure peddler's license, or both.

10-15  
October 2, 1934.



Mr. Roth E. Faubion,  
Prosecuting Attorney,  
Lamar, Missouri.

Dear Sir:

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

"'A' who is a merchant in Golden City, Missouri also runs a truck to the country. In this truck are groceries etc. He runs the truck himself, takes orders and delivers the goods on the same trip. Provided he pays his county and city merchant's tax should he be compelled to also pay a peddlers license? A part of his deliveries are in response to orders received through the mail and by telephone.

"If 'A' should close his store and take out the peddlers license, should he then be compelled to pay the county and city merchants tax? In this latter case he would have no other business other than his truck."

Section 13312, R. S. Mo. 1929, defines who are peddlers and provides as follows:

"Whoever shall deal in the selling of patents, patent rights, patent or other medicines, lightning rods, goods, wares or merchandise, except pianos, organs, sewing machines, books charts, maps and stationery, agricultural and horticultural products, including milk, butter, eggs and cheese, by going about from place to place to sell the same, is declared to be a peddler."

In the case of State v. Holmes, 63 Mo. App. 178, the defendant was convicted for not having a peddler's license, and the Court says:

"The case showed that he traveled from place to place in a two horse vehicle and sold kitchen cabinets, which were manufactured by him in this state."

The Court in the above case held that the man was a peddler and should have had a peddler's license. Section 10075, R. S. Mo. 1929, declares who is a merchant and provides as follows:

"Every person, corporation or co-partnership of persons, who shall deal in the selling of goods, wares and merchandise, including clocks, at any store, stand or place occupied for that purpose, is declared to be a merchant."

Under Section 13312 a person who sells goods, wares and merchandise by going from place to place is a peddler. Under Section 10075 a person who has a fixed place of business or store from which he sells goods, wares and merchandise is a merchant. Whether a person be a peddler or a merchant depends upon his method of doing business. A person may be engaged at the same time in the business of a merchant and in the business of a peddler, all depending upon whether or not he does business in the two distinct ways covered by the statute. In St. Louis v. Wietzel, 130 Mo. 600, it was held that if a person carries on different occupations that it was proper to impose a license tax upon each occupation. The Court says at page 619:

"And, if different occupations are pursued, it is competent to impose a license tax upon each occupation. Of this there can certainly be no dispute, and the contention can not therefore prevail that a license tax paid on a wagon for the general use of the streets, can be converted at the will of the licensee to pursue with that wagon any other occupation or trade, etc. As well might a merchant licensed under the provisions of section 6919, Revised Statutes, 1889, assume the role of an auction-

eer, section 678, Revised Statutes, 1889, and (apart from the privilege conferred by section 693) claim, because he had taken out a license on the stock of goods in his store as a merchant, that, therefore, the state had no further concern in the matter, and he might choose the manner in which he might sell his goods over the counter, whether by public or private vendue, and then if the state interfered with his operations as auctioneer vociferously assert that the law was arbitrary, unjust, oppressive and unconstitutional."

As we view the situation outlined in your letter it is possible that Mr. "A" could be required to pay a county and city merchant's tax for the business he operates as a merchant, and if he is also engaged in carrying on the business of a peddler he might also be compelled to take out a peddler's license from the county. Of course, as a merchant he would be entitled to sell his goods and deliver them wherever the purchasers might reside, but if, on the other hand, he loads his truck with merchandise and goes from place to place throughout the county and sells wherever he finds a willing purchaser, he may also be doing business as a peddler and if so he cannot escape paying the peddler's license, even though he might also be paying a merchant's license.

In answer to your second inquiry, if Mr. "A" should close his store then he could not be compelled to pay a county and city merchant's tax, but if he carries on the business of a peddler then he would be required to take out a peddler's license.

It is therefore the opinion of this Department that even though Mr. "A" is engaged in the business of a merchant and pays a county and city merchant's tax, he may also be required to take out a peddler's license if he is also engaged in the business of a peddler as defined by the statute; that if he is not engaged in the business of a merchant but is engaged solely in the business of a peddler he is required to take out a peddler's license and would not be required to pay a county or city merchant's tax. The question of whether the individual is doing business as a merchant or as a peddler, or both at the same time, depends upon his manner of doing business as established by the facts.

Very truly yours,

APPROVED:

FRANK W. HAYES,  
Assistant Attorney General.