

OCCUPATION TAX: Individual truck haulers subject to payment of the tax when transporting persons or freight for the public but not when transporting freight or persons under a contract with employer.

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July 30th, 1934



Hon. Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Sir:

This Department acknowledges receipt of your letter of July 10th relating to the question as contained in your letter as follows:

"We would be pleased to have the opinion of the Attorney General upon the question of the applicability of the Retailer's Occupation Tax Act to individuals transporting property for hire. The law, under Section 2-A (g), requires 'truck lines, and all character of transportation companies engaged in the transportation of * * * freight for hire' to make return and pay tax, but we are in doubt about whether or not individuals such as contract haulers or persons owning a truck and working for a contractor are subject to the tax."

Section 2A of the Occupation or Privilege Tax Act is as follows:

"For the privilege of a person engaging in the business of rendering the services, furnishing or selling the substances and things hereinafter in this section designated or defined, a tax is hereby imposed upon such person at the rate of one-half of one per cent of the gross receipts of any such person from the sale and/or the furnishing of the services, substances and things hereinafter in this section designated or defined, sold and/or furnished in this state on and after the effective date of this act to and including December 31, 1938.

The tax imposed by this section as to the sale of services, substances and things shall apply to the businesses of:

- (a) Sales of admission tickets, cash admissions, charges and fees to places of amusement, games and athletic events.
- (b) Sales of electricity or electrical current, water, sewer service, gas (natural or artificial), to domestic commercial or industrial consumers.
- (c) Sales of service to telephone subscribers and others for the transmission of messages and conversations, both local or long distance, and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto.
- (d) Sales of service for transmission of messages by telegraph companies.
- (e) Newspaper advertising and newspaper service.
- (f) Commercial laundry, cleaning and dyeing service.
- (g) Sales of tickets, fares and services by railroad companies, express companies, bus lines, truck lines, and all character of transportation companies engaged in the transportation of persons or freight for hire.
- (h) Bill board and all other kinds of outdoor advertising."

The Section of 2A to which you refer is subsection (g) which is as follows:

"(g) Sales of tickets, fares and services by railroad companies, express companies, bus lines, truck lines, and all character of transportation companies engaged in the transportation of persons or freight for hire."

Subsection (g) quoted supra, appears to refer to various transportation companies and not to individuals. However, the last phrase states "and all character of transportation companies engaged in the transportation of persons or freight for hire", and also the phrase "for the privilege of a person engaging in the business of rendering the services."

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The Act under Section 1 is Section (a) which defines "person" as follows:

" (a) 'Person' includes any individual, firm, co-partnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number."

We are of the opinion that if an individual hauls and operates a truck and transports freight or persons for hire and solicits the general public's business of this nature, he would come within the terms as contemplated by the Act and a return should be made of the gross receipts derived therefrom.

As to the portion of your letter, "or persons owning a truck and working for a contractor", we are of the opinion that such person or persons do not come within the terms of the Act for the reason that the owner and his truck are employed by the contract hauler by special contract and do not hold themselves out to the public and solicit business generally and as a consequence are employees and therefore no return should be made to you on the gross receipts.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

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