

TAXATION AND REVENUE - OCCUPATION TAX LAW: Applicability to boarding house keepers.

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February 28, 1935.

Hon. Wallace Cooper,
Prosecuting Attorney of
Johnson County,
Warrensburg, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of February 15, 1935, such request being in the following terms:

"I have had a number of inquiries from boarding house keepers as to their liability to pay the sales tax provided by Article 23, Chapter 59.

Those making inquiry provide board for college students during about 10 months of the year and purchase all of their supplies at retail.

I am of the opinion that these persons fall within the definition of "Sale at retail" as set out in paragraph (g) of section 10164a--1. However, I would like to have an opinion from your office on this matter."

Laws of 1933, Extra Session, page 155, the Act to which you refer in your letter, provides in Section 2 as follows:

"For the privilege of a person engaging in the business of selling tangible personal property at retail 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 of all tangible personal property sold in this state on and after the effective date of this act to and including December 31, 1935."

Section 1 defines "business" and "sale at retail" as follows:

"The following words, terms and phrases when used in this act have the meanings ascribed to

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them in this section, except where the context clearly indicates a different meaning:

* * *

(c) 'Business' includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect.

* * *

(g) 'Sale at retail' means any transfer of the ownership of, or title to, tangible personal property to the purchaser, for use of consumption and not for resale in any form as tangible personal property, for a valuable consideration."

These quotations from the Act indicate that a boarding house keeper would be required to make a return under the Act, which such person engaged in the business of serving meals with the object of making money would not be, for the purposes of the Act, in a materially different position from the proprietor of a restaurant or hotel, who, this office has ruled, is within the Act (opinion of the Attorney-General, dated February 1, 1934, on Occupation Tax Law of Missouri. House Bill No. 5, I, D (12) and (13)).

Attention is called, however, to the ruling just referred to with respect to hotels , which is as follows:

"(12) Hotels.

Hotels serving meals (American Plan) and not segregating the charge for the meals from room service, should not make returns of the gross receipts from such meals.

Where a hotel maintains a restaurant or dining room separate and distinct from its room service and makes separate and definite charges for meals served, the gross receipts from such meals are to be included in a return."

Under this ruling, if a boarding house keeper charged a certain amount for both room and board in a manner comparable to the method of charging of an American Plan hotel, no return would need to be made.

In conclusion, it is our opinion that boarding house-keepers furnishing meals only, for the purpose of gain, would be required to make a return under the Occupation Tax Law of Mis-

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souri (Laws of 1933, Extra Session, page 155), but that if charges are made by such person for combined room and board, without segregating the charge for the meals from the charge for the lodging, no return under the act need be made for such charge.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General