

INTOXICATING LIQUORS: Wholesale Liquor Dealers subject to assessment and payment of an ad valorem tax.

6-26
June 26, 1935.

Hon. J. T. Pinnell
Prosecuting Attorney
McDonald County
Pineville, Missouri



Dear Sir:

This will acknowledge your request for an opinion which reads as follows:

"Is a wholesale liquor dealer in this state subject to assessment and collection of an ad valorem tax?"

We direct your attention to the general law respecting the taxation of merchants which is found, in part, in Section 10075 of the Revised Statutes of Missouri, 1929. This section reads in part as follows:

"Every person, corporation or co-partnership of persons, who shall deal in the selling of goods, wares, and merchandise, ****, is declared to be a merchant. ****"

In the case of the Great Atlantic & Pacific Tea Company, v. Cream of Wheat Company, 227 Fed. loc. cit. pages 46 and 47, the Court, in defining a "wholesaler" said:

"A 'wholesaler' is one who buys in comparatively large quantities and who sells, usually in smaller quantities, but never to the ultimate consumer of an individual unit. He sells either to a 'jobber', a sort

of middleman, or to a 'retailer', who sells to the consumer. The quantities bought by the wholesaler may vary from a fraction of a car load to many car loads; it being the character, not of his buying, but of his selling, that marks him as a wholesaler. *****.

In construing Section 10075, supra, with what the Court said in the above mentioned case in defining a "wholesaler", it is the opinion of this department that a wholesale liquor dealer would come within the meaning of said section for the purpose of taxation.

Section 10077, R. S. Mo. 1929, provides in part that merchants shall pay an ad valorem tax equal to that which is levied on real estate, and reads in part as follows:

"Merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares and merchandise which they may have in their possession or under their control, whether owned by them or consigned to them for sale, at any time between the first Monday in March and the first Monday in June in each year. *****.

It is provided under the provisions of the Liquor Control Act that certain fees be paid for licenses issued to manufacturers, wholesalers and retailers. Also, in addition thereto there shall be paid for the privilege of selling certain alcoholic liquors various amounts of inspection fees.

It is the opinion of this department that the aforementioned fees would not abridge the right to levy an ad valorem tax. In the case of Monetti v. Hall, 128 Mo. App. loc. cit. page 94, the Court said:

***** It has been frequently adjudged to be perfectly competent for the State to collect an ad valorem tax on property used in a calling and at the same time to impose a license tax on the pursuit as a condition to the right to carry it on, and this power may be

delegated to municipal corporations,
****.

In light of the foregoing statutes and authorities,
it is evident that a wholesale liquor dealer would be
subject to the payment of an ad valorem tax.

CONCLUSION.

We conclude that a wholesale liquor dealer is a mer-
chant within the meaning of Section 10075, supra, that
such wholesale liquor dealer is subject to assessment and
collection of an ad valorem tax in addition to the license
and gallonage fees required to be paid under the Liquor
Control Act.

Respectfully submitted,

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APPROVED:

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RCS/afj