SALES TAX: Farmer must be engaged in the "business" of selling apples to be subject to tax.

10-21

October 3, 1935.

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Honorable Owen C. Rawlings,
Prosecuting Attorney,
Marshall, Missouri.

Dear Sir:

We wish to acknowledge your letter of September 27, wherein you state as follows:

> "Please advise as to whether sales tax should be imposed on a sale of apples by a farmer who produces them, and who does not buy and sell."

The word "person" is defined in Section 1, sub-section (a), Laws of Missouri, 1935, at page 413, as follows:

> "'Person' includes any individual, firm, copartnership, joint adventure, association, corporations, municipal or private, 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."

In the case of Worthington v. Robbins and Cedigan, 56 Ont. Law Rep., l. c. 288, the court, in determining whether the word "farmer" comes within the meaning of the word "person", said:

> "I cannot think that the word 'person' can be interpreted to exclude 'farmer.'"

We are of the opinion that the word "person" as defined in Section 1, sub-section (a), supra, includes the word "farmer."

Laws of Missouri, 1935, page 411, provides in part as follows:

> "An Act to provide for the raising of additional revenue for emergency purposes, by imposing a tax upon the privilege of engaging in the business of selling tangible personal property at retail, and by imposing a tax upon the privilege of engaging in the business of selling services, substances and things," etc.

The word "sale" or "sales" is defined in Section 1, sub-section (b), and the word "business" in Section 1, sub-section (c), Laws of Missouri, 1935, page 413, as follows:

> "(b) The term 'Sale' or 'sales' includes installment and credit sales, and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale, and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for valuable consideration and the rendering, furnishing or selling for a valuable consideration any of the substances, things and services hereinafter designated and defined as taxable under the terms of this Act.
>
> "(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 and the classification of which business is of such character as to be subject to the terms of this Act. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business does not constitute engaging in business, within the meaning of this act."

Section 1, sub-section (c), supra, exempts casual or isolated sales from the tax.

Section 1, sub-section (e), of the Laws of Missouri, 1935, page 414, defines the words "sale at retail" in part as follows:

> "'Sale at retail' means any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration."

In order to determine whether a farmer producing apples and selling them is subject to the payment of the one per cent sales tax as imposed by the Act of the 58th General Assembly, supra, we must inquire into the question of whether or not he is engaged in the business of selling apples at retail.

We are of the opinion that a farmer to be engaged in the business of selling apples, must make the raising and sale of apples his chief livelihood and gain, and if such be the case and the sale be at retail, we are of the opinion that he is subject to the one per cent tax. However, if he merely produces apples in connection with the operation of his farm and makes only an occasional or isolated sale, we are of the opinion that he is not subject to the tax.

Yours very truly,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

OWN:

MW:HR