

TAXATION Investigations and hearings by Auditor compelling pro-
duction of books and papers. State Auditor in holding
SALES TAX: investigations and hearings may summon witnesses and
require production of any books, papers or records of
anyone having evidence needed in such hearing.

November 16, 1937



Mr. G. H. Bates, Supervisor
Sales Tax Department
State Auditor's Office
Jefferson City, Missouri

Dear Sir:

This office acknowledges your request dated November 9th for an official opinion from this department as to your authority in investigating and examining retailers for the purpose of ascertaining the amount of sales tax of such retailers, to examine books, papers, records, and persons, officers or agents of corporations, who are engaged in retail sales of personal property and/or services subject to the two per cent sales tax act, or of examining the records, books, files and papers of the party or corporation from whom such retailer obtains the articles of personal property which he sells.

Your inquiry involves the question of the construction of Sections 15, 16, 17 and 18 of the Sales Tax Act of Missouri, located at page 552, Session Acts of Missouri 1937, by which sections the Legislature has set up the procedure for the Auditor to follow in the assessing and collecting of this tax. Your inquiry goes to the question of whether or not the Auditor, or his agents, may require any person other than the person under investigation to furnish evidence pertaining to the business of such person under investigation.

Section 15 of the Act reads as follows:

"Every person engaged in the businesses herein described in this State shall keep records and books of his gross daily sales, together with invoices,

bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the Auditor or his duly authorized agents and employees. Such books and records shall be preserved for a period of at least two years, unless the Auditor, in writing, authorized their destruction or disposal at any earlier date."

This section requires every person engaged in the retail sale business described in the Act to keep records and books on his gross daily sales, together with invoices, bills of lading, sales records and other papers or documents, which shall be subject to inspection of the Auditor, or his agents, at all times during business hours. Such retail merchant, by entering into the businesses described in the Act, is bound to submit and furnish his records to the Auditor, or his agents, for their inspection, and by engaging in business under the Act, he surrenders his constitutional rights of search and seizure as to the information contained in such records. State vs. Bennett, 288 S. W. 50, l.c. 53.

Section 16 of the Act, which is as follows:

"For the purpose of ascertaining the correctness of any return, or for the purpose of determining the amount of tax due from any person, the Auditor or any employee of the Auditor designated in writing by the Auditor may hold investigations and hearings concerning any matters covered by this Act, and may examine any books, papers, records or memoranda bearing upon such sales by any such person and may require within the county where the person resides or does business the attendance of such person or any officer or employee of such person, or of any person having knowledge of such sales, and may take testimony

and require proof for his information. In the conduct of any investigation or hearing, neither the Auditor nor any employee thereof shall be bound by the technical rules of evidence and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made or approved or confirmed by the Auditor. The Auditor or any employee thereof holding such investigation shall have power to administer oaths to such persons or witnesses."

provides that the Auditor may hold hearings and investigations for the purpose of determining the amount due from any person or the correctness of his return. In such investigations or hearings, the Auditor may examine any books, papers, records or memoranda bearing upon such sales by such person then being investigated and may require within the county where the person resides, or does business, the attendance of such persons or any officer or employee of such person, or of any person having knowledge of such sales and may take testimony and require proof of such information.

Section 17 of the Act, which is as follows:

"If any person summoned as a witness by the Auditor or such employee of the Auditor shall fail to obey such summons or shall refuse to testify or answer any material question or shall refuse to produce any book, record, paper or other data when required so to do, he shall be deemed guilty of a misdemeanor and punished as provided by law."

provides for the punishment of those who fail to obey the summons and to testify or to produce the books or papers which the Auditor, or his agents, is authorized by said Section 16 to examine.

The Legislature, by Section 16 aforesaid, in authorizing the Auditor and his agents to make investigations and hold hearings, has given more authority to them than is given by the general statutes authorizing taking of depositions, in that they may examine books, papers, records or memoranda bearing upon the sales of the party being investigated or examined, and may require within the county where the person resides, who is being examined or investigated, the attendance of such person or any officer or employee of such person, or of any person having knowledge of such sales which are being investigated and may take the testimony necessary for the proofs in such examination or hearing.

In order to compel the attendance of such witnesses and the production of the books, papers or records, the Legislature has by implication authorized the Auditor, or his agents, to issue the necessary process for obtaining such evidence for by Section 17 it has provided for a punishment for those who fail to obey the summons or to testify or to answer any material questions, or to refuse to produce any books, records, papers or other data when required so to do.

As Sections 15 and 16 of said Act encroach upon the constitutional rights of search and seizure of the citizen, they should be strictly construed, but such construction should not be so strict as to destroy the intent of the Legislature. In support of this contention, we quote from 64 A.L.R. Colcord v. Granzow, 699, l.c. 706 as follows:

"The rule of strict construction, as applied to statutes, does not mean that words shall be so restricted as not to have their full meaning, but merely means that everything shall be excluded from the operation of the statutes so construed which does not clearly come within the meaning of the language used. 25 R.C.L. at page 1076, says: 'The rule of strict construction comes into play only when the language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity.'"

To construe Section 16 of the Act to hold that the Auditor

or his agents, does not have authority to summons witnesses and require the production of books, papers and records of any person who had such information, would be such a construction upon this section as to prevent the very object of the Legislature in enacting the section. This would be contrary to the rule of statutory construction. Missouri Granitoid Company vs. George, 150 Mo. App. 650, l.c. 657 reads:

"Statutes are not to be construed so as to pervert the very object aimed at."

CONCLUSION

This office is, therefore, of the opinion that the Auditor, or his agents, in holding investigations of sales concerning any matters covered by the two per cent Sales Tax Act, and pertaining to the retail sales, may at all times during business hours of the day, require the production of records, papers and documents in the possession of such retail merchant; and in such hearings, they may issue subpoenas compelling the attendance of any person having knowledge of the matters being inquired into; or the production of any books, papers, records or memoranda which are relevant to the issues involved in the investigation or hearing; and may punish any person who fails to obey such process.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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