

TAXATION AND REVENUE:

A person selling at wholesale at a particular place is a merchant and must comply with Article 17, Chapter 59, R. S. Mo. 1929.

September 22, 1937. 9/23



Honorable Arthur C. Mueller  
Prosecuting Attorney  
Gasconade County  
Hermann, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Will you kindly give me your opinion on the following question?"

"Is a man, engaged in the wholesale distribution of merchandise selling only at wholesale, required to file a statement showing the greatest amount of merchandise on hand at any one time between the first Monday in March and the first Monday in June? And must he pay tax on his stock the same as retail merchants?"

Section 10075, R. S. Mo. 1929, defines a merchant as follows:

"Every person, corporation or copartnership of persons, who shall deal in the selling of goods, wares and merchandise, including clocks, at any store, stand or place occupied for that purpose, is declared to be a merchant."

The above statute has been reviewed by the courts many times and in each instance the decision reached was that the Court would not give a different definition to the word "merchant" than that contained in Section 10075, supra. The statute clearly makes no distinction between a whole sale merchant and a retail merchant, but is leveled at persons

"who shall deal in the selling of goods." We understand from your letter that the merchant is selling goods at wholesale, and we assume from a store occupied for the purpose of selling the goods therefrom.

In *State of Missouri v. Wittaker*, 33 Mo. 457, the Court, after quoting Section 10075, supra, held that such was exclusive as to the definition of a merchant and stated (page 459): "We can not go beyond the statute to find any other definition of a merchant." See also, *Town of Canton v. McDaniel*, 188 Mo. 207, 223; *Campbell Baking Co. v. City of Harrisonville*, 50 F. (2) 670.

The case of *State of Missouri v. Reiheson et al.*, 45 Mo. 575, was a prosecution wherein it was charged that a corporation was doing business as a merchant without complying with Article 17, Chapter 59, R. S. Mo. 1929. The Court, after quoting Section 10075, supra, said (page 578): "So that it does not matter whether a person buys and sells, as merchants ordinarily do, or manufactures and sells; if he 'shall deal in the selling' at any particular place, he is a merchant."

From the above and foregoing, it is our opinion that a person selling only at wholesale at any particular place is a merchant and must comply with the provisions of Article 17, Chapter 59, R. S. Mo. 1929, and "pay tax on his stock the same as retail merchants."

Yours very truly,

AUBREY R. HAMMETT, Jr.,  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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