

TAXATION:
SALES TAX:
JURISDICTION OF STATE OF
MISSOURI OVER GOVERNMENT
PROPERTY:

State of Missouri has no jurisdiction
over sales of tangible personal
property belonging to the United States.

April 26, 1938 4/27



Honorable Ray J. Cunningham,
Chief Attorney
Veterans Administration,
Jefferson Barracks, Missouri.

Dear Sir:

In reply to yours of April 22, 1938, your file number "G", requesting an official opinion from this department based on the following letter:

"This has reference to prior correspondence in connection with an opinion rendered by your Department over the right of the State of Missouri to tax sales made by the lessee of the concession at this Facility under a lease made by the Veterans Administration, as lessor, with Mr. Glenn Beaman.

In your letter dated February 9, 1938 you stated that you would not prepare a special opinion on this question unless it was felt that the opinion enclosed (opinion of John W. Hoffman, Jr., Assistant Attorney General, dated November 5, 1937, holding that the Missouri Athletic Commission has no jurisdiction over boxing events held at Jefferson Barracks) did not cover the subject matter.

Feeling that the opinion written by Mr. Hoffman with reference to the taxation of boxing events was analogous

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to the case of Mr. Beaman, it was felt that an opinion from your Department was not necessary. However, Mr. Beaman is in my office this morning and states that the Prosecuting Attorney's Office of St. Louis County is ready to file suit against him for back taxes on sales made under his lease with the government, acting under instructions from the State Auditor. It is believed that the State Auditor is not familiar with the facts in this particular case and that by calling the matter to his attention instructions should be issued to the Prosecuting Attorney of St. Louis County to desist from filing suit.

In order to determine this matter definitely we would thank you to render a formal opinion in the matter for our information and guidance. Reference is made to a letter of the Solicitor of the Veterans Administration dated August 12, 1937, as well as copy of a letter of the Attorney General, State of Tennessee, involving a similar question, dated November 3, 1937.

We are enclosing herewith a copy of the lease of the government made to Mr. Beaman for your information."

From your letter and a copy of the lease from the government to Mr. Beaman accompanying the letter, it appears that the state auditor is attempting to require Mr. Beaman, who operates a concession at Jefferson Barracks, Missouri, to collect the sales tax on sales of tangible personal property as provided by the two per cent Sales Tax Act of Missouri.

Your request involves the question of the authority of the State of Missouri to impose the provisions of the two per cent sales tax on sales of tangible personal property made on the premises owned by the United States which have been ceded by the State of Missouri to the federal government, and

especially as the act applies to sales made at Jefferson Barracks, Missouri. By an act of the Missouri Legislature in 1892 (Laws of Missouri, 1892, Extra Session, page 16) the State of Missouri ceded to the United States the properties now known as Jefferson Barracks, which act is as follows:

"Section 1. That exclusive jurisdiction be, and the same is hereby, ceded to the United States over and within all the territory owned by the United States and included within the limits of the military post and reservation of Jefferson Barracks, in St. Louis county, this state; saving, however, to the said state the right to serve civil or criminal process within said reservation in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state outside of said cession and reservation; and saving further to said state the right to tax and regulate railroad, bridge, and other corporations, their franchises and property on said reservation. In the event, or whenever Jefferson Barracks shall cease to be used by the federal government as a military post, the jurisdiction ceded herein shall revert to the state of Missouri."

By virtue of the provisions of the 17th clause of Section 8, Article I of the Constitution of the United States, congress is given exclusive jurisdiction over Jefferson Barracks, which clause is as follows:

"The Congress shall have power * * * To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to execute like authority over all places

purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings * *."

Section 11072, at page 291, Laws of Missouri, 1935 provides as follows:

"The consent of the State of Missouri is hereby given in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States to the acquisition by the United States by purchase or grant of any land in this State which has been or may hereafter be acquired, for the purpose of establishing and maintaining postoffices, internal revenue and other government offices, hospitals, sanatoriums, fish hatcheries, game and bird preserves and land for reforestation, recreational and agricultural uses."

Section 11073, R.S. Mo. 1929, provides as follows:

"The jurisdiction of the state of Missouri in and over all such land purchased or acquired as provided in section 11072 is hereby granted and ceded to the United States so long as the United States shall own said land: Provided, that there is hereby reserved to the state of Missouri, unimpaired, full authority to serve and execute all process, civil and criminal, issued under the authority of the state within such lands or the buildings thereon."

By said Sections 11072 and 11073, supra, and the act of the legislature of 1892, the State of Missouri has consented to the United States acquiring Jefferson Barracks and has granted and ceded to the United States jurisdiction over said

lands saving, however, to the said state the right to serve, civil or criminal, process within said reservation in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state outside of said session and reservation.

In the case of United States v. Unzeuta, 74 Law. Ed., 761, the Court said:

"When the United States acquires title to lands which are purchased by the consent of the legislature of the state within which they are situated, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, the Federal jurisdiction is exclusive of all state authority."

And at page 765 of the same case, the Court further said:

"If the consent of the state, in pursuance of the constitutional provision in question, be actually given, it is apparent from the terms of the Constitution that the state may not impose conditions inconsistent with exclusive jurisdiction in the national government."* *

The imposition by the State of Missouri of the provisions of the Sales Tax Act on transactions within Jefferson Barracks would be inconsistent with the exclusive jurisdiction ceded by the State of Missouri and acquired by the national government.

From an examination of the lease which accompanied your request made by the government to the operator of the concession at Jefferson Barracks, it is quite evident that the government has intended to retain all jurisdiction over its properties at said reservation which was ceded

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to it by the State of Missouri in 1892.

CONCLUSION

In view of the foregoing, this office is of the opinion that the State of Missouri does not have such jurisdiction over the United States properties designated as Jefferson Barracks, Missouri, as will authorize it to impose the provisions of the Missouri Sales Tax Act on any sale of tangible personal property made at or on said premises.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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