

TAXATION: Sales of admission tickets, cash admission, charges and fees to or in places of amusement, entertainment and recreation, games and athletic events are subject to sales tax by the City of St. Charles.

June 7, 1938

Hon. Joseph B. Wentker
Prosecuting Attorney
St. Charles County
St. Charles, Missouri



Dear Mr. Wentker:

We desire to acknowledge your request for an opinion on June 4th, which is as follows:

"The City of St. Charles, Mo. has a well developed park, municipally operated, with management through several members appointed by the Mayor constituting a Park Board. Among the various activities sponsored are a Soft-Ball League and a swimming pool which charge fees for the entertainment thereby afforded. The admission charges thus collected go directly to the City of St. Charles to the credit of the Park Maintenance Fund.

"I have been requested on behalf of the city officials to seek from you your opinion as Attorney General as to whether or not under the law a sales tax must be collected and paid by the City of St. Charles upon the admission charges above referred to."

Your request for an opinion is divisible into two parts; first, under the 1937 Statute relating to sales tax, could those who participate in amusements, entertainments, recreations, games and athletic events be required to pay a sales

June 7, 1938

tax; second, under said statute, are sales of admission tickets, cash admissions, charges and fees to or in places of amusements, entertainments, recreations, games and athletic events taxable?

An opinion was rendered by this department to Mr. Edwin C. Orr, Prosecuting Attorney of Boone County, on August 21, 1937 in answer to the first question, a copy of which is enclosed.

II.

The Missouri Sales Tax Act being House Bill No. 6 of the 59th General Assembly of Missouri, 1937 Laws, provides in Section 2 (b) as follows:

"A tax equivalent to two (2) per cent of the amount paid, for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events."

The Legislature has defined the term "person" in Section 1 (a) of the 1937 Sales Tax Act on page 555 to include as follows:

"'Person' includes any individual, firm, co-partnership, joint adventure, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency (except the State Highway Department) 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."

On page 556 of said 1937 Session Acts, the Legislature has defined the term "purchaser" and "seller" to include those persons buying, selling or furnishing tangible property or rendering services, the receipts from which are taxable

under the Sales Tax Act.

Therefore, the City of St. Charles must collect and pay sales tax, under the 1937 Session Acts for admission fees to exhibitions of soft-ball and swimming pool contests unless it be exempt from such payment under one of the two sections of said Act providing who may be exempt.

Section 3 at page 558 of the 1937 Session Acts could not possibly be construed so as to bring said city within its exemptions and if said city be exempt, it is by virtue of Section 46 of said Act at page 568, which is as follows:

"In addition to the exemptions under Section 3 of this Act there shall also be exempted from the provisions of this Act all sales made by or to religious, charitable, eleemosynary institutions, penal institutions and industries operated by the Department of Penal Institutions or educational institutions supported by public funds or by religious organizations, in the conduct of the regular religious, charitable, eleemosynary, penal or educational functions and activities, and all sales made by or to a State Relief Agency in the exercise of relief functions and activities."

Taxation is a sovereign right of the state, and the abandonment of the right to exercise it can never be presumed; but the intention to abandon it must appear in the most clear and unequivocal terms which must be clear and unambiguous and should not be created by implication. *Scotland County v. Railroad Co.* 65 Mo. 134; *State ex rel v. Arnold* 136 Mo. 1.c. 450, 38 S.W. 79. *Pacific Railroad v. Cass County* 53 Mo. 1.c. 27.

The construction of laws exempting property from taxation must be strictly construed and as a rule all property is liable to taxation and it devolves upon the person claiming that any specific property is exempt to show it beyond a reasonable doubt. *Fitterer v. Crawford* 157 Mo. 1.c. 58, 57 S.W. 533. 50 L. R. A. 191.

As the burden of taxation ordinarily should fall upon all persons alike, when one claims an exemption therefrom he must

be able to point to the law granting such immunity and must be clear and unambiguous. *Kansas Exposition Driving Park v. Kansas City* 174 Mo. l.c. 433, 74 S. W. 981. In state ex rel *Globe Democrat Pub. Co. v. Gehner* 316 Mo. 696, 294 S. W. l.c. 1018, the court said:

"The policy of our law, constitutional and statutory, is that no property other than that enumerated shall be exempt from taxation."

The above decisions announce a rule on exemptions in regard to personal and real estate.

In state ex rel *Mo. Portland Cement Co. v. Smith* (1936) 90 S.W. (2d) 405, the court says:

"A tax imposed upon every retail sale in the state of tangible personal property is an excise and not a property tax, and the imposition of such tax on a sale of personal property to the State Highway Department does not violate a provision of the State Constitution exempting the property, real and personal of the state, counties, and municipalities from taxation, since such exemption provision applies to property taxes only."

But the City of St. Charles being included in the classification of those who must collect and pay the sales tax unless exempted under said Section 46 supra, it must clearly show that it was the intent of the Legislature to include them in such exempted class.

The City of St. Charles is a municipal corporation, which is defined by the court in *D'Arcourt vs. Little River Drainage District* 212 Mo. App. l.c. 621, as follows:

"The term 'municipal corporation' is usually applied to corporations for local civil government. All corporations intended as agencies in the

June 7, 1938

administration of civil government
are public, as distinguished from
private corporations."

The right of exemption from the collection and payment of such tax by said city must necessarily exist by virtue of it being a charitable or eleemosynary institution in the conduct of regular charitable or eleemosynary functions or activities or it must show that it is entitled to such exemptions by reason of being an educational institution supported by public funds.

The expression 'educational institution supported by public funds' interpreted in the light of its usual meaning, in our opinion, could not even in its broadest sense comprehend such functions or activities of the City of St. Charles. Neither do we think that said City of St. Charles can possibly be classified as a charitable or eleemosynary institution.

CONCLUSION

Therefore, it is the conclusion of this department that sales of admission tickets, cash admissions, charges or fees to or in places of amusement, entertainment and recreation, games and athletic events conducted and operated by the City of St. Charles are subject to the payment of sales tax under said House Bill No. 6 of the 59th General Assembly of Missouri relating to sales tax.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

SVM:RT