

TAXPAYER: Person paying merchant's tax is a taxpaying citizen within meaning of Section 27, Laws of Mo. 1935, page 277.

April 6, 1939

4-13

Mr. Sam T. Evans  
Prosecuting Attorney  
Daviness County  
Gallatin, Missouri



Dear Sir:

We acknowledge your request for an opinion under date of April 4th, as follows:

"I should like to have an opinion from your office concerning Sec. 27, Laws of Missouri, 1935, at Page 277.

A young man from Richmond, Missouri, has made application for license to operate a retail liquor store at Jamesport, Missouri. He is not now qualified, not being a legal voter.

After he has resided within this county and becomes a legal voter and possesses all other qualifications entitling him to a license, what is the requirement as to being 'a taxpaying citizen of the county, town, city or village', as set forth in section 27. Must he have paid a state and county tax to become a 'taxpaying citizen' or is the payment of a merchant's tax sufficient."

Your question is whether a person who pays a merchant's tax can be considered a taxpayer within the meaning of Section 27, supra, other qualifications as to citizenship, etc., being present. By merchant's tax, we assume you mean an ad valorem tax required of merchants based on the amount of merchandise possessed or under their control between certain dates, and not an occupation tax on the privilege of doing business.

Cooley on Taxation, Vol. I, 4th Ed., Section 17, page 78, defines the term "taxpayer" thus:

"A taxpayer, as the term is generally used, is one who owns property within the state or taxing district and who pays a tax or is subject to and liable for a tax."

In the case of *Castilo v. State Highway Commission* 279 S. W. 673, l.c. 675, 312 Mo. 244, the term is defined as follows:

"In Black's Law Dictionary a taxpayer is defined as 'a person chargeable with a tax.' In *State ex rel. Sutton v. Fasse* (Mo. App.) 71 S. W. 745, Judge Goode, speaking for the St. Louis Court of Appeals, defines a taxpayer as 'a person owning property in the state subject to taxation, and on which he regularly pays taxes.' This definition is adopted in Pope's Legal Definitions."

And, in the case of *State vs. Clements*, 264 S. W. 984, l.c. 986, 305 Mo. 297, the court defines the term as follows:

"In *State ex inf. Sutton v. Fasse*, 189 Mo. loc. cit. 536, 88 S. W. 2, a taxpayer is defined as 'a person owning property in the state subject to taxation, and on which he regularly pays taxes.' Such definition appears to be a very satisfactory one."

It is to be noted that the court does not specify the type of property required to be owned, whether real or personal.

The court, in the case of *State ex rel vs. Tracy*, 6 S. W.

(2nd) 709, 94 Mo. 217, l.c. 224, 225, in holding that a merchant's license tax was a personal property tax, said:

"The Board of President and Directors of the St. Louis Schools has authority, as has been seen, to levy a tax upon 'all real and personal property;' and the final question in this case is, whether a merchant's license tax is a personal property tax. Merchandise is not listed for taxation as other personal property; but instead of this, the merchant must apply for a license to trade as such, and without which he subjects himself to a forfeiture to be recovered by indictment. He must give bond conditioned for the payment of the tax. The further provision is, merchants shall pay an ad-valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares, and merchandise which they may have in their possession at any time between the first Monday of March and the first Monday of June in each year. It is this amount, furnished by a verified statement, that forms the basis upon which the various taxes are levied. The license, when issued, gives the merchant the right to engage in a mercantile pursuit; for that he pays a nominal sum, fifty cents to the clerk for issuing the license, and twenty-five cents to the collector for approving the bond. The tax which the merchant is required to pay is another and a different thing. It is perfectly clear, from the provisions of the statute in question, that the tax is one upon the stock in trade, not upon the occupation. If a tax upon the stock in trade, it must be a personal property tax."

And, in 103 A.L.R., page 34, we find an annotation of

the Missouri cases holding that a merchant's license tax is a personal property tax:

"The so-called merchant's license tax imposed by a statute requiring the merchant to apply for a license to trade as such, to give a bond conditioned for the payment of the tax, and pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares, and merchandise which they may have in their possession at any time between certain dates, is a tax upon the stock in trade as personal property, and not upon the occupation. State ex rel. St. Louis Pub. Schools v. Tracy (1887) 94 Mo. 217, 6 S. W. 709; Aurora v. McGannon (1897) 138 Mo. 38, 39 S. W. 469; State ex rel. Carleton Dry Goods Co. v. Alt (1909) 224 Mo. 493, 123 S. W. 882; American Mfg. Co. v. St. Louis (1917) 270 Mo. 40, 192 S. W. 402.

A 'merchant's license' tax imposed by a municipal ordinance requiring any person desiring to take out a license, to make out and deliver to the city collector a sworn statement of the cash value of the greatest amount of goods, wares, and merchandise on hand, or intended to be kept on hand for sale during the year for which the license was applied for, and pay 1 per cent per annum upon the cash value of such goods, is not an occupation or privilege tax, but a property tax, which is in excess of the authorized tax rate allowed to the municipality, and in violation of the constitutional provision requiring uniformity. Brookfield v. Tooley (1897) 141 Mo. 619, 43 S. W. 387.

And a tax imposed by a municipal ordinance requiring merchants to pay an ad valorem

April 6, 1939

tax equal to that which is levied upon real estate, on the largest amount of all goods, wares, and merchandise which they may have in their possession, or under their control, whether owned by them or consigned to them for sale, at any time between certain dates named, is an ad valorem property tax on the goods of merchants and not a license tax. Troy v. Harris (1903) 102 Mo. App. 51, 76 S. W. 662."

A merchant's license tax, being a tax on personal property, we are of the opinion that a person who pays such tax to a county, town, city or village is a taxpaying citizen within the meaning of Section 27, Laws of Missouri 1935, page 277, other qualifications as to citizenship, etc., being present.

Respectfully submitted,

MAX WASSERMAN  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
(Acting) Attorney General  
MW:RT