

TAXATION: Only goods, wares and merchandise of stock in
MERCHANTS: trade should be included in the merchant's tax
assessment return.

December 10, 1942

Hon. O. A. Kamp
Prosecuting Attorney
Montgomery City, Missouri



Dear Sir:

This is in reply to yours of recent date wherein
you submit the following request:

"The County Assessor asked me to write
you for an opinion on the following
question, concerning the assessment of
Merchant's property.

"Where a person in the merchandising
business is assessed with the valuation
of his stock of merchandise, and who
owns automobiles, trucks, and such motor
vehicles used in connection with the
business, should he be assessed separate-
ly with the value of such motor vehicles?"

The statutes which apply to merchants' taxes are
11303 and 11305, R. S. Mo. 1939, which are as follows:

"Sec. 11303. Who declared to be a merchant.
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 mer-
chant."

"Sec. 11305. Tax to be paid. 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 or under their control, whether owned by them or consigned to them for sale, at any time between the first Monday in March and the first Monday in June in each year: Provided, that no commission merchant shall be required to pay any tax on any unmanufactured article, the growth or produce of this or any other state, which may have been consigned for sale, and in which he has no ownership or interest other than his commission."

In the case of Monett v. Hall, 128 Mo. App. 92, 94, the court, in speaking of the authority of a city to impose a license tax on a business, said:

"* * * It has been frequently adjudged to be perfectly competent for the State to collect an ad valorem tax on property used in a calling, and at the same time to impose a license tax on the pursuit as a condition to the right to carry it on,
* * *"

(Underscoring ours.)

It will be noted by the underscoring portion of this statement that the courts have taken the view that the ad valorem tax may be imposed on property used in a calling. In other words the motor vehicles and fixtures used by a merchant may be taxed under the ad valorem tax act. And, in State ex rel. v. Alt, 224 Mo. 493, 507, the court, in speaking of the merchants' tax, said:

"* * * In this State merchandise is not listed for taxation as other personal property, but instead 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. It is, however, provided that merchants shall pay

an ad valorem tax equal to that which is levied upon real estate, on the highest amount of 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 sworn statement of the merchant, that forms the basis upon which the various state, county, school and municipal taxes are levied."

By this statement it will also be noted that the court has distinguished between merchandise and other personal property for assessment purposes. In other words, they refer to the merchandise as goods, wares, etc., which is the stock in trade. We do not think that automobiles, trucks, and other vehicles which are used in connection with the merchandise business could be classed as stock in trade.

CONCLUSION

From the foregoing it is the opinion of this department that automobiles, trucks, motor vehicles, etc., used in connection with the operation of a business should not be classed as merchandise and, therefore, should not be returned by the merchant on his merchant's assessment return.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General