

TAXATION: Associations organized under Article 23, Chapter 102, R. S. Mo. 1939, are not exempt from merchant's tax.

November 16, 1944

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Honorable Marion Robertson  
Prosecuting Attorney  
Marshall, Missouri

Dear Mr. Robertson:

We have your letter of recent date which reads as follows:

"The Saline County Milk Producers' Association is organized as a non-profit, co-operative association of this county, as provided by Section 14334 to 14363 inclusive. The Board of Equalization of this County has from year to year, assessed a merchant's tax against them for \$3000; this year, however, they increased that assessment to \$10,000, and the Saline County Milk Producers' Association has questioned whether they are subject to any merchant's tax because they are organized under Article 23, and seem to rely to a great extent upon Section 14362, R. S., 1939, which provides for a payment of \$10.00 annually in lieu of all franchise or license or corporation or other taxes, or taxes or charges upon reserves held by the members of such association.

Our Board of Equalization would like to know if they have authority to assess a merchant's tax upon this association."

Your letter does not definitely so state, but we assume that the concern you mention has a stock of merchandise

at some store, stand or place where it is offered for sale. We say this because the association seems to claim exemption from merchant's tax and relies upon Section 14362, R. S. Mo. 1939. We will assume, therefore, that the Saline County Milk Producers' Association is a merchant and that the only question involved in your letter is whether the law governing that kind of an association exempts it from paying merchant's tax.

A merchant's tax is a property tax and not a license tax. In *State ex rel. v. Alt*, 224 Mo., l. c. 506, it is said:

"The taxation of merchants and manufacturers in this state, though nominally and in form a license tax, is, in fact, as often held by this court, a property tax, and not merely an occupation or license tax, and the merchants' statements furnish a basis alike for state, school and municipal taxation. (*State ex rel. v. Kinney*, 48 Mo. 374; *State ex rel. v. Tracy*, 94 Mo. 217; *Cape Girardeau v. Riley*, 72 Mo. 220; *Aurora v. McGannon*, 138 Mo. 38; *State ex rel. v. Ashbrook*, 154 Mo. 375.)"

Such a tax is a tax on the stock in trade of the merchant (*State ex rel. v. Tracy*, 94 Mo. 217, 225).

Since a merchant's tax is a property tax, our question then is whether the Legislature by Section 14362, *supra*, has undertaken to exempt the property of this particular class of merchants from general property taxes which are assessed against the property of other merchants. In considering this question we must start with the premise that taxation is the rule and exemption therefrom is the exception. The rule was stated in the recent case of *State ex rel. Mitchell*, 181 S. W. (2d) 496, 499, as follows:

"\* \* \* The general doctrine is that tax exemption statutes should be strictly construed because taxes are imposed on the whole citizenry for the support of the government, and exemptions are discriminatory. 61 C. J. Sec. 396, p. 392.

"'Taxation is the rule, exemption is the exception.' Young Women's Christian Ass'n v. Baumann, 344 Mo. 898, 902 (1), 130 S. W. 2d 499, 501 (1). \* \* \* \* \*

Therefore, in construing Section 14362, supra, we must apply this rule of strict construction, under which rules an exemption is not allowed unless clearly and unmistakably it is granted by the language of the statute.

Said Section 14362 reads as follows:

"Each association organized hereunder shall pay an annual fee of ten (\$10) dollars only, in lieu of all franchise or license or corporation or other taxes, or taxes or charges upon reserves held by it for members."

Said section does not use the words "property tax" and does not in express language undertake to exempt such associations from paying property taxes. If it undertakes to make such exemption, it is by the use of the words "other taxes." Under the rule of strict construction above mentioned no intendment is made in favor of such exemption, but the exemption must be specifically and clearly provided. Therefore, any doubt as to whether the Legislature intended to include property taxes in the words "other taxes," must be resolved against such inclusion.

Furthermore, in construing a statute containing reference to specific things followed by general words, the general words will be construed to refer to things of the same kind or class as those specifically mentioned. This rule of construction has uniformly been followed by the courts of this state. In State ex rel. v. Wilson, 166 S. W. (2d) 499, 501, the court said:

"Section 13284 is not applicable unless the term 'or otherwise' can be held to apply. This term follows the enumeration of specific instances which create a vacancy and must be construed under the rule of ejusdem generis. 'It is a familiar rule of statutory construction that where

an enumeration of specific things is followed by some more general word or phrase, such general word or phrase should be construed to refer to things of the same kind. 19 C. J. p. 1255. State ex rel. Goodloe v. Wurdeman, 286 Mo. 153, 227 S. W. 64, 67. \* \* \* \* \*

In McClaren v. Robins & Co., 162 S. W. (2d) 856, the court was considering a statute which read as follows:

"Every druggist or other person who shall sell and deliver any arsenic, strychnine, corrosive sublimate, prussic acid or other substance \* \* usually denominated as poisonous, without having the word 'poison' \* \* \* shall be fined not exceeding \$25."

In disposing of that case the court said (l. c. 858):

"Carbon tetrachloride is not found in the above section, but appellant contends that it comes within the phrase 'other substance \* \* \* usually denominated as poisonous.' The ejusdem generis rule is that where a statute contains general words only, such general words are to receive a general construction, but, where it enumerates particular classes or things, followed by general words, the general words so used will be applicable only to things of the same general character as those which are specified. \* \* \*"

Under the foregoing and established rule we must limit the words "other taxes" to taxes of the same character and class as "franchise, license, or corporation taxes." Clearly, property taxes do not fall within that class of taxes, since taxes of that class are taxes on occupations or privileges, while merchants' taxes are ad valorem taxes on property. For that reason we do not think that Section 14362, supra, exempts such associations, as are mentioned in your letter, from paying merchant's tax on its stock in trade.

Conclusion

It is, therefore, the opinion of this office that associations organized under the provisions of Article 23, Chapter 102, R. S. Mo. 1939, are not exempt from paying merchant's tax upon a stock of merchandise owned and held for purposes of sale.

Respectfully submitted,

HARRY H. KAY  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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