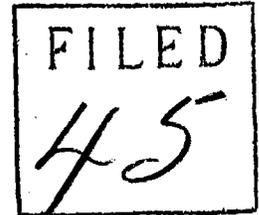


BOARD OF HEALTH: ) Fee for inspection of soft drinks and  
FEE: ) beverages.

May 13, 1946



5/14

R. M. James, M. D.  
State Health Commissioner  
Jefferson City, Missouri

Attention: Mr. Warren E. Lofton,  
Supervisor Food &  
Drug Division

Dear Sir:

This will acknowledge receipt of your request  
for an official opinion, which reads:

"The question arises, has this Di-  
vision the authority to collect back  
Beverage Inspection fees in which  
the Bottler paid the State of Mis-  
souri 3/10¢ a case instead of 3/10¢  
a gallon."

The 62nd General Assembly enacted House Bill 235,  
pages 585-591, Laws of Missouri, 1943, with an emergency  
clause. Said act was approved by the Governor on July 20,  
1943. Section 3 of said act provides for a license fee of  
one dollar and for an inspection fee to be paid by wholesale  
manufacturers of soft drinks or beverages of three tenths  
cent for each gallon manufactured or sold in this state.  
However, such inspection fee shall not in any case exceed  
four cents per month per case of twenty-four bottles of such  
manufacturer's bottling capacity. Said section reads as  
follows:

"A license fee of one dollar (\$1.00)  
shall be paid by each manufacturer of  
soft drinks or beverages required to  
be licensed under the provisions of  
this Act; and in addition thereto an

inspection fee shall be paid by wholesale manufacturers of soft drinks or beverages of three tenths cent for each gallon of such beverage manufactured or sold in this state, but the fees for inspection shall not exceed four cents per month per case of twenty-four bottles of such manufacturer's bottling capacity, as determined by the rated capacity of the machines therein for an eight hour day as rated by the manufacturer of such machines; and for inspection of all fountain syrups, flavors or extracts used in the manufacture or concoction of beverages for retail sales, not otherwise inspected, an inspection fee shall be paid equal to three cents per pound of carbonic gas used in the manufacture or concoction of such beverages or drinks. All fees received shall be paid into the state treasury."

There is a well established rule of statutory construction that statutes should be construed so as to ascertain and give effect to the legislative intent expressed therein. See Wallace v. Woods, 102 S. W. (2d) 91, 340 Mo. 452.

Under the foregoing provision providing for an inspection fee, it is the opinion of this department that wholesale manufacturers of soft drinks or beverages shall pay a license fee of one dollar and also an inspection fee amounting to three tenths of a cent for each gallon of such soft drinks or beverages manufactured or sold in this state. However, if such inspection fee is greater than four cents per month per case of twenty-four bottles of such manufacturer's bottling capacity, then the wholesale manufacturer may pay on the latter basis.

You also inquire as to your authority to collect back Beverage Inspection Fees. While your request does not state when these inspection fees accrued, it is our understanding that they were all within the last three years. In the foregoing act passed by the 62nd General Assembly there

is no specific provision limiting the state as to when it may collect such inspection fees. However, under Section 1040, R. S. Mo. 1939, it is provided that the limitations proscribed in articles 8 and 9 of said chapter shall apply to actions brought in the name of the state, or for its benefit, in the same manner as actions by private parties. Also, in State v. Dalton, 182 S. W. (2d) 311, the Supreme Court of Missouri held that for the state to recover delinquent income taxes, proceedings must be instituted within the general five-year statute of limitations, in the absence of a limitation provision in the income tax law. In so holding the Court said, l. c. 313:

"State v. Farmers' Trust Co. of Macon, Mo. Sup., 31 S. W. 2d 1069, and State ex rel. Wyatt v. Cantley, 325 Mo. 67, 26 S. W. 2d 976, hold that the statutes relating to insolvent banks, and particularly Section 11716, R. S. 1919, Mo.R.S.A. Sec. 7928, which required claims against insolvent banks to be presented within four months, did not apply to claims by the state for taxes. But as those cases specifically point out, there was no provision in that special statute of limitation making it applicable to the state and so the state was not bound by it. In this case, as the state says, there is no statute of limitations in the income tax law. And the general statute of limitations specifically includes 'actions brought in the name of this state' and if, as we hold, litigation to enforce the collection of the state's claims for income taxes is an 'action' or a 'suit' it certainly falls within the plain provisions of the statute and is barred."

Therefore, since these delinquent inspection fees all became due within the last three years, the statute of limitations does not preclude the state from collecting same.

R. H. James, M. D.  
State Health Commissioner - 4

Conclusion

It is, therefore, the opinion of this department that each manufacturer of soft drinks, subsequent to July 20, 1943, shall pay a license fee of one dollar, and in addition thereto wholesale manufacturers of soft drinks or beverages shall pay an inspection fee amounting to three tenths of a cent for each gallon manufactured or sold in this state. However, if such inspection fee is greater than four cents per month per case of twenty-four bottles of such manufacturer's bottling capacity, then said wholesale manufacturer may pay in accordance with the latter amount.

Respectfully submitted,

AUBINEY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

ARM:EG