

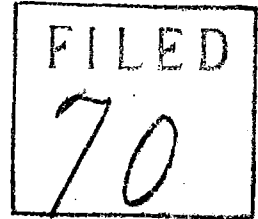
TAXATION:

Merchants' Tax provided for in H.C.S.H.B. 471, H.C.S.H.B. 536 and House Bill 995, passed by the 63rd General Assembly, comply with the provisions of Section 4 (a) of Article X of the Constitution of 1945.

MERCHANTS TAX:

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January 16, 1947



Honorable Hugh Phillips
Prosecuting Attorney
Camden County
Camdenton, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you submit the question of the validity of an assessment of a Merchants' Tax, assessed under the following set of facts:

"A resident of Pulaski County purchased furs and wool and placed and stored them in a building in Camden County until they were sold and shipped to Eastern markets. In 1946, this person was placed on the Merchants' Tax Book for Camden County, Missouri. He appeared before the Camden County Board of Equalization objecting to such assessment as a Merchants' Tax and Merchants' License on the basis that such was personal property and should be assessed in the county of his residence, which is Pulaski County."

In your letter you also set out the taxpayer's reasons for contesting the tax, which are as follows:

" * * * The assessed tax-payer alleges that there is no valid law or statute in effect in the State of Missouri that authorizes the assessment and collection of a merchants' tax. It is based on the following grounds:

"That there is no valid law or statute in effect in the state of Missouri that authorized the assessment and collection of a Merchants' Tax. That committee substitute for House Bill 536 as amended by House Bill 995 and House Bill 998, all enacted by the 63rd General Assembly of Missouri is void and unconstitutional in that it contravenes and violates the provisions of Section 4a of Article 10 of the Constitution of Missouri for 1945 in

that said Acts constitute a legislative intent to create a fourth class of property for tax purposes in Missouri. That the provisions of Section 6 of House Committee Substitute for House Bill 471 is contrary to the provisions of Article 10, 4a of the Constitution of Missouri for 1948 in that said section provides that merchandise held by merchants shall constitute a class separate and distinct by itself for the purpose of state, county and municipal taxes. That by said section the legislature attempted to place merchandise in a class separate and distinct from the three classes of property enumerated in Section 4a of Article 10 of the Constitution. And that the legislature was not authorized nor empowered by the Constitution so to create a separate class of property for tax purposes. That the legislature was only authorized to further classify tangible personal property into sub-classes and to further classify intangible personal property into sub-classes, and that by said section 6 and by the Merchants Tax Law aforesaid the legislature does not attempt to make sub-classifications of tangible personal property or of intangible personal property but instead the legislature exceeds its constitutional power and authority and attempts to place merchandise in a class not enumerated or permitted by the constitution."

The term "merchant" is defined in Section 11303 of H.C.S.H.B. 536 as follows:

"Every person, corporation, copartnership or association of persons, who shall deal in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose, is declared to be a merchant. Every person, corporation, copartnership or association of persons doing business in this state who shall, as a practice in the conduct of such business, make or cause to be made any wholesale or retail sales of goods, wares and merchandise to any person, corporation, copartnership or association of persons, shall

be deemed to be a merchant whether said sales be accommodation sales, whether they be made from a stock of goods on hand or by ordering goods from another source, and whether the subject of said sales be similar or different types of goods than the type, if any, regularly manufactured, processed or sold by said seller."

This definition of the term "merchant" is quite broad, and, under the authority of an opinion of this department, dated December 6, 1946, written to the Honorable Elmer Peal, this person would be termed a merchant. We are enclosing a copy of this opinion for your information.

On the question of the constitutionality of the laws relative to taxation of merchants, we find the following provisions of the Constitution of 1945 applicable here. Section 3 of Article X of the Constitution of 1945 provides as follows:

"Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed. Except as otherwise provided in this Constitution, the methods of determining the value of property for taxation shall be fixed by law."

Section 4 (a) of Article X of the Constitution of 1945 provides in part as follows:

"All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property. The general assembly, by general law, may provide for further classification within Classes 2 and 3, based solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned.* * *"

The lawmakers, by enacting said H.C.S.H.B. 536 and H.C.S.H.B. 471, have attempted to classify stocks of merchandise for ad valorem taxes in a different manner to that in which other tangible personal property, such as livestock, machinery, etc., are classified for taxing purposes. H.C.S.H.B. 471, passed by the 63rd General Assembly, was enacted by virtue of the constitutional authority conferred by said Section 4 (a) of Article X, supra. Section 2 of said H.C.S.H.B. provides as follows:

"All property in Missouri shall be classified for tax purposes as follows:

- Class 1--real property
- Class 2--tangible personal property
- Class 3--intangible personal property."

It will be noted under the provisions of Section 4 (a) of Article X of the Constitution of 1945 that tangible personal property, under Class 2 of said section, may be further classified for tax purposes if the classification is based "solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned."

The General Assembly, by Section 6 of said H.C.S.H.B. 471, under the authority of the foregoing provisions of said Section 4 (a) of Article X, has placed merchandise in a different class, under Class 2 of said Section 4 (a), to that of livestock, machinery, household goods, etc. Said Section 6 of H.C.S.H.B. 471 reads as follows:

"For the purpose of state, county and municipal taxes merchandise held by merchants and the raw material, merchandise, finished products, tools, machinery and appliances used or kept on hand by manufacturers shall constitute a class separate and distinct by itself."

By Section 11305 of said H.C.S.H.B. 536, provision is made for levying ad valorem taxes on stocks of merchandise. It reads as follows:

"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 January and the first Monday in April 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."

This section is taken from the 1939 Laws with the exception that the dates when the merchandise is held for tax purposes are different,

In speaking of the nature of the Merchants' Tax, the Missouri Supreme Court, in the case of State ex rel. v. Alt, 224 Mo. 493, 1.c. 506, 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.* * * "

This opinion definitely holds that the Merchants' Tax is a property tax.

Sub-section (c) of Section 3 of said M.C.S.H.B. 471 defines tangible personal property as follows:

"Tangible personal property includes every tangible thing being the subject of ownership or part ownership whether animate or inanimate, other than money, and not forming part of a parcel of real property as herein before defined."

There can be no question that a stock of merchandise comes within the definition of the term "tangible personal property" which is in Class 2 of property taxed under said Section 4 (a) of Article X of the Constitution. From the attack made on these bills by the taxpayer, he has taken the position that the General Assembly has placed merchandise in a different class than that authorized by the Constitution, and for that reason the Acts are unconstitutional.

As provided by Section 3 of Article X of the Constitution, except as otherwise provided in this Constitution, "the methods of determining the value of property for taxation shall be fixed by law." Pursuant to this provision, the General Assembly

provided the method for determining the valuation of merchants' stocks of goods by said Section 11305 of H.C.S.H.B. 536, supra. By authority of the provisions of Section 4 (a) of Article X of the Constitution, which provides that: "The general assembly, by general law, may provide for further classification within Classes 2 and 3, based solely on the nature and characteristics of the property," the lawmakers, by said Section 6 of H.C.S.H.B. 471, supra, divided Class 2 of tangible personal property and placed merchandise in a class separate from other tangible personal property in Class 2, such as livestock, machinery, household goods, etc.

In the construction of statutes, the constitutionality of a statute is presumed.

The Missouri Constitution of 1875 did not contain any provisions similar to that found in said Section 4 (a) of Article X with respect to classification of property for taxing purposes. However, the Constitution of 1945, as well as the Constitution of 1875, authorizes the General Assembly to impose taxes on all property, real and personal, both tangible and intangible. Both Constitutions also required that the taxes should be uniform on the same class of subjects. The method pursued by the General Assembly, in arriving at the value of property in different classes, is not controlled or provided for by the Constitution of 1945, and the only limitation therein is that the tax be uniform and that the property be in one of the three classes or a subdivision thereof. In the case of *State ex rel. Brown v. The Missouri Pacific Railway Company*, 92 Mo. 157, the Missouri Supreme Court had before it a case in which the validity of the assessment of taxes for school purposes on the rolling stock of railroads was questioned. In holding the statutory method of fixing the value on this stock valid, the court said at l.c. 145:

" * * * It is not required that the same methods shall be pursued in the taxation of the various classes of property; that would be impossible. If the same rate of tax is imposed upon all taxable property, according to its value, the end is accomplished, and although as many different methods be applied as there are different classes of property, yet it is all by 'due process of law.' * * * "

Said Section 4 (a) of Article X of the Constitution of 1945 indicates an intention on the part of the framers of that Article that the Legislature would have authority to further classify property for taxation under Classes 2 and 3. The

rule, as to the authority of the Legislature in such cases, is stated in 51 Am. Jur., page 253, Section 174, in the following language:

"The power to make classifications with respect to taxation is with the legislature in the first instance, and its discretion in the matter is very broad and covers a wide range. In this connection it has been variously said that in taxation there is a broader power of classification than in some other exercises of legislation; that it is not necessary that the basis of a classification of property for tax purposes be deducible from the nature of things classified, and that the legislature, in classifying subjects for taxation, cannot be required to state the grounds of the classification."

We also find the following in the footnotes to the foregoing rule:

"So far as concerns the classes into which articles may be assigned for purposes of taxation, the matter is one for the legislature and not for the courts; the latter not only have no duty to classify, but they are and should be forbidden to interfere with the legislative classification, unless they can say with certainty that it is purely illusory--clearly intended as an evasion of the Constitution. *Heisler v. Thomas Colliery Co.* 274 Pa 440, 113 A 594, 24 ALR 1215, affirmed in 260 US 245, 67 L ed 237, 43 S Ct 83."

In the case of *Missouri, K. & T. Ry. Co. of Texas v. Shannon et al.*, 100 S.W. 138, we find that the Supreme Court, in applying the foregoing principle, made this statement at l.c. 142:

"Taxation shall be equal and uniform. All property in this state whether owned by natural persons or corporations other than municipal shall be taxed in proportion to its value, which shall be ascertained as provided by law.' Now, if it be conceded that it was the intention of the makers of the Constitution to confer upon

the county assessors the exclusive power to list and set down the value of all property in their respective counties subject to an ad valorem tax, it cannot be denied that the Legislature is empowered to provide the mode of ascertaining their value."

At l.c. 145, we find the following statement, which was quoted from State v. Jones, 51 Ohio St. 492, 37 N.E. 945:

" * * * The true value in money is adopted as a standard for taxation--as the basis upon which a uniform rate of taxation is to be fixed. But taxation by a uniform rule does not necessarily demand that there should be the same mode of assessment for every species of property, without regard to any classification. An assessment, in the sense of a valuation of the property of the taxpayer for the purpose of determining the proportion of tax to be paid, should, it is true, be uniform in its mode, to the extent that the property is assessed according to its true value in money. But it would not follow that different classes of property may not be valued for taxation by different officers and boards, and by different modes and agencies. The same rigid and inflexible method of assessment for all classes of property might result in a marked inequality in the burden of taxation." * * *

Also in the case of Charleston Federal Savings & Loan Association et al. v. Alderson, State Tax Commissioner, 324 U.S. 182, 65 S. Ct. 624, the United States Supreme Court made the following statement with reference to a law-making body classifying property for taxation in view of the provisions of the Fourteenth Amendment at l.c. 630:

"It is plain that the Fourteenth Amendment does not preclude a state from placing notes and receivables in a different class from personal property used in agriculture and the products of agriculture, including livestock, and taxing the two classes differently, even though the state places them in a single class for other purposes of taxation. * * *

The foregoing principle and authorities clearly demonstrate that as long as the Legislature imposes taxes uniformly on the same class of subjects, it is within the constitutional provisions even though it may provide different modes for ascertaining the value of such property. The Missouri Legislature, in devising a means to assess tangible personal property under Class 2 of Section 4 (a) of Article X of the Constitution of 1945 was acting within the powers granted to it by the Constitution when it provided by H.C.S.H.B. 536 that the value of stocks of merchandise for taxing purposes may be determined as of a different date than for ascertaining the value of other intangible personal property referred to in Section D of Section 3 of said H.C.S.H.B. 471. It is not necessary for the General Assembly to state its reasons for making different classifications of property for tax purposes; however, it is not difficult to see why the General Assembly would find reason to provide a different manner for ascertaining the value of stocks of merchandise than for values of livestock, machinery, household goods, etc. Stocks of merchandise generally consist of numerous articles, and it would be almost impossible for a merchant to furnish the value of a stock of goods on the first day of January as is provided by Section 4 of H.C.S.H.B. 471 in cases in which an individual makes a return of tangible personal property under Class 2. It would seem that it was for this reason that the General Assembly provided in Section 11309 of House Bill 995 that the merchant should make a return on the first Monday in May of each year of the value of goods, wares and merchandise which he has on hand at any one time between the first Monday in January and the first Monday in April.

The House Bills referred to in this opinion were enacted by the 63rd General Assembly.

CONCLUSION

From the foregoing, it is the opinion of this department that the Missouri General Assembly, in enacting H.C.S.H.B. 471, H.C.S.H.B. 536, and House Bills 995 and 998, providing for taxation of merchants, was acting within the powers granted to that body under Section 4 (a) of Article X of the Constitution of Missouri for 1945, and that these laws are constitutional.

Respectfully submitted,

APPROVED:

TYRRE P. BURTON
Assistant Attorney General

J. E. TAYLOR
Attorney General
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