

TAXATION

) Personal property may not be taxed to merchant for both
) merchants' tax and personal property tax.

April 4, 1950

Honorable Joe Collins
Prosecuting Attorney
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Stockton, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Where an assessment is made on a merchant for merchant's tax and another assessment is made on the same property as a personal tax, would it be considered double taxation and unlawful?"

"The property is being assessed to the merchant both for the merchant's tax and for the personal property tax."

Section 11305, Laws of Missouri, 1945, page 1838, provides:

"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."

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Section 6 of an act found in Laws of Missouri, 1945, page 1799, provides:

"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."

Section 10 of an act found in Laws of Missouri, 1945, page 1782, and relating to the assessment of property, provides in part:

" * * * He (the assessor) shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable real and tangible personal property in the county owned by such person, or under the care, charge or management of such person, except merchandise which may be required to pay a license tax and except all other property which may be exempted by law from taxation. * * *"

(Underscoring ours.)

In the case of State ex rel. v. Alt, 224 Mo. 493, 123 S.W. 882, the court said at 224 Mo. 507:

" * * * 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

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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."

(Underscoring ours.)

If the property which is the subject of your inquiry was a part of the merchant's stock of goods on January first of the taxable year, any attempt under the foregoing statutes to assess such property to the merchant as other personal property would be without authority of law, and, therefore, the assessment would be void without regard to the question of double taxation.

There might conceivably be a situation where a merchant had property on January first which was not part of his stock of merchandise and subsequently decided to place it in his stock for sale some time between the first Monday in January and the first Monday in April and it was a part of such stock at the time that the inventory was determined for purposes of merchants' tax. In such situation if the property were assessed to the merchant as other personal property by reason of his ownership on January first and was also included in computing his merchants' tax, the question of double taxation would arise.

Double taxation is not expressly prohibited by any constitutional provision. However, the courts of this state have held that double taxation violates the uniformity provision of the State Constitution, (Section 3, Article X, Constitution of 1945.) and occurs "when a given subject of taxation contributes twice to the same burden, while other subjects of the same class are required to contribute but once." (State v. Hallenberg-Wagner Motor Company, 341 Mo. 771, 108 S.W. (2d) 398, 1. c. 402.)

The merchants' tax has been held to be a property tax and not an excise tax on the privilege of doing business and measured by the value of the stock of goods of the merchant. (American Manufacturing Company v. City of St. Louis, 270 Mo. 40, 192 S. W. 402.)

Such being the nature of the tax, we feel that to assess the property to the merchant both as personal property for purposes of the personal property tax and as part of his stock of goods in computing liability for merchants' tax would constitute illegal double taxation under the rule laid down by the courts of this state.

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CONCLUSION

Therefore, it is the opinion of this department that a merchant may not be charged with both personal property tax and merchants' tax on the same item or items of personal property.

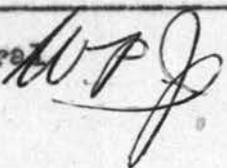
Respectfully submitted,

APPROVED:

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RRW/feh