

MERCHANTS' TAX)

) The county collector is authorized to institute
) suit and prosecute the same against a merchant
) who fails to file the statement required in
) Section 150.050, RSMo 1949.

June 13, 1951

6-13-51

FILED

41

Honorable W. H. Holmes
State Auditor
Jefferson City, Missouri

Dear Mr. Holmes:

We have given careful consideration to your recent request for an official opinion, which request is as follows:

"Section 150.050, R. S. Mo., 1949, provides in part: On the first Monday in May, 1946, and on the same date each year thereafter, it shall be the duty of each person, corporation or co-partnership or persons, as provided by Sections 150.010 to 150.290, to furnish to the assessor of the county in which such license may have been granted, a statement of the greatest amount of goods, wares, and merchandise which he or they may have had on hand at any one time between the first Monday in January and the first Monday in April next preceding; said statement shall include goods, wares, and merchandise owned by such merchant, and consigned to him or them for sale by other parties.

"In the event the statement required by Section 150.050, R. S. Mo., 1949, is not furnished the assessor, what procedure does he (the assessor) follow to obtain said statement?"

Honorable W. H. Holmes

The statute governing the license required of merchants and the tax on merchandise is contained in Sections 150.010 to 150.290, RSMo 1949. Section 150.100 provides that no person or business firm shall be allowed to sell goods without first having obtained a license according to law, and any merchant found in violation of this section shall be deemed guilty of a misdemeanor. A tax on merchandise is provided in Section 150.040. Under Section 150.050 each and every merchant is required to furnish to the assessor of the county an annual statement of the greatest amount of goods which he may have had in stock at any one time between the first Monday in January and the first Monday in April, and this statement is used as the assessment for the tax.

Section 150.160 provides that any merchant applying for a license to sell merchandise shall, before receiving such license, execute a bond to the state, conditioned that he will pay to the collector of the county all merchants' tax due. Said bond, however, shall not be required of any merchant who has obtained and paid a license as required by law for a period of five continuous years immediately preceding his application for a license for the current year. But the actions authorized for default of said bonds shall be prosecuted against any such merchant to the same effect as if such bond had been given.

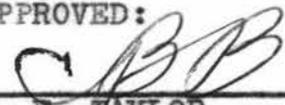
There is no authority vested in the assessor to compel a merchant to furnish the statement required in Section 150.050. The remedy lies in Sections 150.240 and 150.270. Any merchant who shall fail to file such statement, as required by law, shall be deemed to have forfeited his bond; and it becomes the duty of the county collector to institute suit to recover an amount three times as great as the revenue which may be found to be due.

CONCLUSION

It is the opinion of this office that the assessor has no legal means of forcing a merchant to furnish the statement required in Section 150.050, RSMo 1949. But the county collector has full power, under Sections 150.240 and 150.270, RSMo 1949, to institute suit and prosecute the same against any such offending merchant for three times the amount of the tax which may be found to be due.

Respectfully submitted,

APPROVED:



J. E. TAYLOR
Attorney General

B. A. TAYLOR
Assistant Attorney General