

TAXATION:  
MERCHANTS TAX:

Person who at his residence in one county, by telephone and mail, sells ties stored in another county is a merchant and subject to merchants tax.

October 29, 1953



Honorable G. C. Beckham  
Prosecuting Attorney  
Crawford County  
Steeleville, Missouri

Dear Mr. Beckham:

This is in reply to your letter of recent date requesting the opinion of this department concerning the question presented therein, which is as follows:

"An individual who is a resident of Franklin County is engaged in the railroad tie business. This individual buys railroad ties from saw mill operators; stores them at three different tie yards in Crawford County. He then takes orders from Railroad Companies and then loads these ties onto railroad cars at the yard and ships them out of the county. His sales are actually transacted either by telephone or by correspondence from his residence in Franklin County. These three yards are merely used to store the railroad ties on while they belong to this individual.

The "The question is whether or not this individual would be a merchant as defined by the above section of the statutes and whether or not he would be liable for a merchants tax upon the railroad ties stored on these three yards in Crawford County. I would appreciate having the opinion of your office on this question."

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Section 150.010, RSMo 1949, is applicable and sets forth the definition of merchant. Said section reads as follows:

"Every person, corporation, copartnership or association of persons, who shall deal in the selling of goods, wares and merchandise of 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."

At the outset, it is our conclusion that the person in question is a merchant under the terms of Section 150.010, supra. A general definition of merchant is found in the Kansas case of Campbell vs. City of Anthony, 20 P. 492, 40 Kan. 652, as follows:

"A merchant is one who traffics or carries on trade, one who buys goods to sell again--one who is engaged in the purchase and sale of goods--and includes lumber dealers."

Under Section 150.010, supra, every person who deals in the selling of goods, wares and merchandise, at any place occupied for that purpose is declared to be a merchant. In this case, the sales are actually transacted either by telephone or by correspondence from the residence in Franklin County, Missouri, of the person involved. We feel that a dual occupancy exists in that this person's residence is also occupied for the purpose of making such sales.

Said section further provides that a person shall be deemed to be a merchant whether said sales are made from a

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stock on hand or by ordering goods from another source. This provisions indicates that the place where the goods are stored or located is not the determining factor.

The fundamental rule in the construction of statutes is to ascertain and give the effect to the purpose of the legislature. State ex rel Consolidated School District No. 1, vs. Hackmann, 302 Mo. 558, 258 S. W. 1011. The Missouri Courts seek to arrive at the intention of the legislature as disclosed, in part at least, by objectives of the legislation. In re Duren, 355 Mo. 1222, 200 S. W. (2d) 343. We feel that the purpose or object of said section was to include in the definition of merchant, those persons engaged in buying and selling goods, wares, and merchandise at any particular place regardless of where such goods, wares and merchandise are stored or located. To hold otherwise, we believe, would be to place a strained or unreasonable construction on said section of the statutes and might possibly result in dual taxation in some cases.

We submit that the ad valorem tax on such merchants was intended by the legislature to be levied at the place where the person involved is engaged in the selling, of goods, wares, and merchandise. In other words, at the place which is actually occupied for the purpose of said transactions.

#### CONCLUSION

Therefore, it is the opinion of this department that a person who is a resident of Franklin County, Missouri, and is engaged in buying and selling railroad ties, said transactions being conducted at his residence in Franklin County, Missouri, is a merchant under Section 150.010, RSMo 1949, and, as such, is subject to taxation in Franklin County, Missouri, under Section 150.040, RSMo 1949, even though said merchant stores railroad ties in Crawford County, Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. David Donnelly.

Very truly yours,

JOHN M. DALTON  
Attorney General

DD/mv