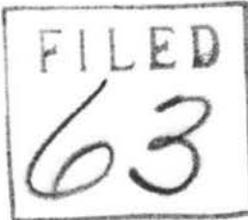


TAXATION:  
MERCHANTS' TAX:  
COUNTY AND TOWNSHIP ASSESSORS:

Circumstances under which township assessor in Fourth Class county, entitled to compensation for taking merchants' statements.



November 24, 1953

Honorable Garner L. Moody  
Prosecuting Attorney  
Wright County  
Hartville, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"I would like an opinion from your office on the following question:

"'Is a township assessor entitled to fees for taking merchant's assessment statement after June 1st, in any taxable year?'"

In your letter of inquiry you have drawn no distinction between statements taken from merchants who were operating an established business on the first Monday in January of the calendar year to which such statements relate, and businesses established subsequent to such date. For reasons which will appear infra, we will discuss each of these categories of merchants separately.

The provisions relative to the taking of statements from merchants appear in Section 150.050, RSMo 1949, from which we quote:

"150.050. Annual statement - merchants' tax book - township organization counties. - 1. 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 copartner-

Honorable Garner L. Moody:

ship 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.

\* \* \* \* \*

"4. Provided, that in counties under township organization the statements herein provided for shall be made by the township assessor who shall deliver the same to the clerk of the county court, who shall return the book to the county board of equalization on the second Monday in July, and thereafter the same proceedings shall be had thereon as in other counties."

(Emphasis ours.)

We have emphasized a portion of the above statute inasmuch as the same relates to township assessors in counties of the fourth class. We note that Wright County is a county within such a class as established by an act of the General Assembly.

It is observed from the foregoing that the duty of making the statement mentioned in the statute is placed upon the merchant to be done on the first Monday in May of each calendar year. It is also observed that such statement, as finally incorporated in the book prepared by the Clerk of the County Court, is to be returned to the County Board of Equalization not later than the second Monday in July of the same calendar year. It is also observed that Section 150.240, RSMo 1949, provides that the failure to file

Honorable Garner L. Moody:

such statement at the time and in the manner required, shall amount to a forfeiture of the merchant's bond which is required under another statute.

In your letter of inquiry you have referred to the date of "June 1st". Apparently, none of the statutes relating to the taxation of merchants gives any materiality to this particular calendar date. It is our thought that a reasonable interpretation of the statutes is one which will permit the township assessor to receive such statements at any time prior to the time in which he is required to transmit the same to the Clerk of the County Court, provided that the failure to file the statement on the exact date provided in the statute, to-wit, the first Monday in May, has been occasioned through inadvertence or mere oversight. We think that under such circumstances the township assessor is entitled to receipt of the fee for taking such statement as provided in Section 150.070, RSMo 1949.

We think the foregoing adequately disposes of your opinion request with respect to businesses which were established and in actual operation on the first Monday in January in any calendar year. However, a different procedure is provided by statute with respect to businesses established in any calendar year subsequent to such date. We direct your attention to Section 150.180, RSMo 1949, which reads as follows:

"150.180. New business--bond of merchant--inventory statement as tax basis.--When any merchant shall commence the business of merchandising in any county in this state after the first Monday in January, in any year, he shall execute a bond as provided for in section 150.160, conditioned that he will furnish to the collector of his county a statement, verified as herein required, of the largest amount of goods, wares or merchandise which he had on hand or subject to his control, whether owned by himself or consigned to him for sale, on the first day of any month between the time when

Honorable Garner L. Moody:

he commenced business as a merchant, and the said first day in January next succeeding; upon which statement he shall pay a tax based upon the same rate as other merchants, to be determined by the number of months in business in any calendar year."

You observe that under this statute the township assessor has been relieved of any duties with respect to the taking of statements. Such duty has, in effect, been transferred to the collector of the county wherein the business has been duly established. Therefore, since the township assessor has been relieved of any duties imposed upon him with respect to such statements relating to businesses becoming established subsequent to the first Monday in January in any calendar year, we believe that he is not entitled to any compensation for taking any such statements relating to such businesses, nor should such be delivered to him.

#### CONCLUSION

In the premises, we are of the opinion:

1) That the township assessor in a county of the Fourth Class is entitled to his statutory fees for taking merchants' statements subsequent to June 1st in any calendar year, only when such statements relate to a business in existence prior to the first Monday in January of such year, and that such statement properly should have been filed on the first Monday in May in such calendar year; provided, that such statement is actually delivered to the assessor in such time as to comply with the requirement that the same be incorporated in the merchant's book and returned to the County Board of Equalization on the second Monday of July in such calendar year; and,

2) That such township assessor is not entitled to any fee for, nor should any such statement be delivered to, such township assessor with respect to any new business established subsequent to the first Monday in January in any calendar year.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General