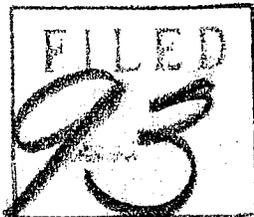


TAXATION: Sales tax on cigarettes contemplated by H.B. No. 18 is not unconstitutional as amounting to "double taxation."

February 17, 1955



Honorable J. S. Wallace
Member, Missouri House of Representatives
Scott County
House of Legislative Post Office
Capitol Building
Jefferson City, Missouri

Dear Sir:

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

"I would like to have your opinion as quickly as possible as to the constitutionality on double taxation or otherwise with regard to House Bill No. 18.

"I would appreciate it very much if you can get this opinion to me, as this bill is on the calendar now for hearing."

At the outset, we wish to point out that the Constitution of Missouri contains no direct prohibition against so-called "double taxation." The general rule with regard thereto is found in *State v. Hallenberg-Wagner Motor Co.*, reported, 108 S. W. (2d) 398, from which we quote, l. c. 402:

"* * Respondent's assault against the foregoing construction on the stated ground it results in double taxation confuses, we think, non-uniformity in taxation with double taxation. Respondent refers us to no constitutional prohibition against double taxation, and the cases relied upon, *Automobile Gas Co. v. St. Louis*, 326 Mo. 435, 443, 32 S. W. (2d) 281, 283 (3); *State ex rel. v. Louisiana & M.R.R.Co.*, 196 Mo. 523, 535, 94 S. W. 279, 281; and *State ex*

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rel. v. Koeln, 278 Mo. 28, 39, 211 S. W. 31, 34, are only to the effect that double taxation is not favored and is not to be presumed; illegal double taxation occurring 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. See, generally, Cooley, on Taxation (4th Ed.) Sections 1684 and 223-246; 61 C. J. pp. 137-147, Sections 69-86; 37 C. J. pp. 209-211, Sections 62-64. * * * "

It is true that the proposed bill does not exempt sales of cigarettes from the general sales tax law found Chapter 144, RSMo 1949. We do not believe that such results in a lack of uniformity in the application of the proposed new tax, however, for the reason that cigarettes constitute a peculiar and particular class of their own. In other words, constituting a separate and distinct class as they do, cigarettes may be isolated and singled out for the imposition of a tax on the sales thereof without infringing upon constitutional prohibitions against lack of uniformity or discrimination in the levying of such tax.

This phase of the problem has been considered by the Supreme Court in Ploch v. City of St. Louis et al., reported 138 S. W. (2d) 1020, from which we quote, l. c. 1023:

"Plaintiff contends that the ordinance violates Sec. 53, Sub-Sec. 32, Art. IV of the constitution, Mo. St. Ann., which provides that 'where a general law can be made applicable, no local or special law shall be enacted.' He argues that the isolation of cigarettes from other merchandise, including other forms of tobacco, for the purpose of taxing and regulating the sale of the same, is an arbitrary and unreasonable classification.

"In all jurisdictions the cigarette has been a favored article for isolation and classification. The sale or gift of a cigarette is prohibited in some jurisdictions. It is not a 'useful commodity'. The nicotine is harmful. There is no question of classification. The harmful

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properties of the article do the classifying. * * * *

"Furthermore, it is common knowledge that the size and mildness of the cigarette tempt the young to indulgences which produce tobacco addicts. This justifies the isolation of cigarettes from other forms of tobacco. In some jurisdictions the sale of cigarettes is prohibited within certain distances of school houses. The taxation and regulation of the article is well illustrated in 62 A. L. R. 105. The ordinance is not a purely revenue measure, for the tax levied is such that it tends to diminish the use of the article. An occupation tax may be both a police regulation and a revenue measure. *Viquesney v. Kansas City*, 305 Mo. 488, 497, 266 S. W. 700; *Gundling v. Chicago*, 177 U. S. 183, 188, 20 S. Ct. 633, 44 L. Ed. 725. The classification is neither arbitrary nor unreasonable, the ordinance levies an occupation tax, and it does not violate the above-named section of the constitution."

The salutary effect of additional taxation on cigarettes as tending to diminish the consumption thereof is in accord with the emphasized portion of the opinion quoted.

CONCLUSION

In the premises, we are of the opinion that the tax on sales of cigarettes proposed under H. B. No. 18 is not unconstitutional as amounting to "double taxation."

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

Very truly yours,

JOHN M. DALTON
Attorney General

WFB, Jr.:da