

TAXATION:
MERCHANT'S LICENSE:
MANUFACTURER'S LICENSE:

Interest and penalty on delinquent
merchant's and manufacturer's license.

OPINION NO. 371

November 8, 1965

Honorable Donald J. Stohr
County Counselor
St. Louis County Courthouse
Clayton, Missouri 63105



Dear Mr. Stohr:

This is in answer to your request of September 30, 1965, for an opinion from this office concerning the penalty and interest to be charged on delinquent merchants' and manufacturers' license taxes under Senate Bill No. 356, 73rd General Assembly, and whether said bill applies to St. Louis County. (Section 150.235 VAMS August 1965 Pamphlet)

"Any person who shall fail to pay to the Collector of Revenue any merchant's and manufacturer's tax on the property of such person in said county on or before the 31st day of December next after the same shall have been assessed and levied, such tax shall be deemed delinquent, and said delinquent taxpayer shall pay in addition to such taxes which said taxpayer may stand charged on the tax books of such county a penalty of one per cent per month plus ten per cent interest, provided that such penalties shall not exceed more than ten per cent per annum."

This bill was introduced in the Senate on March 8, 1965. Under the provisions of the original bill, it was applicable only "in counties of the first class not having a charter form of government." The bill was later amended by striking out the above quoted provision.

There is a legal presumption that a statute is valid; that if there is doubt as to the constitutionality of the statute, the doubt should be resolved in favor of the constitutionality of the act; that the expediency or in expediency of the act is not for the courts; that the power of the Legislature to enact laws has no limitation except that expressed in the State and Federal Constitution. State ex inf. Barker vs. Merchants' Exchange, 269 Mo. 346.

Honorable Donald J. Stohr

The primary rule of statutory construction is to ascertain and determine the intent of the Legislature and, as far as possible, give effect to the intention expressed. One method utilized to determine this intent is to review the Legislative history of the bill. One of the accepted canons of statutory construction permits, and often requires, an examination of the historical development of the legislation, including changes therein and related statutes, and the whole statute should be construed on the theory that the lawmakers intended to accomplish something by the change. State ex rel. Klein vs. Hughes, 173 S.W.2d 877; Ex parte Helton, 93 S.W. 913; Household Finance Corp. v. Robertson, 364 S.W.2d 595.

Applying these rules of construction, it is the opinion of this department that Senate Bill No. 359, as enacted, is a general statute in effect in all counties of the state including St. Louis County.

Chapter 150, RSMo 1959, provides for the licensing and taxing of merchants and manufacturers in this State. It requires each merchant or manufacturer in the State, as defined therein, to be licensed and pay an ad valorem tax each year on the goods, wares, and merchandise, raw materials and manufactured products. Provision is made therein for the collection of this tax by the county collector of revenue. Senate Bill No. 356, supra, provides a penalty for failure of said merchants and manufacturers to pay said tax.

In regard to the penalty, said bill provides that any person who fails to pay the collector any merchant's and manufacturer's tax when due shall, in addition to said tax, pay "a penalty of one per cent per month plus ten per cent interest, provided that such penalties shall not exceed more than ten per cent per annum." It is noted that there are two separate matters dealt with in this provision. One is "penalty", the other is "interest".

Under the above statutory provision a penalty of one per cent of the total tax is to be collected for each month the tax is delinquent; in addition thereto, the taxpayer is required to pay ten per cent interest. The provision in such section providing that "ten percent interest" is to be paid by the delinquent taxpayer does not authorize a flat charge of 10% of the amount of the delinquent tax regardless of the time of payment of such delinquent tax, but does authorize the charging of interest at the rate of 10% per year until the delinquent tax is paid.

Honorable Donald J. Stohr

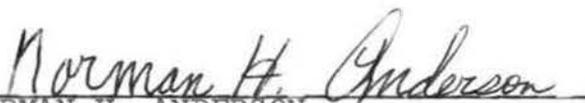
In the absence of any provision to the contrary, the rate of interest is to be computed on an annual basis. First National Bank vs. Kirby, 175 S.W. 926; Finley vs. Acock, 9 Mo. 841.

CONCLUSION

It is our opinion that the "ten per cent interest" provided for in Senate Bill 356, 73rd General Assembly, Section 150.235 VAMS August Pamphlet, means ten per cent per annum or five-sixths of one per cent per month each month the tax is delinquent and in addition thereto a penalty of one per cent per month not to exceed a total of ten per cent per annum for each year the tax is delinquent. This act applies to each and every county in the State.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,


NORMAN H. ANDERSON
Attorney General