

TAXATION (MERCHANTS & MANUFACTURERS): Merchants and manufacturers tax
MERCHANTS: valuation cannot be reduced after
MANUFACTURERS: statements mailed out because of mistake in
COUNTY COURT: valuation. If assessment raised by Equali-
ERRONEOUS TAXES: zation Board and no notice given, increase
BOARD OF EQUALIZATION: void. County court can correct erroneous
COUNTY BOARD OF EQUALIZATION: valuation under Section 137.270. Taxes may
BANKRUPTCY: be collected from bankrupt and his bondsman.
Collector given credit for uncollectible
taxes by county court.

August 16, 1966

OPINIONS NO. 2 and 3 (1966)

Honorable Don E. Burrell
Prosecuting Attorney for Greene County
Springfield, Missouri



Dear Mr. Burrell:

This is in response to your two requests for opinions concerning certain assessments of Merchants and Manufacturers Taxes which requests we have consolidated.

Your first question is as follows:

I.

"1. A new manufacturer in the County reported his total investment and inventory. Since he was assessed on April, 1963, and tax statements were not mailed until October 15, 1963, he has had no opportunity to appear before the Board to request an adjustment in his tax. This was reported on the prescribed assessment list and mailed into the Assessor in the regular and accepted manner."

Perhaps, some general statement of the applicable law is in order so as to make our answer to this question more understandable.

Under Section 150.310, RSMo 1959, manufacturers are required to pay a tax on the highest amount of inventory of raw materials and finished products as well as tools, machinery and appliances possessed by them between the first Monday in January and the first Monday in April. They are required to make a report of this amount to the assessor on the first Monday in May of each year who enters it in a tax book, Section 150.320, RSMo 1959.

Prior to the first Monday in May of each year, the assessor is required to inspect manufacturers facilities for the purpose of obtaining such information as is needed to accurately compare the facts with the manufacturers report, Section 150.325. A report of the assessor's findings is made to the county Board of Equalization and the tax book turned over to it on or before the second Monday of July.

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If, after comparing the assessor's reports and the manufacturer's statement, the county Board of Equalization raises the valuation of the statement, it must give notice to the person involved by mail and advise that the Board will meet on the second Monday in August to hear reasons why the increase should not be allowed, Section 150.330, RSMo 1959.

With respect to your questions set out above, you mention that the tax statement was not mailed until October 15, but you do not mention if the tax was based on the manufacturers own statement (in which case he has no cause to complain,) or if it was raised by the Board of Equalization in view of the assessor's report. The latter could only be done after giving notice as required by Section 150.330, supra, before the second Monday in August so that objections could be made on that date. Absent such notice, the increase is void, State v. Wilson, 332 SW 2d 867, 872.

Your second question is as follows:

II.

"2. The Board erroneously put on the books an assessment on a merchant who had been in business in the County in prior years, but had removed his business from this County the latter part of 1962. He operated in another county during 1963 and paid his tax in said county. What procedure and under what authority do you strike this type of error from your tax books?"

There is no valid basis for the assessment of a merchant or manufacturer who was not doing business in Greene County during the year for which he was assessed. Section 137.270 RSMo is applicable in this situation. Such Section provides as follows:

"The county court of each county may hear and determine allegations of erroneous assessment, or mistakes or defects in descriptions of lands, at any term of the court before the taxes are paid, on application of any person who, by affidavit, shows good cause for not having attended the county board of equalization for the purpose of correcting the errors or defects or mistakes. If any lot of land or any portion thereof has been erroneously assessed twice for the same year, the county court shall release the owner or claimant thereof upon the payment of the proper taxes. Valuations placed on property by the assessor or the board of equalization shall not be deemed to be erroneous assessments under this section."

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It is our view that Section 137.270, is applicable to all assessments of tangible property and is not applicable only to real estate assessments. Such Section provides for correction of erroneous assessments of all tangible property and correction of mistakes or defects in descriptions of lands.

It follows therefore, that the county court can correct an erroneous assessment of a merchant or manufacturer under Section 137.270.

III.

"3. The assessed has filed bankruptcy and this office has filed proper papers to the referee. The assessed had proper bond filed with bondsmen qualified on the application for license. Do you hold the bondsmen liable for the tax?"

The federal bankruptcy act contains two provisions applicable here which are too lengthy to set out in view of the position we take upon this question.

Title 11, Section 35, U.S.C., sets out those debts which shall not be deemed affected by a discharge in bankruptcy. Among them are taxes levied by the United States, or any state, county, district, or municipality. Title 11, Section 34 U.S.C., provides that the liability of a surety for a bankrupt shall not be altered by discharge of such bankrupt.

There has been a large number of cases decided under these two sections involving myriad facets of the problem. Since you provide us with no information concerning the time the tax debtor filed his petition in bankruptcy with respect to the time his tax obligation matured (which may have something to do with the case,) we can do nothing more than to advise you that, in all likelihood, you should be permitted to proceed against the surety forthwith, the petition in bankruptcy notwithstanding. Before proceeding however, we recommend that you familiarize yourself with the cases set out under the foregoing federal statutes in the United States Code Annotated.

IV.

"4. The assessed was a small operator and closed the business in the early part of the year and is not available for collection."

You do not state whether the individual was a merchant or a manufacturer. If he was a merchant Section 150.200 RSMo would be applicable. Such Section provides as follows:

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"The county court, at each regular term thereof, shall settle and adjust the accounts of the collector for licenses delivered to him giving him credit for all blank licenses returned, and charging him for all licenses not returned, according to the statement required to be filed by the person having license, and the statement of the bonds required to be returned; provided, however, that when the collector shows that he has exercised due diligence to collect outstanding merchants' taxes against the merchant and upon his bond or bondsmen and that the same is uncollectible, the county court, upon a showing of said facts may allow the collector credit for the amount thereof."

If the individual inquired about was a manufacturer, Section 150.200 would be applicable under the provision of Section 150.310, RSMo, which provides that manufacturers are taxed in the same manner as provided by law for the taxing and licensing of merchants.

It follows that if the collector shows that he has exercised due diligence to collect outstanding merchants' and manufacturers' taxes and they are uncollectible, the court may credit him for the amount thereof.

V.

"5. Is there any authority after tax statements have been mailed out to reduce the valuation returned for merchants' and manufacturers' tax when a greater amount than the actual value of the goods, wares and merchandise is actually turned in by the merchant or manufacturer."

We find no statute that authorizes such a change to be made after tax statements have been mailed. Such assessment may be incorrect because of the excessive valuation but it is not an erroneous assessment within the meaning of Section 137.270 RSMo, supra, which provides that valuations placed by the assessor or Board of Equalization are not erroneous assessments under such Section.

CONCLUSION

It is the opinion of this office:

1. Any increase in assessment for merchants' and manufacturers' taxes by a county board of equalization without notice is void.

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2. Assessments erroneously made of merchants' and manufacturers' taxes may be corrected by the county court under provisions of Section 137.270 RSMo.

3. A discharge in bankruptcy does not exonerate the bankrupt or his bondsmen from payment of merchants' and manufacturers' taxes already assessed.

4. If a collector shows that he has exercised due diligence to collect outstanding merchants' and manufacturers' taxes and such taxes are uncollectible, the county court may credit him for the amount thereof.

5. An excessive valuation by a merchant or manufacturer listed in his return for merchants' and manufacturers' tax cannot be corrected after tax statements based on such valuation have been mailed out.

The foregoing opinion which I hereby approve was prepared by my Assistant, Mr. C. B. Burns, Jr.

Very truly yours,



NORMAN H. ANDERSON
Attorney General