

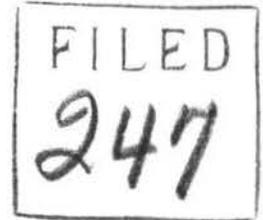
MERCHANTS:
TAXATION:
CONSIGNMENT:

Those dealers are liable for the merchants tax set out in Chapter 150, RSMo, upon goods stored in a warehouse pursuant to a consignment agreement between such dealers and the shippers of such goods, such agreement providing that the dealers have control of such goods and, whereunder such dealers may remove goods from the warehouse to be placed for sale by the dealers from time to time as needed.

OPINION NO. 247

September 1, 1966

Honorable Jack Lukehart
Prosecuting Attorney
Chariton County
Keytesville, Missouri



Dear Mr. Lukehart:

You have requested an opinion of this office concerning the merchants tax under Chapter 150, RSMo. You state that three companies, none of which has an office in Chariton County, ship fertilizer and associated products to a warehouse at Brunswick in Chariton County, on consignment to various dealers. The dealers obtain these products from the warehouse as they need them. You further state that actual title to the merchandise is not in the dealer until he goes to the warehouse and obtains the merchandise in order to take it to his store for sale.

At least one of the consignment agreements between shippers and dealers reads in part as follows:

"You agree to unload upon arrival at destination and to keep clear of demurrage, securely stored, stacked and segregated from goods of yourself and others, all goods consigned by us to you without charge to us. You agree to pay us in full for loss of or damage to, in or to any of our goods in your possession or control, except loss or damage by flood or by fire without your fault.* * *"
(Emphasis added)

We base our opinion on the factual situation as shown by the quoted language; that is, we assume as to all dealers that the goods are consigned to the dealer and that the dealer has under the provisions of such contract, control and responsibility for the goods.

Section 150.040, RSMo requires that:

"Merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares and merchandise which they may have in their possession or under their control, whether owned by them or consigned to them for sale, at any time between the first Monday in January and the first Monday in April in each year . . . " (Emphasis added)

The term "merchant" is defined in Section 150.101, RSMo as follows:

"Every person, corporation, copartnership or association of persons, who shall deal in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose . . . "

The dealers in question have under the above quoted language of the consignment contracts control over and responsibility for the goods consigned. Thus, the contracts obviously give control of the goods to the merchants even though they do not have possession and the statutory requirements are met, subjecting them to liability for the merchants tax.

CONCLUSION

It is the opinion of the Attorney General that dealers are liable for the merchants tax set out in Chapter 150, RSMo upon goods stored in a warehouse pursuant to a consignment agreement between such dealers and the shippers of such goods, such agreement providing that the dealers have control of such goods and whereunder such dealers may remove goods from the warehouse to be placed for sale by the dealers from time to time as needed.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donald L. Randolph.

Very truly yours,



NORMAN H. ANDERSON
Attorney General