

August 26, 1966

OPINION NO. 348  
Answered by letter-Nowotny

Honorable Thomas C. Gilstrap  
Collector of Revenue  
State of Missouri  
Jefferson Building  
Jefferson City, Missouri 65102



Dear Mr. Gilstrap:

This is in answer to your request for an opinion which request reads as follows:

"We received a letter from Mr. Everett Griffin, Fair Play, Missouri, requesting a refund of his Itinerant Vendor's Special Deposit in the amount of \$500.00.

"Mr. Griffin was first issued an Itinerant Vendor's License on July 10th, 1956 which was in the amount of \$25.00 and was for the period of one year. At the same time we also received his \$500.00 cash bond which has been carried in a custody account, and is returned to the vendor sixty days after the license has been cancelled. Mr. Griffin renewed his license each year, the last being on July 10th, 1959. However, we have not heard from him since that time until last month. Mr. A. S. Arenson, former Collector of Revenue, tried on numerous occasions to locate Mr. Griffin, but without success.

"We wrote Mr. Griffin under date of March 30th requesting him to send us his Itinerant Vendor's License in letter form, dated July 10th, 1956, and also his Receipts for the cash bond and \$25.00 license fee which must be sent to us before any action can be taken in regard to the refund. However, Mr. Griffin has advised me that he is unable to locate this license or his Receipts.

"We will be guided by your opinion in this matter."

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An itinerant vendor in Missouri must obtain a state license as provided for by Section 150.390, RSMo 1959. This section reads in part as follows:

"2. Every itinerant vendor desiring to do business in this state shall deposit with the state collector of revenue the sum of five hundred dollars as a special deposit, and thereafter, upon application in proper form, and the payment of a further sum of twenty-five dollars, as a state license fee, such state collector of revenue shall issue to him an itinerant vendor's license, authorizing him to do business in this state, in conformity with the provisions of sections 150.380 to 150.460, for one year from the date thereof."

The purpose of the deposit is to satisfy claims of creditors of the licensee and to pay any fines and penalties incurred by the licensee. Section 150.440, RSMo 1959 reads as follows:

"Each deposit so made with the state collector of revenue, shall be subject to attachment and execution on behalf of creditors, whose claims arise in connection with business done in this state, and to the payment of fines and penalties incurred by the licensee, through violation of sections 150.380 to 150.460. Claims under civil process shall be enforced against the state collector of revenue as garnishee, or trustee by action in the usual form, and claims for satisfaction of fines and penalties shall be enforced by the prosecuting attorney serving notice of pendency of action and judgment when obtained upon the state collector of revenue. Claims upon each deposit shall be satisfied after judgment, in the order in which notice of the claim is received by the state collector of revenue, until such claims are satisfied, or the deposit exhausted; but notices filed after the expiration of such sixty days' limit shall not be valid. A deposit shall not be paid by the state collector of revenue to licensees as long as there are outstanding claims or notices of claims against it, unless there is unreasonable delay in enforcing them."

Section 150.430, RSMo 1959, provides for expiration and surrender of licenses and return of the deposit and reads in part as follows:

"2. All state licenses shall expire by limitation one year from the date thereof, and may be surren-

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dered at any time prior thereto for cancellation. Upon the expiration and return, or surrender of a state license, the state collector of revenue shall cancel it, indorse the date of delivery and cancellation thereon, and place it on file.

"3. He shall hold the special deposit of such licensee mentioned in sections 150.380 to 150.460, for the further period of sixty days, and after satisfying all claims made under it under section 150.440, shall return such deposits, or portion thereof, as remains in his hands, to the licensee depositing same."

The license issued by the state, then, automatically expires one year from date of issue. However, a license may be cancelled before expiration by surrender of the license. If the license has automatically expired, as happened here, then the license is cancelled upon return of the license.

In either case the special deposit is returned only after a sixty day period starting from the date of cancellation by the state Collector of Revenue.

Cancellation is effected on return of the license to the Collector of Revenue. However, here the license has been lost or destroyed making it physically impossible to return the license. It is our opinion that the licensee is nevertheless entitled to the return of his special deposit.

The Collector of Revenue must insure that the particular person claiming the deposit is entitled to the deposit. The Collector should require proof that the claimant is the same person to whom the license was issued and further should require sworn affidavits that the claimant is physically unable to return the license because it has been lost, stolen or destroyed.

When the Collector of Revenue is adequately assured that the claimant is entitled to the special deposit the license is then considered cancelled and after sixty days the special deposit should be returned.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General