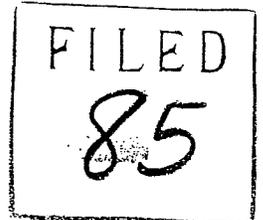


TAXES:
AGRICULTURE:
DEPARTMENT OF AGRICULTURE:
NOXIOUS WEED LAW:

MAR 3 0 1967

OPINION NO. 85
(509 1966)
Answered by Letter
(Downey)



Honorable Dexter D. Davis
Commissioner of Agriculture
Jefferson Building
Jefferson City, Missouri

Dear Mr. Davis:

Reference is made to your request for an official opinion from this office stated as follows:

"A committee working on a revision of the Missouri Noxious Weed Law has recommended that to finance the enforcement of the act that a 3% assessment be charged against all herbicides sold in the state. Is such an assessment in conflict with any existing statutes?"

By oral conference you have clarified the statement of the question to the effect that the proposed statute will provide for an assessment of 3 per cent on the gross sales of all herbicides sold in the state.

Article X, Section 1 of the Constitution provides that the taxing power may be exercised by the General Assembly for state purposes. Article X, Section 4 (a), specifically declares that the constitutional provisions shall not prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types. In State ex rel. Missouri Portland Cement Co. v. Smith, 90 S.W.2d 405, the Court, in construing the constitutional provisions relating to taxes, stated that the power of the Legislature in matters of taxation for public purposes is

unlimited except insofar as restrained by the State or Federal Constitutions or by inherent limitations on the power to tax. The Court further defined excise taxes as including every form of charge imposed by public authority for the purpose of raising revenue upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation. The Court further stated that if the amount of a tax is measured by the amount of business done or the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer, irrespective of the nature or value of the taxpayer's assets, it is regarded as an excise. In *General American Life Insurance Co. v. Bates*, 249 S.W.2d 458, the Court cited with approval *State ex rel. Missouri Portland Cement Co. v. Smith*, *Supra*, and further stated that excises are valid as revenue measures if they operate alike upon all within the same class of subjects.

Herbicide is defined by Section 263.270 (6), as follows:

"The term 'herbicide' means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed;"

If it may be assumed that the control of noxious weeds, and the supervision and regulation of herbicides incidental thereto, is a lawful subject for legislative action, revenue for such legislative purpose may be provided for pursuant to Article X, Section 1, of the Constitution. The proposed assessment of 3 per cent upon the gross sales of herbicides constitutes an excise tax pursuant to *State ex rel. Missouri Portland Cement Co. v. Smith*, *supra*, and *General American Life Insurance Co. v. Bates*, *supra*, and such taxes are permissible pursuant to Article X, Section 4 (a), of the Constitution.

Chapter 144, RSMo, provides for a sales and use tax in the amount of 3 per cent of gross receipts. Section 144.030 (2), RSMo Cum. Supp. 1965, declares a legislative intention to avoid double taxation under the provisions of Chapter 144, and pursuant to said intention certain exemptions are made from the sales tax. These exemptions include spray materials which are to be used for spraying growing crops, fruit trees and orchards when the harvested product thereof will be sold at retail. It may be that some or all of the herbicides in question enjoy the referenced exemption. Nevertheless, it remains a question of legislative policy as to whether or not the excise tax in question is to be levied. The Supreme Court has stated that double taxation is not favored and is not to be presumed; *Wood v. Deuser*, 164 S.W.2d 303. However, the

Honorable Dexter D. Davis
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Courts of this state do not appear to have condemned double taxation per se.

It is noted that the Legislature frequently provides that the expenses for administering laws applicable to a particular industry will be recovered from the supervised or regulated industry. Thus, Section 339.070, RSMo 1959, provides that the expenses of administering the Real Estate License Law shall be provided from fees and charges against the licensed persons, corporations and associations. Section 411.150, RSMo Cum. Supp. 1965, provides that the expenses of administering the Grain Warehouse Law shall be provided from fees collected for services rendered under the law. Section 386.370, RSMo Cum. Supp. 1965, provides that the expenses attributable to the regulation of public utilities shall be provided by an assessment not to exceed $\frac{8}{100}$ of 1 per cent of the gross operating revenues of the regulated utilities. Many other examples could be cited. It is specifically noted that the assessment provided for in Section 386.370 is an excise in the form of a per cent of gross operating revenues and as such it is analagous to the proposed assessment of 3 per cent of gross sales.

It is my opinion that the legislature may lawfully impose excise taxes for the administration and enforcement of the Noxious Weed Law.

Yours very truly,

NORMAN H. ANDERSON
Attorney General