

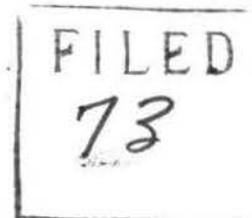
TAXATION (EXEMPTIONS):  
CONSTITUTIONAL LAW:

1. Tangible personal property consigned to a warehouse from an out-of-state point acquires a tax situs in this state when it is warehoused for the convenience of the owner of the property; 2. Goods that are shipped from different out-of-state sources and combined together as one item in the warehouse before being forwarded to an out-of-state consignee do acquire tax situs at the warehouse; 3. The documentary proof required to prove that shipments are in transit are those documents that, in the particular business involved, accurately reflect the destination or eventual sale or consignment of the goods; 4. To secure the exemption provided by Section 137.093, RSMo, bills of lading do not necessarily have to show shipments from the point of origin through a Missouri county to the final destination outside the state on one and the same document; 5. A public warehouse owner, when authorized to do so by the owner of tangible personal property consigned to his warehouse, may show documentary proof of in-transit status in the same manner as the actual owner of the goods and claim an exempt status for the owner; 6. The federal import exemption that applies to uncrated goods is binding on county assessors.

OPINION NO. 73

August 17, 1972

Mr. J. E. Riney, Chairman  
State Tax Commission  
12th Floor Jefferson Building  
Jefferson City, Missouri 65101



Dear Mr. Riney:

This opinion is issued in response to your request for an interpretation of Section 137.093, RSMo 1969. In your request, you asked the following questions:

"1. When does tangible personal property consigned to a warehouse acquire a tax situs in this state?

"2. Do goods that are shipped from different out-of-state sources and combined together as one item in the warehouse before being forwarded to an out-of-state consignee acquire situs at the warehouse?

"3. What documentary proof is required to prove that shipments are in transit?

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"4. Must bills of lading show shipments from the point of origin through a Missouri county to the final destination outside the state on one and the same document?

"5. When a public warehouse owner claims the in-transit exemption for his clients, should he be required to show proof also? If so, what proof is sufficient?

"6. Is the federal import exemption that applies to uncrated goods binding on county assessors?"

Section 137.093, RSMo 1969 states:

"Tangible personal property moving through the state or consigned to a warehouse in this state from a point outside the state, in transit to a final destination outside the state shall, for purposes of taxation, acquire no situs in the state. The owner shall if required, in order to obtain a determination that any property has not acquired a situs in the state, submit to the appropriate assessing officer documentary proof of the in-transit character and the final destination of the property."

This provision has not yet been interpreted by any reported decisions of Missouri courts.

#### I.

Your first question: "When does tangible personal property consigned to a warehouse acquire a tax situs in this state?" compels an examination of both constitutional doctrines concerning the acquisition of situs for the purpose of the imposition of a personal property tax and the legislative history of this enactment.

A plethora of cases make it abundantly clear that, absent this statute, a personal property tax could be imposed on goods temporarily in this state at a warehouse or storage facility, although intended for ultimate distribution to an out-of-state vendee. E.g., Independent Warehouses, Inc. v. Scheele, 331 U.S. 70, 67 S.Ct. 1062, 91 L.Ed. 1346 (1947); Coe v. Town of Errol, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715 (1886); Old Dominion Steamship Co. v. Virginia, 198 U.S. 299, 25 S.Ct. 686, 49 L.Ed. 1059 (1905); Carey v. New York Central Ry. Co., 165 N.E. 805 (N.Y. 1929); Louisiana Iron & Supply Co. v. Jolly, 51 P.2d 280 (Okla.

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1935); Chickasha Cotton Oil Co. v. Grady County, 58 P.2d 590 (Okla. 1936). The general rule, that the personal property of a nonresident actually situated in another state is not to be assessed and taxed against him in this state, but the property of either a resident or a nonresident is taxable here, if it be found situate within the local jurisdiction, whether it be in the hands of the owner himself or his agents, was stated in the decision of City of St. Louis v. Wiggins Ferry Company, 40 Mo. 580 (1867). Compendiums of other related cases can be found at 110 A.L.R. 707 (1937); 171 A.L.R. 283 (1947); and 4 A.L.R.2d 244 (1949).

The principle is well established that personal property actually in transit in interstate commerce is protected by the commerce clause of the Federal Constitution from local taxation in the state through which it passes. When such journey is interrupted, the question of whether the goods involved have lost their in-transit status and immunity from taxation arises. The general principle enunciated by the Supreme Court of the United States in such cases is that if the interruption of the journey between states is of a temporary nature, due to the necessities of the journey or for the purpose of safety and convenience in the course of movement, the in-transit status of the shipment is not lost. But in-transit status is lost when ". . . property has come to rest within a state, being held there at the pleasure of the owner, for disposal or use, so that he may dispose of it either within the state, or for shipment elsewhere, as his interest dictates, it is deemed to be a part of the general mass of property within the state and thus subject to its taxing power." Minnesota v. Blasius, 290 U.S. 1, 11, 54 S.Ct. 34, 78 L.Ed. 131 (1933). The Blasius decision, supra, also observed:

". . . Formalities, such as the forms of billing, and mere changes in the method of transportation do not affect the continuity of the transit. The question is always one of substance, and in each case it is necessary to consider the particular occasion or purpose of the interruption during which the tax is sought to be levied. . . ." (290 U.S. at 10)

Therefore, the protection of the commerce clause of the United States Constitution is lost when such property is no longer in transit when goods are consigned to a warehouse for the convenience of the owner so that he might dispose of the goods either in the state of Missouri or outside the state of Missouri. See also United States v. Great Lakes Pipeline Co., 328 F.2d 79 (8th Cir. 1964) for a discussion of certain leading cases concerning in-transit status.

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Section 137.093 attempts to grant an exemption for certain tangible personal property warehoused in this state. Section 6 of Article X of the Constitution of Missouri is a limitation upon the power of the legislature of Missouri to exempt property from taxation. There is no specific grant of authority to the legislature to exempt tangible personal property moving through the state or consigned to a warehouse. The concluding sentence of Section 6 of Article X states:

" . . . All laws exempting from taxation property other than the property enumerated in this article, shall be void."

When confronted with the possibility of differing interpretations of a law, one that would preserve its constitutionality and one that would void it, courts invariably choose the former course. E.g., State ex rel. R. Newton McDowell, Inc. v. Smith, 67 S.W.2d 50 (Mo. 1933). Therefore, it is the opinion of this office that Section 137.093, RSMo 1969 is to be applied as if it merely reenunciated the well-established principles stated by the United States Supreme Court concerning taxation of personal property in interstate commerce. Therefore, tangible personal property consigned to a warehouse in this state acquires a tax situs when the consignment to a warehouse is not due to the exigencies of transportation but is for the convenience and benefit of the owner.

## II.

For your second question, you ask:

"Do goods that are shipped from different out-of-state sources and combined together as one item in the warehouse before being forwarded to an out-of-state consignee acquire situs at the warehouse?"

In view of the general statutory language of Section 137.093, RSMo 1969, and the answer to the preceding question, this question must be answered in the affirmative. For example, a warehouse could have consigned to it a carload of tires and a carload of auto parts. If the warehouse personnel combined these shipments and sent them to out-of-state vendees, such action by the warehouse, on behalf of the owner, would deprive these goods of their in-transit status because such a combination would clearly be for the owner's benefit. If manufacturing or processing activities occur, this would also deprive the goods of their in-transit status. By their very nature, manufacturing or processing activities, or the combination of goods as one item in the warehouse, are activities designed to benefit the

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owner and not situations occasioned by the exigencies of transportation. Therefore, the occurrence of such activities would deprive the goods involved of their in-transit status, and such goods do have a tax situs in this state.

III.

You also ask, in question three:

"What documentary proof is required to prove that shipments are in transit?"

The statute does not state what documentary proof is appropriate. This office could not state what proof would be appropriate as to do so would be exercising a legislative function. However, documentary proof that might be appropriate would include bills of lading, affidavits, invoices, etc., that show the in-transit nature of the goods. The assessor can require whatever showing of facts is necessary to make a determination as to whether goods are in transit.

IV.

Your fourth question asks:

"Must bills of lading show shipments from the point of origin through a Missouri county to the final destination outside the state on one and the same document?"

This requirement could be imposed to qualify tangible personal property moving through the state for an exemption. However, because of the silence of the statute on a documentary proof required, other documentation could be used to bring goods within the statutory exemption. Normal business practice often dictates the use of, for example, multiple bills of lading, and because of the absence of direction concerning the documentary proof required, an assessor would be unauthorized to impose this requirement as a condition for exemption.

V.

Your fifth question is:

"When a public warehouse owner claims the in-transit exemption for his clients, should he be required to show proof also? If so, what proof is sufficient."

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If the owner of the warehouse in which the goods are stored seeks to invoke the exemption on behalf of his clients, he is clearly acting on their behalf and in the capacity of an agent. As such, he stands in the owner's shoes and should have the same obligation to show documentary proof imposed upon him as an owner. Sufficient proof in his case would be the same evidence as would be adduced by the owner. Of course, he would have to be able to substantiate his agency status.

Related to this inquiry is the question of who should be assessed for this personal property tax, the owner of the goods or the warehouseman. The relevant statutory provisions pertaining to assessment, Sections 137.075, 137.095, and 137.115, RSMo 1969, support the conclusion that the assessor should first seek to obtain a correct statement of all taxable tangible personal property owned by any person and warehoused in this state. If this is not possible, then the assessor should seek such a statement from the warehouseman to whom the goods have been consigned. Section 137.075 states:

"Every person owning or holding real property or tangible personal property on the first day of January, including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

Section 137.095, in relevant part, provides:

"The real and tangible personal property of all corporations operating in any county in the state of Missouri and in the city of St. Louis, and subject to assessment by county or township assessors, shall be assessed and taxed in the county in which the property is situated on the first day of January of the year for which the taxes are assessed, and every general or business corporation having or owning tangible personal property on the first day of January of each year, which is situated in any other county than the one in which the corporation is located, shall make return to the assessor of the county or township where the property is situated, in the same manner as other tangible personal property as required by law to be returned, . . ."

Section 137.115 directs the assessor to:

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". . . call at the office, place of doing business or residence of each person required by this chapter to list property, and require the person to make a correct statement of . . . all taxable tangible personal property owned by the person or under his care, charge or management, taxable in the county, except merchandise upon which he is required to pay a license tax."

The Supreme Court of this state, in the decisions of City of St. Louis v. Wiggins Ferry Company, 40 Mo. 580 (1867) and Curtis v. Ward, 58 Mo. 295 (1874) early ruled that the property of a non-resident is taxable in this state if it is to be found within this jurisdiction, whether in the hands of the owner or his agents.

In collecting the personal property taxes imposed, the collector of revenue for the county will, of course, follow the procedures established by Chapter 139 of the Missouri Revised Statutes. Such procedures include the remedy granted by Section 139.120, RSMo 1969, permitting the seizure and sale of personal property of the person liable for taxes.

## VI.

For your final question you ask: "Is the federal import exemption that applies to uncrated goods binding on county assessors?"

Article I, Section 10 of the Constitution of the United States provides that "No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." This provision has been subject to considerable litigation and the general principle that has been often repeated is that goods imported do not lose their character as imports, for purposes of state taxation, until they have passed from the control of the importer or have been broken up by him from their original cases. Department of Revenue v. James B. Beam Distilling Co., 377 U.S. 341, 84 S.Ct. 1247, 12 L.Ed.2d 362 (1964); See generally, Hooven & Alison Co. v. Evatt, 324 U.S. 652, 65 S.Ct. 870, 89 L.Ed. 1252 (1945); Annot., 20 A.L.R.2d 152 (1951); Annot., 89 L.Ed. 1279 (1945). The provisions of this section of the Constitution are to be given full effect by county assessors.

## CONCLUSION

It is the opinion of this office that:

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1. Tangible personal property consigned to a warehouse from an out-of-state point acquires a tax situs in this state when it is warehoused for the convenience of the owner of the property;
2. Goods that are shipped from different out-of-state sources and combined together as one item in the warehouse before being forwarded to an out-of-state consignee do acquire tax situs at the warehouse;
3. The documentary proof required to prove that shipments are in transit are those documents that, in the particular business involved, accurately reflect the destination or eventual sale or consignment of the goods;
4. To secure the exemption provided by Section 137.093, RSMo, bills of lading do not necessarily have to show shipments from the point of origin through a Missouri county to the final destination outside the state on one and the same document;
5. A public warehouse owner, when authorized to do so by the owner of tangible personal property consigned to his warehouse, may show documentary proof of in-transit status in the same manner as the actual owner of the goods and claim an exempt status for the owner;
6. The federal import exemption that applies to uncrated goods is binding on county assessors.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Peter H. Ruger.

Very truly yours,



JOHN C. DANFORTH  
Attorney General