ATHLETIC COMMISSION:) Section 317.020, RSMo 1949: Tax on "gross ceipts" from regulated boxing, sparring and wrestling exhibitions not to be applied to r ceipts obtained by theaters televising such hibitions. Five per cent of the gross amount paid for the right to televise such exhibitions should be collected on the amount paid for the right to televise such exhibitions.

TAXATION:)

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January 31, 1952

2-1-52

Honorable Bert Cooper
Director
Dept. of Business and Administration
State Office Building
Jefferson City, Missouri

Dear Mr. Cooper:

The following opinion is rendered in reply to your recent request reading as follows:

"The Division of Athletics in the State Department of Business and Administration is authorized and given the expressed duty by Section 317.020, Revised Statutes 1949 to supervise all boxing and wrestling matches in the state and to issue license and collect fees.

"Among the fees collected is a charge of five percent of the gross gate receipts of every boxing, sparring and wrestling exhibition held in the state. Such funds are paid into the State Treasury and are set aside as a State Athletic Commission fund. Any appropriation made to the Division of Athletics is taken from this fund. The expenditures of the Division of Athletics cannot exceed the amount of fees collected and deposited in the Athletic Commission fund if the appropriation exceeds the amount.

"Some of these exhibitions are now being televised and in some parts of the country theatres are sold exclusive rights to televise

> live fights or boxing bouts and wrestling exhibitions. Televised exhibitions naturally cut the attendance at the real exhibition hence reduces the collections and threatens ultimate elimination of state supervision and enforcement of regulations.
>
> "1. Can the Missouri Athletic Commission under existing laws collect five percent of the gross admission receipts of theatres when they have exclusive rights and do televise live boxing or wrestling exhibitions in the State of Missouri?
>
> "2. Can the State Athletic Commission collect from promoters or sponsors five percent of the gross amount paid by theatres for the right to televise live prize fights and wrestling exhibitions?
>
> "3. If the answer to the above questions is negative, please suggest a legal method for the Athletic Commission to collect a fair share of receipts resulting from boxing bouts and wrestling exhibitions held under its authorization and supervision which are live televised."

The Athletic Commission of the State of Missouri derives its authority to tax boxing, sparring or wrestling exhibitions from Section 317.020, RSMo 1949, which provides, in part, as follows:

> "That the athletic commission of the state of Missouri shall have general charge and supervision of all boxing, sparring and wrestling exhibitions held in the state of Missouri, and it shall have the power, and it shall be its duty:

* * * * * *

"(3) To charge fees for such license of ten dollars for every license issued and to charge five per cent of the gross receipts of every boxing, sparring or wrestling exhibition held. * * *"

Question No. 1:

In reply to this question we call your attention to the above-quoted Section 317.020, RSMo 1949. This section authorizes and directs the Athletic Commission "to charge five per cent of the gross receipts of every boxing, sparring or wrestling exhibition held." (Underscoring ours.) A fundamental rule in the construction of statutes is embodied in the maxim, "expressio unius est exclusio alterius," which means that the express mention of one thing implies the exclusion of another.

In City of Hannibal v. Minor, Mo. App., 224 S.W. (2d) 598, l.c. 605, the court said:

"* * * There is a fundamental principle of construction which has been recognized and applied from time immemorial by our courts to such questions as we have here. It is embodied in the maxim: 'Expressio unius est exclusio alterius' which means that the express mention of one thing, person or place implies the exclusion of another. * * *"

By including in the statute authority "to charge five per cent of the gross receipts of every boxing, sparring or wrestling exhibition held," it thereby implies the exclusion of all else. Taxing gross receipts of a theater televising such an exhibition could by no stretch of the imagination be included in the authority conferred on the Athletic Commission by this statute which merely authorizes charging five per cent of the gross receipts of boxing, sparring and wrestling exhibitions.

Our answer, therefore, to Question No. 1 is "No."

Question No. 2:

In reply to your Question No. 2 we are of the opinion that the State Athletic Commission not only can, but that under the statute, Section 317.020, RSMo 1949, it is its duty to collect from promoters or sponsors five per cent of the gross receipts paid for the right to televise live prize fights and wrestling exhibitions held in the state. The money paid for the right to televise boxing, sparring or wrestling exhibitions is as much a part of the gross receipts as the gate receipts or admission charges, and five per cent of the gross amount of such receipts should be charged by the commission.

What is the meaning of "gross receipts?" In Savage v. Commonwealth ex rel. State Corporation Commissioners, 186 Va. 1012, 45 S.E. (2d) 313, l.c. 317, which is a "gross receipts" tax case, the court defined "gross receipts" as follows: "The words, 'gross receipts," mean whole, entire, total receipts. * * *" (Underscoring ours.) Webster defines "gross" as follows: "4. Whole; entire; total; as, the gross sum, amount, weight; -- opposed to net. The gross earnings, receipts, or the like, are the entire earnings, receipts, or the like, under consideration, without any deduction."

The same definition appears in State v. Hallenberg-Wagner Motor Company, Mo. Sup., 108 S.W. (2d) 398, at l.c. 401.

In City of Lancaster, Appellant, v. Briggs & Melvin, Respondents, 118 Mo. App. 570, the court was dealing with an ordinance which required a telephone company to pay the city two per cent per annum of the "gross receipts" collected by the company for the use of the streets and alleys of the city to carry the poles, lines and wires necessary to the operation of a telephone exchange. The court at l.c. 574-576 said:

> "Defendants filed the required statements and paid to the city the sums shown in them to be due under the ordinance, but it is contended by plaintiff that items of revenue earned by the business and received by defendants were omitted and this suit

is for the recovery of two per cent of the aggregate of such omitted items. It is conceded by defendants that the receipts reported were confined to those derived solely from the rental of telephones in the city and it is argued by them, and this was the view taken by the learned trial judge, that the ordinance imposed no other burden on defendants than to pay to the city two per cent of the gross receipts from such rentals, while plaintiffs insists that the words 'gross receipts collected from the use of said telephone system' include earnings received from 'long distance' service rendered by defendants to their patrons as well as rentals collected for telephones used in the city.

* * * * * *

"* * * Therefore, if defendants operated long distance lines connecting Lancaster with other cities and towns over which they conducted a toll business, or as a part of their business operated exchanges in neighboring towns, the earnings of such divisions of their telephone system would not be subject to the charge under consideration. <u>But it equally is as clear the parties intended that the earnings from all sources of the system within the city should be included in the term 'gross receipts.'</u> These earnings, it is fair to assume in the state of the case before us, consisted not only of rentals paid for the use of telephone instruments in the city but also included a percentage received by defendants of the proceeds of toll line business that required the services of the Lancaster exchange in its transaction. All such income

> actually received by defendants under contracts with the owners of independent connecting lines on account of the service of the Lancaster exchange in the transmission or delivery of long distance business certainly belongs to the gross receipts of that exchange and with respect to tolls received by defendants for long distance service over lines and exchanges operated entirely by them, the reasonable value of the services rendered by the Lancaster exchange to that class of business should be regarded as a part of the gross receipts of that exchange. * * * The city is entitled to its percentage of all of the earnings of that exchange received from all classes of patronage and to nothing more, and the court erred in its interpretation of the term 'gross receipts.'"

The court in City of Lancaster v. Briggs & Melvin, supra, properly held that the city should not be limited to receipts solely derived from the rental of telephones, but that "gross receipts" also included earnings from long-distance telephone service as well as rentals collected for telephones used in the city. It was held that the city was entitled to the percentage of all the earnings that the exchange received from all classes of patronage.

In Taylor v. Rosenthal, (Ky.), 213 S.W. (2d) 435, l.c. 437, the court commented on the subject of tax levy on "gross receipts" as follows:

> "Appellant cites several cases, such as Sandusky Gas & Electric Co. v. State, 114 Ohio St. 479, 151 N.E. 685; Cincinnati Milford & Loveland Traction Co. v. State, 94 Ohio St. 24, 113 N.E. 654; State v. Central Trust Co. 106 Md. 268, 67 A. 267; State v. Hallenberg-Wagner Motor Co., 341 Mo. 771, 108 S.W.

> 2d 398, which are tax cases. It is evident that they are not in point here. When a tax is levied on 'gross receipts' it applies to every penny a person, firm or corporation takes in regardless of the source from which it comes. Also, it is apparent that City of Lancaster v. Briggs, 118 Mo. App. 570, 96 S.W. 314, cited by appellant, is not controlling here, since it only determines that receipts from long distance calls constitute a part of the gross receipts of a telephone system."
>
> (Underscoring ours.)

In Sandusky Gas & Electric Co. v. State, 114 Ohio St. 479, 151 N.E. 685, l.c. 687, the court said:

> "The levy of an excise tax upon the gross receipts of public utility companies is made pursuant to the provisions of sections 5417, 5474, 5475, and 5483, General Code, and the words 'entire gross receipts,' as there employed, mean and include the entire receipts of such company from the intrastate business done by it under the exercise of its corporate powers, whether from the operation of the utility itself or from any other business done by it."

In Madison Avenue Coach Co., Inc., v. New York City, 82 N.Y.S. (2d) 270, l.c. 271, the court said:

> "This is a motion for judgment on the pleadings. Plaintiff has instituted an action for a judgment declaring its rights under a franchise granted it by the defendant City. It appears that under the franchise plaintiff is obliged to pay a fixed percentage of its gross income to the defendant. In computing the gross, plaintiff includes

> the sum received from a lease of the privilege of installing advertising cards in its buses. Under this lease plaintiff receives from its lessee a percentage of the amount the latter is paid by the advertisers. Defendant urges that the franchise percentage should be computed on the gross received by the plaintiff's lessee and not on what plaintiff receives.
>
> "Examination of the franchise discloses that gross receipts include 'revenues of the Company' (plaintiff) 'from whatever source derived, either directly or indirectly, in any manner, from or in connection with the operation of the route.' Receipts from advertising in the buses is clearly within such a definition. * * *"
>
> (Underscoring ours.)

In Commonwealth v. Brush Electric Light Company, Appellant, 204 Pa. 249, l.c. 252, the court said:

> "By section 23 of the Act of June 1, 1889, P.L. 420, electric light companies are taxed eight mills upon the gross receipts from their business. The appellant, such a company, claims exemption from this tax upon certain items in its gross receipts, because they are not derived from electric lighting. They are for electric power furnished to individuals and corporations for manufacturing purposes and for sales of electric supplies, such as lamps, drop lights, fans, etc. The contention of the appellant is, that, as it is incorporated as an electric light company, only its gross receipts from electric lighting are taxable. But such are

> not the words of the statute. They are clear and unambiguous, as they must be, if the commonwealth is entitled to the taxation imposed: Boyd v. Hood, 57 Pa. 98. The tax is not to be paid upon the gross receipts from electric lighting, but upon the gross receipts from the business of the company. For the purpose of enlarging and swelling the volume of its business, it furnishes not only electric light, but electric power to manufacturers and sells electric supplies. Having so extended its business beyond the mere furnishing of light by electricity, the company has largely increased its revenues, and it would be a strained construction of the words of the statute if the gross receipts from its business should be interpreted as meaning only its gross receipts from electric lighting, simply because it is called an electric light company. It is taxed on what it does. The statute imposes the tax not upon a portion of its receipts--those derived from a particular commodity it supplies to the public--but upon all of its receipts from its general business conducted under its franchises. Having, under what it regards as its franchises not questioned by the commonwealth, enlarged its business by extending the same beyond the mere furnishing of light, and having realized largely increased revenue from so doing, its plea for abatement of the tax claimed by the state is ungracious, and cannot avail it in the face of the statute declaring what it shall pay. * * *"

When the Legislature empowered the Athletic Commission to "charge five per cent of the gross receipts" of every

boxing, sparring or wrestling exhibition, it certainly did not mean that the charge be placed on only a part of the gross receipts or just gate receipts or admission charges -- it evidently meant by "gross receipts" the whole, the entire, the total receipts, which is all inclusive.

If there is any exemption from a tax, the burden is on the claimant to establish clearly his right to such exemption.

In re First National Safe Deposit Co., Mo. Sup., 173 S.W. (2d) 403, l.c. 405, Leedy, J., speaking for the Supreme Court of Missouri, said:

> "It is the general rule that taxing statutes are to be strictly construed in favor of the taxpayer, and against the taxing authority; but this does not extend to exemption provisions of such statutes. The applicable rule in the latter connection is as stated in State ex rel. St. Louis Y.M.C.A. v. Gehner, 320 Mo. 1172, 11 S.W. 2d 30, 34: ' * * * no such exemption can be allowed, except upon clear and unequivocal proof that such release is required by the terms of the statute. If any doubt arises as to the exemption claimed, it must operate most strongly against the party claiming the exemption. * * * "Such statute and constitutional provisions are construed with strictness and most strongly against those claiming the exemption. * * * the burden is on the claimant to establish clearly his right to exemption." * * *' See, also, State ex rel. Spillers v. Johnston, 214 Mo. 656, 113 S.W. 1083, 21 L.R.A., N.S., 171; 1 Cooley on Taxation, 3d Ed., 357, 358."

It is our opinion that in the statute under consideration that "gross receipts" means "the whole, the entire, the total receipts," and that it is the duty of the Athletic Commission to collect from promoters or sponsors

Honorable Bert Cooper

of all boxing, sparring and wrestling exhibitions held in the state five per cent of the "gross receipts" of such exhibitions, and the amount received for television rights should be included in the "gross receipts."

We, therefore, are of the opinion that your Question No. 2 should be answered in the affirmative.

Question No. 3:

In view of the fact that our answer to Question No. 2 is in the affirmative, we assume you desire no answer to Question No. 3.

CONCLUSION

It is the opinion of this department that:

(1) The Missouri Athletic Commission, under the existing laws, cannot collect five per cent of the gross admission receipts of theaters when they have exclusive rights and do televise live boxing, sparring or wrestling exhibitions in the State of Missouri; and

(2) The State Athletic Commission can and it is its duty to collect from promoters or sponsors five per cent of the gross amount paid for the right to televise live boxing, sparring and wrestling exhibitions held in the state as such amount is a part of the "gross receipts" of such exhibitions.

Respectfully submitted,

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APPROVED:

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GCH/feh