

**ATHLETIC COMMISSION - Shall collect 5% of all the gross receipts of every boxing, sparring or wrestling exhibition held.**

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February 1, 1938

Athletic Commission  
State of Missouri  
Jefferson City, Missouri



Attention: Mr. Horace T. Dawson, Sec.

Gentlemen:

This is to acknowledge your request of January 24, 1938 for an opinion, which reads as follows:

"This letter is to request an opinion from your office concerning the priority of taxes.

"This question was called to my attention a few days ago by one of our inspectors in his report and remittance to this office. According to the statutes, our inspectors collect a 5% State tax of the gross gate receipts of all boxing and wrestling matches in the State. This deduction is made after the Federal tax has been deducted.

"The question now arising is whether or not the sales tax should be deducted from the gross gate receipts before the 5% State tax, or whether the State tax should be taken before the sales tax."

The question of priority of state taxes is not discussed in the course of this opinion, in view of the obvious requirements of Section 12999 of R. S. Mo. 1929, which reads in part as follows:

" \* 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; \*\*\* to collect five per cent. of the gross receipts of every boxing, sparring or wrestling exhibition held, \*\*\* "

The only question for determination in view of the above section is: what did the Legislature mean by the use of the words "gross receipts"? Ordinarily, in the construction of statutes, words should be construed in their ordinary and usual sense. Cummings vs. Kansas City Public Service Company, 66 S. W. (2d) 920; O'Malley vs. Continental Life Insurance Company, 75 S. W. (2d) 837.

In applying the above principle of law to the words above used, we find that Webster's Dictionary defines the word "gross" as meaning,

"whole; entire; total; -- opposed to net.  
The undivided whole."

The word "receipts", when used with the word "gross", and when interpreted in its common acceptation, leaves nothing to construe as to what the Legislature meant when those words were used in the above statute.

Our Supreme Court has never passed on the words "gross receipts" as have been used in a statute. In the case of Pacific Gas and Electric Company vs. Roberts, 167 Pac. 845, 848, the Supreme Court of California had before it for consideration the term "gross receipts from operation", and held that those words meant the total, entire income, without any deductions of any kind. In reaching its conclusion, the court quoted with approval the Supreme Court of Illinois and said:

"In State v. Illinois Central Railroad Co., 246 Ill. 188, 92 N. E. 814, the

court was considering a provision in a charter of a railroad company requiring it to pay a percentage of 'the gross receipts,' and it was held that the quoted expression meant the entire income without deduction. In the illuminating discussion of this subject the court cited German Alliance Ins. Co. v. Van Cleave, 191 Ill. 410, 61 N. E. 94, wherein 'gross income' was held to be the gross receipts of the business, the court saying that the word 'gross', as used in the statute, is opposed to 'net', and in its ordinary significance is applied to all of the receipts of the business, while net receipts are those remaining after deductions for the expenses of conducting the business. \*\*\* "

In support of our conclusion, we have examined the Federal Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, (26 U. S. Code Annotated, Section 940) and the Sales Tax Act (Laws of Mo. 1937, page 552, Section 2, Subdivision b and Section 5) and do find from such examination that the tax is in addition to the price paid for an admission to any place of amusement.

Sub-section a of Section 940, supra, and Sub-division 2 of Sub-section a of the Federal Revenue Act, provides a specified rate of tax to be levied, assessed, collected and paid by the person paying for such admission. A similar provision is provided under the Sales Tax Act. This provision requires that it is the duty of every person making a purchase to pay the amount of the tax imposed to the person making the sale.

From these observations, it will be noted that the amount of tax to be collected is in addition to the actual price paid for such admission, and is based upon the price paid. For example, if a ticket of admission to a boxing exhibition costs \$1.00, the Federal tax is

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to be computed on the \$1.00. Likewise, as to the sales tax and should be collected by the person making such sale.

To further illustrate, if a boxing exhibition is held before an attendance of 100 persons, and the price of admission for each person is \$1.00, the total amount of gross receipts would be \$100.00, and the tax computed on such single admissions would be in addition, and the 5% tax should not be computed on the additional taxes imposed by the State and Federal government, because such taxes in nowise constitute a part of the gross receipts, since such taxes are to be collected on the single admission.

CONCLUSION

In view of the above, it is our opinion that the Athletic Commission is required to collect 5% of the gross receipts derived from every boxing, sparring or wrestling exhibition held in this state after excluding taxes collected on behalf of the Federal government and the State.

Very truly yours,

RUSSELL C. STONE  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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