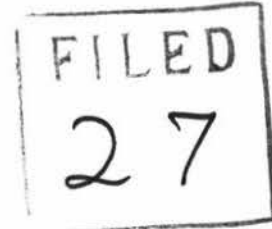


TAXATION: Hatchery operator engaged in selling baby fowls should be classified as a merchant and subject to the merchant's  
HATCHERY: tax. Farmer engaged in selling farm products not subject to merchant's tax provided he does not have a regular stand or place of business away from his farm. Person contracting to hatch eggs for others is not a merchant.

September 20, 1950

Honorable Clarence Evans  
Chairman, State Tax Commission  
Jefferson City, Missouri



Dear Sir:

This is in reply to your letter of recent date requesting an official opinion of this department and reading as follows:

"A question has arisen in one of the counties of our state where a private owner living outside the city owns and operates a Hatchery within the city.

"This Commission would like to have your opinion as to whether a Hatchery should be assessed as a manufacturer or as a merchant."

"Manufacturer" is defined by Laws of Missouri, 1945, p. 1855, Sec. 4, in the following terms:

"Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials, shall be held to be a manufacturer for the purpose of the foregoing section."

It is the opinion of this office that a hatchery operator does not come within this definition of "manufacturer."

Section 11303, Laws of Missouri, 1945, page 1838, defines the term "merchant" in the following terms:

"Every person, corporation, copartnership or association of persons, who shall deal in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose, is declared to be a merchant. Every person, corporation, copartnership or association of persons doing business in this state who shall, as a practice in the conduct of such business, make or cause to be made any wholesale or retail sales of goods, wares and merchandise to any person, corporation, copartnership or association of persons, shall be

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deemed to be a merchant whether said sales be accommodation sales, whether they be made from a stock of goods on hand or by ordering goods from another source, and whether the subject of said sales be similar or different types of goods than the type, if any, regularly manufactured, processed or sold by said seller."

It is the opinion of this department that the definition of merchant as it appears in the act levying a tax on merchants embraces the hatchery operator who shall deal in selling chickens or other fowls at a store, stand, or place occupied for that purpose.

May we also direct your attention to Section 11329, Laws of Missouri, 1945, p. 1838, Sec. 1, which exempts farmers from the act levying the merchant's tax in the following words:

"Any farmer residing in this state who shall grow or process any article of farm produce or farm products on his farm, is hereby authorized and permitted to vend, retail or wholesale said products, free from license, fee or taxation from any county or municipality, in any quantity he may choose, and by doing so shall not be considered a merchant; provided, he does not have a regular stand or place of business away from his farm, And provided further, that any such produce or products shall not be exempted from such health or police regulations as any community may require."

It appears from this section that if a hatchery were operated on a farm and the fowls grown or produced on the farm were sold by the farmer in any quantity he might choose such farmer would not be considered a merchant for the purpose of this merchant's tax, provided he did not have a regular stand or place of business away from his farm.

It appears from reading these sections that the legislature has expressed their intention that a farmer selling farm products should be exempt from the merchant tax but if one engaged in "selling goods, wares and merchandise at any store, stand or place occupied for that purpose" he is declared to be a merchant and subject to the tax levied on merchants.

In State v. West, 34 Mo. 424, it was held:

"To be a merchant in the sense of the law, the dealer must have on hands goods, wares and merchandise ready for sale and present delivery, and must also actually deal in the selling of the same."

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The operator of a hatchery who deals in the selling of baby fowls or birds from a stock of goods at a store, stand or place occupied for that purpose would be classified as a merchant for the purpose of this taxing act. Distinguish, however, the hatchery operator who may not engage in selling baby fowls from a stock kept at a store or place of business for that purpose but only contracts to hatch eggs that are brought to him for that purpose. Such a hatchery operator would not be engaged in any selling activity and would not be classified as a merchant. In *State v. West* (supra) the court said:

"One who manufactures and supplies goods alone to the previous order of his customers, although he keeps on hand, but not for sale, the materials from which the manufactured articles are produced, is not a merchant within the meaning of the statute."

We can readily see the determination of whether a hatchery operator is to be classified as a merchant is a question of fact in each case. If such an operator is merely contracting to hatch eggs brought to him he would not be classified as a merchant who engages in selling baby chicks or birds from a store, stand, or place of business.

In the case of *Kansas City v. Ferd Hein Brewing Company* the court said: "It will be seen by these decisions that a manufacturer may or may not be a merchant within the meaning of the charter and statute of the state. If he keeps at a store, stand or other place, in stock articles manufactured by him for sale in the ordinary course of trade, he is a merchant. If he only manufactures upon order he is not a merchant (as the example of the hatchery operator who contracts to hatch eggs but does not stock baby chicks for sale.) It is therefore a mixed question of law and fact whether a manufacturer is or is not a merchant."

In *State v. Whittaker*, 33 Mo. 457, the court held: "A merchant, under the statute, is a person who deals in the selling of goods, wares, and merchandise, at any store, stand, or place occupied for that purpose. It is immaterial if the defendant, by his labor, changed the form of the goods sold; if he deals in the selling of the goods at a store he is a merchant for the purposes of the act." And it was further held that it was "immaterial that the store, stand, or place, may have been also occupied for some other purpose."

The legislature has provided this method of assessing merchandise for taxation differently from other personal property because of the variation of inventories of merchants and manufacturers. In this state merchandise is not listed for taxation as other per-

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sonal property, but instead the merchant is required to apply for a license to trade as such, and he is required to pay an ad valorem tax, equal to that which is levied on real estate, on the highest amount of goods and merchandise which he may have in his possession at any time during the period fixed by statute and it is the amount furnished by his sworn statement which forms the basis on which the various state, county, school, and municipal taxes are levied (State ex rel. Carleton Dry Goods Co. v. Alt. 123 S.W. 882; 224 Mo. 493.

It is a cardinal rule in construing a statute, repeated many times by the Supreme Court of this state, that a statute should be construed so as to ascertain and give effect to the legislative intent expressed therein. This principle was reiterated in Artophone Corporation v. Coale, 133 S.W. (2d) 343; 345 Mo. 354, in these words, "The primary rule of construction of statutes is to ascertain the lawmakers' intent from the words used, if possible, and to put on the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object and manifest purpose of the statute."

Taking into consideration the purpose of the legislature in providing this method of assessing merchants and the section defining "merchants" quoted supra wherein the legislature has declared "every person \* \* \* who shall deal in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose, is declared to be a merchant," it appears the legislature has included the operator of a hatchery who keeps on hand a stock of baby chicks or other merchandise at a stand, store or place occupied for that purpose and offers such merchandise for sale as a merchant.


#### CONCLUSION.

It is the opinion of this department that one who operates a hatchery from which is sold baby chicks should be classified as a merchant and subject to the tax levied on merchants. Further, that a farmer engaged in selling farm products from his farm is specifically exempt from the merchant's tax provided he does not have a regular stand or place of business away from the farm in which he engaged in vending his products. Further, that if one solely contracts to hatch eggs for others but does not offer baby chicks for sale, such person would not be classified as a merchant.

Respectfully submitted,

JOHN E. MILLS,  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney-General