

TAXATION: Co-operative stores are subject to taxation
MERCHANTS TAX: as merchants.

December 31, 1942

Hon. A. L. Gates
Prosecuting Attorney
Moniteau County
California, Missouri

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Dear Sir:

This is in reply to yours of recent date wherein you submit the following statement of facts and request:

"There is operating at Tipton, Mo., the Co Mo Electrical Co-operative, which is a non profit corporation, operating through the REA. The question has arisen as to whether or not this corporation is subject to a merchant tax.

"The Co Mo. is composed of a group of members who are charged a membership fee and pay a certain rate per kilowatt for electricity they use. They do not sell electricity to anyone other than a member of their organization. They have, in their office and store at Tipton, a few electric stoves, refrigerators and irons which they will sell only to members of their organization, and not to the public. This merchandise is bought by the co-operative and sold to their members at cost and transportation. This concern is not doing a general merchandising business. Only a member of the co-operative can do any business whatsoever with the organization.

"Is this non profit corporation subject to a merchant's tax?"

From your statement there is no question but what this co-operative store owns or holds some personal property. The personal property owned and held by this store, and which you describe in your letter, does not come within any class of exemptions, either under the Constitution or the Statutes. Under Section 10940, R. S. Mo. 1939, it is provided that every person owning or holding property on the first day of June shall be liable for taxes thereon for the ensuing year. If this firm is not taxed as a merchant then it would have to pay the tax under this section. Section 11303, R. S. Mo. 1939, defines the term "merchant." This section reads as follows:

"Every person, corporation or copartnership of persons, who shall deal in the selling of goods, wares and merchandise, including clocks, at any store, stand or place occupied for that purpose, is declared to be a merchant."

This section is all inclusive and does not exclude stores such as co-operative.

Under Section 11309, R. S. Mo. 1939, the merchant, for the purpose of assessment, is required to make a statement of the greatest amount of goods, wares and merchandise which he may have had on hand at any time between the first Monday in June next preceding.

This co-operative electrical company, as we understand it, was incorporated and organized under the provisions of Article 28, Chapter 102, R. S. Mo. 1939. Under Section 14406, of this chapter, co-operatives organized thereunder are authorized to sell articles of merchandise. This does not confine the sales of such co-operative group to its own members. We think the fact that it sells merchandise, regardless of to whom, would put it in the class of the merchants, and taxable as a merchant.

Hon. A. L. Gates

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CONCLUSION

It is, therefore, the opinion of this department that the Co. Mo. Electrical Company is subject to taxation as a merchant.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

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