

Taxation and Revenue: Construction of the words "successor"  
Sales Tax: and "purchaser" Section 23, 1934  
Extra Session Acts and Section 28 of  
the Session Acts of Mo. for 1935 re-  
lating to Sales Tax.

August 9, 1938

Honorable John W. Hoffman, Jr.  
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Dear Mr. Hoffman:

We wish to acknowledge your request for an opinion in regard to the sales tax, which is as follows:

"Please give me an official opinion on the following case:

A operates a business until December 1935 and fails to pay any tax. B purchases the business and operates until March 1936, paying his tax but not paying A's. C purchases the business from B. Is C liable for A's tax, since the statute only makes A's tax the personal obligation of B?"

The owner operating the business until December, 1935 would be liable to sales taxes under the 1933 Extra Session Acts of Missouri and the 1935 Session Acts of Missouri.

The question involved is embodied in Section 23 of the 1933 - 34 Extra Session Acts and Section 28 of the 1935 Session Acts and said sections being verbatim, we quote Section 28 of said 1935 Session Acts, which is as follows:

"If any person required to remit a tax levied hereunder shall sell his or its business or stock of goods or shall quit the business, he shall make a final return under oath within fifteen days after the date of selling or quitting business. His or its successor,

if any, shall be required to withhold sufficient of the purchase money to cover the amount of such taxes and interest or penalties due and unpaid until such time as the former owner shall produce a receipt from the Auditor showing that they have been paid, or a certificate stating that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided, he shall be personally liable for the payment of the taxes, interest and penalties accrued and unpaid on account of the operation of the business by the former owner and person."

The Supreme Court of Missouri in *State v. Baker*, 293 S. W. 399, 1. c. 41, 316 Mo. 853 in laying down a general rule as to the construction of revenue laws, says:

"As a general rule, revenue laws are to be strictly construed, but the doctrine of strict construction should be applied with due regard to the intention of the Legislature as expressed in the statute, and with a view to promoting the object of the statute. 36 Cyc. 1189, 1190. It is the duty of the courts to endeavor by every rule of construction to ascertain the meaning of and give full force and effect to every legislative enactment not obnoxious to constitutional provisions, but the legislative intent must be intelligibly expressed. *State ex inf. v. Street Ry. Co.*, 146 Mo. 155, loc. cit. 168, 47 S. W. 959."

In laying down a rule as to the construction of a statute which is plain and unambiguous, the court in *Grier vs. Railway Company*, 523 l. c. 534, et. seq., 228 S. W. 454, says:

" \* \* \* The primary rule for the interpretation of statutes is that the legislative intention is to be ascertained

by means of the words it has used. All other rules are incidental and mere aids to be invoked when the meaning is clouded. When the language is not only plain, but admits of but one meaning, these auxiliary rules have no office to fill. In such case there is no room for construction. \* \* \*

" \* \* \* It is elementary that in construing a writing, whether it be a statute or a contract, the clear meaning of unequivocal language cannot be controlled, or overthrown by a construction in respect to that which is obscure or incomplete. \* \* \* 'When the words admit of but one meaning, a court is not at liberty to speculate on the intention of the Legislature, or to construe an act according to its own notions of what ought to have been enacted.' \* \* \* "

The wording of said Section is clear and unambiguous. The only transaction referred to is that of a seller of a business or stock of goods and the purchaser or successor of said stock. There is not mentioned in said statute any purchaser or successor of the first purchaser or successor and if the legislature had intended to include all subsequent purchasers and successors to the first purchaser and successor, said section would have so stated and by virtue of the fact that such subsequent purchasers or successors to the first purchaser or successor were not mentioned therein, it is clear that it was the intent of the legislature not to include them.

If said section would be construed as to include any successor or purchaser subsequent to the first purchaser or successor, it would necessarily extend to all subsequent purchasers or successors ad infinitum and extend liability under said statute until limited by the statute of limitations.

#### CONCLUSION

Therefore, it is the conclusion of this department that a party operating a business until December, 1935,

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upon failure to pay sales tax, becomes liable under the 1934 Extra Session Acts and 1935 Session Acts of Missouri; that when a party purchases the business, against which said tax is due, he becomes liable under said Section 23 and 28, supra, as a successor or purchaser of said business, but that the words "successor" and "purchaser" refer to the first purchaser and not to subsequent purchasers and successors thereof.

Respectfully submitted

S. V. MEDLING  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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