

TAXATION: Section 11329, R. S. Mo. 1939, applies only to merchants commencing business after the first Monday in June and not to a person who is in business between the first Monday in March and the first Monday in June next preceding..

January 10, 1942

Honorable Edwin W. Mills
Prosecuting Attorney
St. Clair County
Osceola, Missouri



Dear Sir:

We are in receipt of your request for an opinion from this department under date of January 5, 1942, which is as follows:

"A former merchant of Appleton City, who had been in business 38 years, sold out and quit business August 22, 1941. The dry goods stock had been assessed for the 1941 ad valorem tax at \$4000 and was advertised later as a \$7500 stock of goods.

"Since the sale the merchant, through an attorney, has requested the local Collector of Revenue to reduce the tax stating that 'under Sec. 11329 R. S. Mo. 1939,' only the portion of the tax from June 1, 1941, to August 22, 1941, should be due.

"The Collector referred the matter to me and I wrote the attorney that in my opinion the section cited by him applied only to new businesses which commenced after June 1st, in any specified year.

"However, he thinks my construction of the law too harsh, so I am writing for the views of your office in the matter."

Section 11309, R. S. Missouri 1939, partially provides as follows:

"On the first Monday in June in each year it shall be the duty of each person, corporation or copartnership or persons, as provided by this article, to furnish to the assessor of the county in which such license may have been granted, a statement of the greatest amount of goods, wares and merchandise, which he or they may have had on hand at any one time between the first Monday in March and the first Monday in June next preceding; * * * * *"

Under the above section it is mandatory to furnish the assessor a statement of the greatest amount of goods, wares and merchandise which he has on hand between the first Monday in March and the first Monday in June next preceding before he can obtain a merchant's license.

Section 11329, R. S. Missouri 1939, provides as follows:

"When any person or corporation shall commence the business of merchandising in any county in this state after the first Monday in June, in any year, he shall execute a bond as provided for in section 11306, conditioned that he will, on the first day of January next succeeding, furnish to the collector of his county a statement, verified as herein required, of the largest amount of goods, wares or merchandise which he had on hand or subject to his control, whether owned by himself or consigned to him for sale, on the first day of any month between the time when he commenced business as a merchant, and the said first day in January next succeeding; upon which statement he shall pay the same rate of tax as other merchants, to be estimated as the time from the day on which he commenced business to the first Monday in June next succeeding shall be to one year."

This section is only applicable where the merchant has commenced business after the first Monday in June for the reason that the merchant could not comply with that part of Section 11309, supra, for the reason that he was not in business between the first Monday in March and the first Monday in June next preceding.

That this section is not applicable to merchants who are already in business was inferred in the case of State ex rel. v. Rodecker, 145 Mo. 450, 1. c. 460, where the court said:

"It may be true as alleged that they had ceased to do business as merchants in said county before the first day of June, 1894, and yet not have discontinued business more than one day before that time. That part of the answer is not inconsistent with this view, and if at any time between the first Monday in March and the first Monday in June of that year, Rodecker and Cohen were engaged in selling goods, wares, and merchandise at Bates county it was their duty on the first Monday in June in that year to file in the office of the clerk of the county court of that county a statement of the greatest amount of goods, wares, and merchandise which they may have had on hand at any time between those dates, whether they were in fact engaged in the mercantile business on the first Monday of June, 1894, or not."

CONCLUSION

In view of the above authorities it is the opinion of this department that under Section 11329, R. S. Missouri 1939, merchants who were in business between the first Monday in March and the first Monday in June of the year next preceding must pay the full amount of the tax even if not in business or cease to operate after the first day of June.

Hon. Edwin W. Mills

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It is further the opinion of this department that Section 11329, R. S. Missouri 1939, is only applicable to a merchant when he commences business after the first Monday in June and not to a merchant who has commenced business between the first Monday in March and the first Monday in June.

Respectfully submitted

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APPROVED:

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