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DIRECTOR OF REVENUE:)

Director of Revenue authorized
records of one unit in order to compute
tax under another unit.

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January 9, 1947

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Honorable W. O. Jackson
Supervisor of Sales Tax Unit
Department of Revenue
Jefferson City, Missouri

Dear Mr. Jackson:

We are in receipt of your letter of December 9, 1946, requesting an opinion from this office. Your letter reads as follows:

"A question has arisen as to the interpretation of Sections 15 of Senate Bill 297 enacted by the 63rd General Assembly, Section 11375 of the new Income Tax Law and Section 11415 of House Bill 652 enacted by the 63rd General Assembly.

"The question that has arisen is whether or not the Director of Revenue, or his authorized agents, in determining the amount of sales tax which may be due from a retail dealer is authorized to examine the income tax returns of the dealer and to use in arriving at the proper amount of sales tax due, information which may be found in the State Income Tax Return of the merchant. Would you please furnish the writer an opinion upon that question."

Some of the background of these new laws must be considered if they are to be properly construed.

Section 11375, R. S. No. 1939, concerning the Income Tax Law, provided a penalty for divulging information found in income tax returns but made an exception in the case of the

State Auditor or his agents in the discharge of their duties in the administration of the income tax laws.

Section 11440, R. S. Mo. 1939, the Sales Tax Law, also makes it unlawful to divulge information concerning sales tax returns and sets out a similar exception in regard to the State Auditor and his agents when they are required to give evidence in court or in any proceeding brought to collect any tax due or to punish persons for making false or fraudulent returns.

During the existence of these provisions no situation arose involving the question of whether or not the State Auditor was entitled to look to the returns and records of one of these divisions in order to compute the tax under the other. This was true even though Section 11415, R. S. Mo. 1939, of the Sales Tax Law, is a general provision allowing the State Auditor to obtain information from other agencies. It is as follows:

"For the purpose of carrying out the provisions of this article, the State Auditor is hereby authorized and empowered to demand of any agency or department of the State Government, or of any officer of any political subdivision of the State, any and all information necessary to properly administer any and all provisions of this article."

When the Missouri Constitution of 1945 made provision for the reorganization of the Executive Department, Senate Bill 297 establishing the Department of Revenue, containing a provision similar to Section 11415 of House Bill 652, was enacted. The provision, Section 15 of Senate Bill 297, is as follows:

"The state collector of revenue or his agent shall have access to all records and property used in the assessment or collection of any license, tax or fee payable to the state in any department, institution or agency in which such records may be."

The income tax and sales tax laws were reenacted to comply with this reorganization. The Sales Tax Act was left substantially the same. In the sections we are interested in here, 11415 and 11440 of House Bill 652, the only change made was to substitute the words "director of revenue" for "state auditor." However, when Section 11375, the Income Tax Law, was reenacted by the 63rd General Assembly in House Bill 676, several changes were made including several additional exceptions, one in particular that we are interested in here is as follows:

"Provided, further, that this section shall not prohibit the Director of Revenue nor any agent, clerk or inspector employed by his office from comparing any such return as provided for in this article with other returns required by law to be filed by the Director of Revenue, * * *"

Judging from the wording of this clause it seems clear that the intention of the General Assembly was to harmonize Section 11375 of House Bill 676, the Income Tax Law, with the previously enacted provisions of Section 15 of Senate Bill 297 and Section 11415 of House Bill 652, the Sales Tax Law, which give the Director of Revenue, the Collector of Revenue, or the Supervisor of the Sales Tax Unit access to, and require this official to demand any information or records used in the assessment or collection of any tax in any department or agency in which such information or records may be found. This view is supported by the rule of construction in the case of *State v. Ball*, 171 S. W. (2d) 787, p. 792, as follows:

"The general rule as to statutory construction has been stated as follows:
'The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to that intent, * * * Intent is the spirit which gives life to a legislative enactment. In construing statutes the proper course is to start out and follow the true intent of the Legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest

manner the apparent policy and objects of the Legislature.' Sutherland on Statutory Construction, 2d Ed., Vol. 2, Sec. 363."

And also in the case of Pugh v. St. Louis Police Relief Ass'n., et al., 179 S. W. (2d) 927, at pp. 934-935:

"In construing said statutes the court must be guided by the primary rule of statutory construction, which is to ascertain and give effect to the intention of the lawmakers from the words used in the statutes and to adopt that sense which harmonizes best with the context thereof and promotes in the fullest measure the apparent policy and objects of the Legislature. State ex rel. Lentine v. State Board of Health, 334 Mo. 220, 65 S. W. 2d 943. See also, Sutherland on Statutory Construction, 2d Ed., Vol. 2, Section 363."

The harmonization of these provisions will make possible more efficient administration of the units within the Division of Collection of the Revenue Department.

Conclusion

Therefore, it is the opinion of this department that the Director of Revenue or his authorized agents, in determining the amount of sales tax which may be due from a retail dealer, is authorized to examine the income tax returns of the dealer and to use in arriving at the proper amount of sales tax due, information which may be found in the state income tax return of the dealer.

Respectfully submitted,

APPROVED:

DAVID DONNELLY
Assistant Attorney General

J. E. TAYLOR
Attorney General

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