

TAXATION:
MERCHANTS' TAX:
PERSONAL PROP-
ERTY TAX:

Burns

Stock of goods in store in Boone County, owned by resident of Randolph County, assessed in Boone County; fixtures in such store assessed in Randolph County. Stock of goods located in city, owned by individual who lives in county, assessed in city; fixtures in such store, assessed only in county. When stock of goods or fixtures in store are owned by corporation, property is taxed wherever located.

February 13, 1948

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Honorable George A. Spencer
Representative, Boone County
517 Guitar Building
Columbia, Missouri

Dear Sir:

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

"The question has come to my mind with reference to a discussion with our Assessor, and also in considering the law, and I would like to have your official opinion within the next ten days, if at all possible, dealing with the following matter:

- "1. Would Boone County assess a stock of goods in a store located in Boone County but owned by a resident of Randolph County, or would that stock of goods be assessed in Randolph County?
- "2. Would the same answer to the above question apply to the fixtures used in the operation of said store?
- "3. Would this same answer arise with reference to the question as to whether a city would tax the stock of goods owned by an individual who lives in the county but not in the city?
- "4. Would the same answer apply to fixtures owned by a non-resident of the city but a resident of the county?

"I think the same question runs though all of these different conditions and that is for the purposes of personal property assessment and taxation. Is

the property assessed at the place of residence of the owner or at the situs of the property? Would there be a different answer where it is owned by a corporation under similar circumstances?"

We are enclosing a copy of an official opinion of this department rendered to Hugh Phillips under date of January 16, 1947, which holds that the merchants' tax in this state is a constitutional levy.

Since Section 6, Laws of Missouri, 1945, page 1800, provides that, for the purpose of state, county and municipal taxes, merchandise held by merchants is a class separate and distinct by itself, the provision of Section 8, Laws of Missouri, 1945, page 1801, stating that all tangible personal property situated in a county other than that in which the owner resides shall be assessed in the county where the owner resides, does not apply to an individual who owns merchandise in a county other than that in which he resides.

Section 11304, Laws of Missouri, 1945, page 1839, provides that no person, corporation, copartnership or association of persons shall deal as a merchant without a license first obtained according to law.

Section 11305, Laws of Missouri, 1945, page 1839, provides that merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares and merchandise which they have in their possession or under their control at any time between the first Monday in January and the first Monday in April in each year.

Section 11306, Laws of Missouri, 1945, page 1962, provides that, when a license is applied for, before the license is received, a bond must be executed, conditioned that the merchants' tax will be paid on or before the 31st day of December following.

Section 11325, Laws of Missouri, 1945, page 1845, provides that no license issued shall authorize any person, corporation or copartnership of persons to deal in the sale of goods, wares and merchandise in any other county than the one in which said license was granted.

It is clear, under the above cited statutes, that the ad valorem tax is assessed on goods, wares and merchandise in the county where the license is issued, and that the only county which may issue a license to a merchant is the one in which the

store of the merchant is located. Therefore, a stock of goods in a store located in Boone County, owned by a resident of Randolph County, would be assessed in Boone County.

Since the merchants' ad valorem tax applies only to goods, wares and merchandise, Section 8, Laws of Missouri, 1945, page 1801, governs the place of taxation of fixtures, which are personal property of the owner, and in case the fixtures of a store located in Boone County were owned by a resident of Randolph County, such fixtures would be assessed in Randolph County.

With regard to your question as to whether a city can tax a stock of goods owned by an individual who lives in the county but not in the city, you do not state to what class of cities you refer, but we believe the general rule can be shown by reference to Section 6936, R. S. Mo. 1939, which authorizes cities of the third class to levy upon merchants an ad valorem tax equal to that which is levied on real estate, and provides that the amount of the tax shall be determined and ascertained in the same way as the state and county tax is determined and ascertained.

Since the Legislature, as pointed out, supra, has made a separate class or subclass of merchants' goods, we believe that Section 6936, R. S. Mo. 1939, which applies to all merchants in the city, authorizes the imposition of the ad valorem tax upon a stock of goods in a store in a city even though the residence of the merchant is in the county.

With regard to your question as to the taxation of fixtures owned by a nonresident of the city but a resident of the county, we are enclosing a copy of an official opinion rendered under date of May 20, 1938, to J. A. Gregory, in which it is held that persons living outside the city limits are not subject to a city tax on their personal property.

Since, under the provisions of Section 9, Laws of Missouri, 1945, page 1801, all tangible personal property of business and manufacturing corporations is taxable in the place where situated, the answer to all the questions you have asked with regard to corporations is that both the goods, wares and merchandise and the fixtures in stores which are owned by corporations are taxable wherever they are situated.

CONCLUSION

It is the opinion of this department that:

(1) A stock of goods in a store located in Boone County, owned by a resident of Randolph County, is assessed in Boone County.

(2) The fixtures in a store located in Boone County, owned by a resident of Randolph County, are assessed in Randolph County.

(3) A city can tax the stock of goods owned by an individual who lives in the county but not in the city.

(4) A city cannot tax the fixtures, which are personal property, owned by a nonresident of the city but a resident of the county.

(5) The goods, wares and merchandise and fixtures owned by a corporation are taxable wherever situated.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR *JB*
Attorney General

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