

MOTOR VEHICLE LICENSE
APPLICATIONS:
COLLECTOR TO ISSUE RECEIPT
OR STATEMENT TANGIBLE PERSON-
AL PROPERTY TAXES ARE PAID,
EVEN IF MERCHANT'S TAX IS DE-
LINQUENT:

One who pays all tangible per-
sonal property taxes assessed
against him for preceding year,
is entitled to tax receipt or,
on request, to collector's cert-
ified statement showing taxes paid,
even though party owes delinquent
merchant's tax. Upon proper appli-
cation for motor vehicle license,

accompanied by such tax receipt or collector's statement, in
accordance with Sec. 301.025, RSMo Cum. Supp. 1957, party en-
titled to receive license although merchant's tax is delinquent.



July 21, 1958

Honorable J. W. Colley
Prosecuting Attorney
Dade County
Greenfield, Missouri

Dear Mr. Colley:

This is to acknowledge receipt of your request for our
legal opinion, which reads, in part, as follows:

"The County Treasurer also has this problem in
Dade County. It seems that a wife has the title
to an automobile in her name. The personal prop-
erty belonging to the husband and the automobile
in the name of the wife is given to the tax as-
sessor all in the husband's name. The husband
does not pay the personal property tax. The wife
demands a statement from the County Treasurer to
the effect that she owes no personal property tax.
By the use of this statement she purchases a li-
cense plate for the automobile.

"It seems to me as if Section 301.025, of the Mis-
souri Statute, 1945, requires that the personal
property tax actually be paid before the owner can
legally purchase the license plate.

"A similar proposition has arisen. The owner of
a business owes personal property tax on the per-
sonal property assessed to his business. He also
has an automobile and other personal property as-
sessed against him. He pays the personal property
tax on the personal property which includes his
automobile but is delinquent on the personal prop-
erty tax covering his business. The County Treas-
urer wants to know whether or not such a party is
entitled to secure a license plate on his automo-
bile merely by paying part of the personal property
tax that he owes."

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An opinion of this department written for Honorable Harold W. Barrick, Prosecuting Attorney of Pettis County, on July 31, 1953, concludes that unassessed personal property may not be added to the tax books after October 31st, by assessor, collector or county court, and, therefore, a person whose property was not assessed is entitled to a statement that no taxes were owed by him. The county of residence on January 1st is the county from which statement regarding personal property tax liability must be obtained for use under Section 301.025, RSM Cum. Supp. 1957.

Also, in an opinion of this department written for Honorable Haskell Holman, State Auditor, on October 5, 1953, it was concluded that where a husband and a wife each own personal property individually, such property should be assessed to each one individually.

It is believed the above-mentioned opinions fully answer the third inquiry, and copies of same are enclosed for your consideration.

For purposes of taxation, all property in Missouri has been classified as (1) real property, (2) tangible personal property, and (3) intangible personal property. Tangible personal property has been defined by paragraph 3, Section 137.010, RSMo 1949, "includes every tangible thing being the subject of ownership or part ownership, whether animate or inanimate, other than money, and not forming part or parcel of real property as herein defined."

From this statutory classification of property for tax purposes, it appears that merchandise would be tangible personal property. Yet, this type of property is not assessed and taxed as other kinds of tangible personal property. Chapter 150, RSMo 1949, provides a separate method for the taxation of merchandise, which will be presently seen from different sections of said chapter.

While the issue in the case of *Ex rel. v. Alt*, 224 Mo., 493, was whether merchants are liable for a property tax or merely a license permitting them to sell merchandise, the court called attention to the special method of taxing merchandise and, at l.c. 507-508, said:

"* * * In this State merchandise is not listed for taxation as other personal property, but instead the merchant must apply for a license to trade as such, and without which he subjects himself to a forfeiture to be recovered by indictment. He must give bond conditioned for the payment of the tax. It is, however, provided that merchants shall pay an ad valorem tax equal to that which is levied upon

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real estate, on the highest amount of goods, wares and merchandise which they may have in their possession at any time between the first Monday of March and the first Monday of June in each year. It is this amount, furnished by a sworn statement of the merchant, that forms the basis upon which the various state, county, school and municipal taxes are levied."

Section 150.020, RSMo 1949, construes the term "merchant" and reads:

"The term 'merchant' as used in sections 150.010 to 150.290, shall be construed to include all merchants, commission merchants, grocers, manufacturer and dealers in drugs and medicines, except physicians for medicines used in their practice, whether trading as wholesale or retail dealers."

Section 150.040, RSMo 1949, requires the merchant to pay an advalorem tax, annually, on merchandise in the amount specified by said section, which reads:

"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 may have in their possession or under their control, whether owned by them or consigned to them for sale, at any time between the first Monday in January and the first Monday in April in each year; provided, that no commission merchant shall be required to pay any tax on any unmanufactured article, the growth or produce of this or any other state, which may have been consigned for sale, and in which he has no ownership or interest other than his commission."

Section 150.050, RSMo 1949, requires the merchant to deliver a statement of the greatest amount of merchandise on hand at any time between the first Monday in January and the first Monday in April next preceding, which statement shall be furnished the assessor on the first Monday in May each year, except in counties under township organization (par.4). The statement shall be made by the township assessor, who shall deliver it to the clerk of the county court, who, in turn, shall deliver it to the county board of equalization on the second Monday of July each year.

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The statement furnished the assessor is the basis for the assessment of merchants' taxes, since the merchandise is not to be listed on a regular assessment blank with other real and personal property of the taxpayer. While the tax is an ad valorem tax on the merchandise, it is in the nature of a license tax authorizing the merchant to sell goods for the year in which it is issued. The merchant is subject to criminal prosecution if he engages in business without first obtaining the license, and must furnish a bond in favor of the state to secure the payment of the tax in every instance, except when he has paid the license tax for five consecutive years preceding his application. All of these characteristics of the merchants' tax given in the applicable statutes referred to, set it apart from all other taxes of tangible personal property taxes, to such an extent that, while such property thus taxed may technically fall within the general classification of tangible personal property, it is not ordinarily considered such for tax purposes, and is not to be included within the plain or ordinary meaning of the term "tangible personal property tax."

We believe this usage is shown by the manner in which the terms are referred to in that part of Sec. 301.025, RSMo Cum. Supp. 1957, we have underscored, which reads:

"No state registration license to operate any motor vehicle in this state shall be issued unless the application for license is accompanied by a tax receipt or a statement certified by the county or township collector of the county or township in which the applicant's property was assessed showing that the state and county tangible personal property taxes for the preceding year have been paid by the applicant or that no such taxes were due. Every county and township collector shall give each person a tax receipt or a certified statement of tangible personal property taxes paid. Where no such taxes are due each such collector shall, upon request, certify such fact and transmit such statement to the person making the request. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms." (Emphasis ours).

It appears there is no indication the legislative intent was to give the language used in this section some special or technical meaning, consequently, it must be assumed the legislative intent was to give such language its plain or ordinary usage, and this would particularly be true of the words "tangible personal property."

In view of the fact that the assessment of tangible personal property, referred to in the section, undoubtedly refers to such property as is assessed in the usual manner and not to that tangible personal property which happens to be merchandise. There-

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fore, we conclude the legislative intent was not to include merchandise in the general terms "tangible personal property taxes" used in this section.

From the facts given in the fourth inquiry of the opinion request, it appears that the person operating the drugstore is a merchant within the meaning of Sections 150.010 and 150.020, defining merchants, and is liable for the payment of the merchants' tax under the provisions of Section 150.040, supra. It does not appear he has filed the statement required with the county assessor, but we will assume that the statement has been filed. We are informed that the "tax assessed to his business", which is construed as referring to a merchant's tax, is delinquent. The party has other personal property, including an automobile assessed to him, and he has "paid the part of his personal property tax which includes his automobile". By this, we understand the person has paid all tangible personal property taxes assessed to him, except the merchant's tax.

We are uninformed as to whether or not the county treasurer and ex officio collector issued the tax receipt to the drugstore operator. It was the duty of the treasurer to issue a tax receipt to the taxpayer, if this has not already been done, because the issuance of the tax receipt could not be delayed until the merchant's tax had been paid. In the event the merchant's tax was not paid at the same time as the other personal property tax, and was still delinquent, then it became the duty of the treasurer to proceed against the drugstore operator in an effort to collect the merchant's tax by the only method which could be followed in such instance and which is set out in Sections 150.230, 150.240, 150.270 and 150.280.

Therefore, in answer to your fourth inquiry, it is our thought that, since the taxpayer has paid all tangible personal property taxes assessed against him for the preceding year, it is immaterial that he owes delinquent merchant taxes, and it is the duty of the treasurer and ex officio collector of Dade County to issue a receipt showing payment of such taxes, or at the request of the taxpayer, to issue a certified statement showing said taxes have been paid. Upon making application for license to operate a motor vehicle in Missouri and forwarding the tax receipt or certified statement with his application for license, in accordance with Section 301.025, RSMo Cum. Supp. 1957, said taxpayer is entitled to receive a license plate for his automobile.

CONCLUSION

Therefore, it is the opinion of this department that when one pays all tangible personal property taxes assessed against him for the preceding year he is entitled to receive a tax re-

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ceipt or, upon request, a certified statement of the county or township collector showing payment of said taxes, regardless of the fact that at such time the taxpayer owes delinquent merchant taxes. If the taxpayer makes a proper application for registration license to operate a motor vehicle in this state, and said tax receipt or certified statement of the county or township collector, showing tangible personal property taxes paid for the preceding year, accompany the application, as required by Section 301.025, RSMo Cum. Supp. 1957, the taxpayer is entitled to receive such license, although his merchant's tax is delinquent at such time.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Very truly yours,

John M. Dalton
Attorney General

PNC/ld

Encs. Opinions to
Haskell Holman;
Harold W. Barrick.