TAXATION: Sales Tax Act applies to retail sales of
SALES TAX: intoxicating liquors and non-intoxicating
LIQUOR SALES: beverages.

April 28, 1941.

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Mr. G. H. Bates, Supervisor
Sales Tax Department
Jefferson City, Missouri

Dear Mr. Bates:

This is in reply to yours of recent date wherein you request an opinion from this department on the question of whether or not the Sales Tax Act applies to retail sales of intoxicating liquor and non-intoxicating beverages. In our search through the opinion files of this department I fail to find where an official opinion has been rendered on this question.

Section 11408 of Article 24 of Chapter 74, in so far as it applies to the question here submitted, is as follows:

> "From and after the effective date of this article and up to and including December 31, 1941, there shall be and is hereby levied and imposed and there shall be collected and paid:
>
> "(a) Upon every retail sale in this State of tangible personal property a tax equivalent to two (2) per cent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to two (2) per cent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange."

Section 11411 of the same Article and Chapter imposes on the seller a duty of collecting and remitting the tax collected on each retail sale taxable under the act. Section 11412 imposes on the purchaser the duty to pay this tax and inflicts a penalty if he does not pay it. Section 11410 of the same Article and Chapter provides as follows:

> "The tax imposed by this article shall be in addition to any and all other taxes and licenses except as herein otherwise provided."

By this section it will be seen that the lawmakers intended to impose the sales tax on certain retail sales transactions, in this state, even though other taxes and licenses may have been imposed on the article sold.

From your letter it would appear that the sellers of intoxicating liquors and non-intoxicating beverages take the position that since the state has imposed other licenses and taxes on such articles, that the Sales Tax Act therefore does not apply.

Under Section 4898, of Article 1, Chapter 32, R. S. Mo. 1939, certain licenses are required of parties who sell, at wholesale or retail, intoxicating liquors in this state. Section 4900 of the same Article and Chapter impose additional charges for the privilege of selling intoxicating liquors in this state. Section 4925, imposes an inspection fee on malt liquor containing alcohol in excess of 3.2% weight. Section 4954, Article 2 of Chapter 32, provides for permits authorizing the manufacture and sale of non-intoxicating beer. The taxes authorized by the Liquor Control Act are for the privilege of selling and for inspection, while the tax imposed by the Sales Tax Act is one imposed on the purchaser of each retail sale. These taxes are separate and distinct and are imposed on different parties to the transactions, namely, under the Liquor Control Act, on the seller, while under the Sales Tax Act, upon the purchaser.

The Liquor Control Act was in effect when Section 11410, supra, was re-enacted and there could be no question but that the lawmakers had these other taxes in mind when it provided, by said Section 11410, supra, that the Sales Tax Act would apply in addition to any other licenses or taxes on the article sold.

Section 3, Article X of the Constitution of Missouri, provides that taxes shall be uniform upon the same class of subjects within the territorial limit of the authority levying the tax. It has been suggested that such a tax would be in violation of the constitution because it is double taxation, however double taxation is not prohibited by the constitution although it is not favored.

In the case of State vs. Hallenberg-Wagner Motor Co., 108 S. W. (2d) 398, 341 Mo. 771, l. c. 778, the court, in speaking of the power of the General Assembly to levy excise taxes and the question of double taxation, said:

> "The inherent power of the Missouri General Assembly to levy taxes, independent of constitutional grant, is subject only to limitations prescribed in the Federal and State constitutions. (State ex rel. v. St. Louis, 318 Mo. 870, 894, 2 S. W. (2d) 713, 720(11); Hannibal & St. J. Railroad Co. v. State Board of Equalization, 64 Mo. 294, 307; State ex rel. v. Smith, 338 Mo. 409, 90 S. W. (2d) 405, 406(1).) Respondent's assault against the foregoing construction on the stated ground it results in double taxation confuses, we think, nonuniformity in taxation with double taxation. Respondent refers us to no constitutional prohibition against double taxation, and the cases relied upon (Auto Gas Co. v. St. Louis, 326 Mo. 435, 443, 35 S. W. (2d) 281, 283

(3); State ex rel. v. Louisiana & M. Railroad Co., 196 Mo. 523, 535, 94 S. W. 279, 281; and State ex rel. v. Koeln, 278 Mo. 28, 39, 211 S. W. 31, 34) are only to the effect that double taxation is not favored and is not to be presumed; illegal double taxation occurring when a given subject of taxation contributes twice to the same burden while other subjects of the same class are required to contribute but once. * * *"

In the case of Ex Parte Asotsky, 5 S. W. (2d) 23, l. c. 27, it was held:

"The question of the propriety of a classification, measured by section 3, art. 10, is largely one for the Legislature. The courts may not declare a particular classification unreasonable and violative of said section 3, art. 10, unless the classification made cannot be justified on any reasonable grounds. So long as the tax imposed bears alike upon every one within the class and the classification can be justified upon any reasonable theory, the tax cannot be declared violative of section 3, art. 10."

* *

"It is said that the imposition of the cigarette tax compels the dealer to pay a double tax. This same question was raised and decided adversely to petitioner's contention in Viquesney v. Kansas City, supra, where we said:

"'It is claimed by appellant that he is compelled by this ordinance to pay a double occupation tax, because Ordinance 38141, as amended by Ordinance 39337, imposes a tax upon every retail merchant of fifty cents for each one thousand dollars or fraction thereof of gross receipts of the business operated by such merchant. This tax, however, is imposed upon every retail merchant "except as otherwise provided in this ordinance." The ordinance was amended by Ordinance 44965, as pointed out above, by the addition of sections levying the tax objected to here. Thus it

> seems this ordinance "otherwise provided " for the tax of appellant.'"

In Vol. 61, C. J., page 139, l. c. 140, Section 71, the rule on the construction of a statute imposing double taxation is stated as follows:

> "* * * but where the language of the statute is clear, the fact that double taxation results therefrom will not justify the court in disregarding the language."

So, on the question here, even though it could be successfully maintained that the tax on liquor is a double tax, yet under the foregoing rule and in view of the fact that the lawmakers have clearly stated their intention of imposing the sales tax in addition to any other taxes or licenses on such articles, then the court would not be justified in disregarding the plain language of the statute.

Special Rule No. 53 of the rules and regulations relating to the Sales Tax Act of 1937 and which was practically re-enacted in 1939, reads as follows:

> "Retail sales of all drinks and beverages are taxable and the seller thereof must collect and remit the tax thereon. The foregoing shall include both intoxicating and non-intoxicating drinks and beverages, and the fact that the seller is subjected to various licenses, fees, revenue stamps, etc., by cities, counties, state or federal government, does not exempt the sale of intoxicating liquors from the sales tax.

> "No deductions are to be made for license fees, revenue stamps or any other overhead or selling costs from the gross receipts taxable under the Act."

There can be no question but that the officers administering this act have construed it to apply to retail sales of intoxicating liquors. This construction is entitled to great weight. Auto Gas Company vs. City of St. Louis, 32 S. W. (2d) 281. A question similar to the one here presented has never been before the Appellate courts of this state, but in the State of Illinois we find, in the case of Bardon v. Nudelman, Director of Finance, 15 N. E. (2d) at page 836, the Supreme Court of that state held that the retailers occupation tax applied to sales of intoxicating liquor. There the court said:

> "While both of the taxes here involved may be classified as occupational in character, an examination of the two statutes shows that they were enacted with different objects in view. The Retailers' Occupation Tax act is a revenue measure based upon the taxing power. There are no provisions in it which seek to regulate the business of persons engaged in selling tangible personal property at retail, except to the extent necessary to collect the tax imposed by the act. On the other hand, the Liquor Control act, Ill. Rev. Stat. 1937, c. 43, Section 94 et seq., is primarily an exercise of the police power. Section I of article 1 thereof provides that the act shall be liberally construed ' to the end that the health, safety and welfare of the People of the State of Illinois shall be protected and temperance in

the consumption of alcoholic liquors shall be fostered and promoted by sound and careful control and regulation of the manufacture, sale and distribution of alcoholic liquors;' article 3 provides for the establishment of the Illinois Liquor Control Commission; article 4 empowers cities, villages, towns and counties to regulate the use of alcoholic liquors; article 5 provides for the issuance of licenses, and specifies the kind and cost thereof; article 6 fixes the qualifications of licenses, and places limitations upon the operation of their respective businesses; article 7 establishes the procedure to be followed in issuing and revoking licenses, and article 10 fixes penalties for violations of the act. The Liquor Control Commission is vested with power to administer the regulatory provisions of the act. Article 8 is the only provision of this act which levies a tax purely for revenue. This article is administered by the Department of Finance and levies a tax only upon manufacturers and importing distributors of alcoholic liquors, and these taxes are declared to be in addition to all other occupation or privilege taxes imposed by the State, municipal corporations, or subdivisions thereof.

"The retail liquor dealer's license fee to the State, fixed by the Liquor Control act, Ill. Rev. Stat. 1937, c. 43, Section 118, is $50 per year. It is significant that no effort is made to show that this license fee is prohibitory or that the amount charged is more than sufficient to

> defray the reasonable expense of enforcing this police measure. It is not charged that under the guise of regulation, the State is, in fact, collecting these fees for revenue purposes."

In comparing the Illinois Retailers Occupation Tax and liquor regulation laws, we find that they are quite similar to Missouri laws relating to the same subject. The Illinois Retailers Occupation Sales Tax Act contained a section similar to Section 11410, supra, of the Missouri act, and finally the court, in speaking of the authority to impose the retailers occupation tax on the sales of intoxicating liquors, said:

> " * * * There is no constitutional provision forbidding the enactment of both measures and there is nothing invalid about either of them. These two statutes are not inconsistent and both may be given effect."

CONCLUSION

From the foregoing authorities, it is the opinion of this department that the Missouri Sales Tax Act applies to sales at retail of intoxicating liquors and non-intoxicating beverages which may be so sold in this state.

Respectfully submitted,

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APPROVED:

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