

**TAXATION:**  
**MERCHANTS:**  
**TAX COMMISSION:**

Jurisdiction of State Tax Commission  
over merchants' assessments.

October 2, 1941

Honorable Jesse A. Mitchell  
Chairman  
State Tax Commission  
Jefferson City, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion as follows:

"This Commission is being confronted with the request for review of assessment of merchants and manufacturers in Jackson County.

"Does the law provide for such review by the Tax Commission? This property is not equalized by the State Board and we wish to inquire whether it is our duty to review their assessments."

By Article XVIII, Chapter 74, Revised Statutes of 1939, a system for taxing merchants is provided. This plan is different from the plan prescribed by the Legislature for assessing and taxing real and personal properties. Under this plan, the merchant must obtain a license in the first instance. Failure to do so subjects him to prosecution. It also provides that the tax is paid on a basis of the goods in his possession or under his control at anytime between the first Monday in March and the first Monday in June of each year. It also requires the merchant, when he obtains the license, to give a bond, the condition of which is that he will pay before delinquent the tax due upon such license.

The Act also requires the merchant to furnish to the assessor of the county in which the license is granted

the statement showing the amount of goods, wares and merchandise which he may have had on hand at anytime between the first Monday in March and the first Monday in June. It provides for a special book to be obtained by the assessor in which is shown the valuation of such statement as equalized by the County Board of Equalization.

Under this Act, the County Board of Equalization meets as a merchants board on the first Monday of September in each year to pass upon the merchants assessments. After the board has passed upon these valuations, notice is given to the merchant if his assessment has been raised, and he is given an opportunity to appear before the board on the fourth Monday of September of that year. After the county board has completed these duties, the county clerk is required to extend on the merchants book these taxes at the rates levied on other properties in the county, and the county collector then is charged with the collection of these taxes as other taxes are charged.

It will be noted that there is no provision for an appeal from the action of the County Board of Equalization.

Under Section 11315 of this article, if the merchant has filed a correct statement and failed to pay the amount of revenue owing the board, he shall be deemed to have forfeited the bond given by him, and judgment may be rendered against him for double the amount of such revenue and costs.

Under Section 11316, if the merchant fails to file the statement at the proper time and in the manner required, the bond is forfeited and he is liable for damages to the amount of three times the amount of revenue which shall be found to be due for the year on his statement. If the merchant makes a false statement, the bond is deemed forfeited and judgment shall be rendered as damages in the amount of four times the amount of revenue found to be due for the year.

Section 11318 requires the collector of the county in which the merchant is doing business to institute a suit on the bond in case the merchant has committed any of the acts described in the three preceding sections hereinbefore mentioned.

These sections particularly referred to seem to set up a complete system and plan for the assessment and collection of merchants taxes.

In discussing this Merchants Tax Act and its provisions, the Supreme Court, in *State ex rel. Allen v. Railroad*, 116 Mo. 15, 22, said:

"The merchant is required to file a sworn statement with the county clerk, on the first Monday in June in each year, of the greatest amount of goods on hand at any time between the first Monday in March and the first Monday in June next preceding; and upon this statement the tax is directly levied. Revised Statutes, 1889, secs. 6896, 6899, 6900. The merchant's goods and stock in trade never go on the assessor's books at all, nor has the assessor anything whatever to do with it. Neither the assessor or the board of equalization ever act upon it in any manner."

And, at l. c. 23, the court further said:

"The tax of merchants and dram-shop keepers, although they are required to pay an ad valorem tax on their stock in trade, is in the nature of a license tax, and the property upon which the taxes are thus paid do not go into and form a part of the general wealth of the county within the meaning of the revenue laws upon which taxes are levied for revenue purposes. No such property is listed by the assessor. The county court is required to fix the rate of taxation and make the levy at the May term (Revised Statutes, sec. 7663, supra), while merchants' statements

are not to be filed until the first Monday in June of each year. The tax on merchants constitutes a separate and distinct class of itself.

\* \* \* \* \*

"And the tax on merchants constitutes a separate and distinct class of itself. The state board of equalization meets in February, and the county board on the first Monday of April of each year, to correct and adjust the assessment of all property, both real and personal. The state board of assessment of railroad property meets on the third Monday of April each year, showing conclusively that the last annual assessment for state and county purposes is to be complete before the county court is required to fix the rate and make the levy at the May term.

"But it is contended by counsel for defendant that the same argument which would sustain the exclusion of merchants' statements for 1887, would also exclude the valuations of railroad and telegraph property from the commutation of taxable property for the purpose of fixing the rate for county taxes. It would seem to be a sufficient answer to this contention that the law requires the state board of equalization to meet on the first Monday of April of each year for the assessment and equalization of railroad property; and that section 7731, Revised Statutes, supra, requires that the county court, upon receipt from the auditor of the certificate of the action of said board of assessment and equalization, the returns of the county assessor, etc., shall at the regular term of said court, if in session at the time, if not at an adjourned term, called for that purpose, ascertain and levy the taxes for state,

county and other purposes on the railroad property in such county, at the same rate as may be levied on other property, and shall make an entry thereof in the records of said court. This section of the statute expressly provides that in respect of railroad property, the levy shall be made by the county court, the evident intention of the legislature being thereby, that such property should go into and become a part of the general wealth of the county for revenue purposes. The statute contains no such provision in regard to merchandise and stock in trade owned by merchants. \* \* \*

From this opinion it will be seen that the court treated the merchants tax more in the nature of a license than a property tax. Also, it will be noted that the merchant's stock does not go into and become a part of the general wealth of the county for revenue purposes. This system of taxation is a special plan, whereby the lawmakers have sought to obtain public revenue from the merchants. In Volume 61 C. J., page 81, Section 10, the rule as to the mode of taxation by the Legislature is stated as follows:

"The taxing power of the state is exclusively a legislative function, and taxes can be imposed only in pursuance of legislative authority, there being no such thing as taxation by implication. Subject to the fundamental or organic limitations on the power of the state, the legislature has plenary power on the matter of taxation, and it alone has the right and discretion to determine all questions of time, method, nature, purpose, and extent in respect of the imposition of taxes, the subjects on which the power may be exercised,

and all the incidents pertaining to the proceedings from beginning to end; and the exercise of such discretion, within constitutional limitations, is not subject to judicial control. Where the legislature has covered the whole subject of taxation, there is no room for exercise of authority by local authorities, and a town has no power to make a contract concerning the subject."

Under this rule, the Legislature may prescribe any mode it sees fit for the raising of revenue, provided such plan does not violate the provisions of the Constitution, and, if the Legislature has by such a plan covered the whole subject of such taxation, there is no room for exercise of authority by local authorities.

We think this rule might be applied here in view of the fact that the Legislature, by the foregoing article, has covered the entire subject of assessing and taxing of merchants, and there would be no need to impose any authority on the Tax Commission to review the action of the County Board.

This merchants tax was before the Supreme Court in the case of State ex rel. Horton Land and Lumber Company, 161 Mo. 664, and the court, in speaking of a suit on a bond given under the provisions of the Act, and speaking of the nature of the suit, said, l. c. 671:

"This is not an action for the recovery of the taxes of 1896, nor for the recovery of damages under section 6904, for failure to pay the amount of the taxes for that year, levied in accordance with a correct statement filed by the lumber company as required by law, but for damages under section 6905, for the failure of the lumber company to file the statement required by law, whereby

such taxes might have been assessed, levied and collected in the manner provided by law. The character of the action is determined by the facts stated in the petition and not by the prayer for relief. The bond covered not only damages under section 6904, for failure to pay such taxes, when so assessed and levied, but also damages under section 6905, for failure to file the proper statement whereby they might have been so assessed, levied and collected. \* \* "

The sections referred to in the foregoing opinion relating to merchants tax are the same as Sections 11315 and 11316, supra. It will be noted from the case reported that actions for the enforcement of the merchants tax have been brought on the bonds given by the merchant.

Your inquiry goes on to question whether or not the Commission is required and authorized to review the return of the merchants' assessments made by the County Board.

The Act creating the Tax Commission was passed in 1917, Laws of 1917, page 542. The Act pertaining to the taxation of merchants was in force for many years prior thereto.

The powers and duties of the Tax Commission are well stated in State ex rel. Laclede Land and Improvement Company v. State Tax Commission, 243 S. W. 887, 888:

"The state tax commission is a non-descript when it comes to the assessment of property. The power to assess property is fixed in named officers under the law, and, unless the Tax Commission Act repeals that law, such commission cannot assess property. To rule that such Tax Commission Act (article 4 of chapter 119, R. S. 1919)

repealed the law as to whom the duties were imposed on as to the assessment of property would be preposterous. No agency of the state has considered that such commission has been given such power. The language of the act itself (save some loosely drawn sections, or parts of sections) indicates no such purpose. After the assessment the law provides that there shall be certain county agencies to fix and determine the wrongs committed by the assessor. To hold that these agencies were disturbed or superseded by the Tax Commission Act would likewise be preposterous.

"The Tax Commission Act contemplates that such commission may, in a proper manner, see that these several agencies empowered to assess property perform their duties, but it does not contemplate that such commission perform their duties for them. True it is that such commission may take evidence as to inequalities of assessments, but this is for the sole purpose of advising the state board of equalization. What information, that the tax commission gathers by authority of law, it can give, and should give, to the state board of equalization. The state board of equalization cannot act upon individual discrepancies in the official work of its subordinate officers, nor can the tax commission (a mere advisory commission for the state board of equalization) go further. The tax commission may gather facts to assist the state board of equalization in determining whether or not the county property has been assessed properly as in comparison with other counties in the state. The decision of the state board of equalization is the finality of an assessment. This because the Constitution (article 10, Section 18)



so lodges it. No law can deprive this board of its constitutional right to ultimately determine the equalization of property assessments as between the counties. If, after the state board had acted (as in this case), the tax commission could change the assessments, then the constitutional board must yield to a mere statutory board. This is unthinkable. Be it remembered that in this case the relator is asking the tax commission to act after the state board of equalization has acted, because relator avers the previous action of the state board of equalization.

"The act creating the tax commission will be read in vain, if the view is to be taken that it contemplated an interference with the previous methods of assessing and equalizing the assessments of property. In the act there is no indication that the lawmakers intended that property should be assessed other than by assessors named by previous laws, nor is there in the act intimation that such commission should be the final judicatory to pass upon the individual cases of irregular or wrongful assessments. The tax commission was formed for a purpose, as indicated by the law. Its purpose was advisory as to taxation, and as to other things not here necessary to discuss. It was authorized to see that the laws pertaining to revenue were enforced, but it was not authorized to assess, or equalize assessments. These were left (where the Constitution contemplates) with the local agencies, giving to the commission the power to see that the laws were enforced. Giving the commission the power to see that the laws were enforced does not mean that it can usurp any of the functions of the bodies over which it has supervision. The assessment of property has a fixed meaning

in our laws. It includes the act of the assessor, and the boards thereafter authorized to review his acts. Ultimately, when these agencies are through with their work, the state board of equalization (constitutional in authority) completes the assessment. We conclude that there is no authority in law for this tax commission to interfere with any of the agencies of assessment, from the assessor to the state board of equalization. They can gather information for the information of the latter board, and see to the enforcement of the laws, but not otherwise. As a personal unit in the assessment of property, such board has no power. We would rather put this case upon the broad ground than upon the more restricted one. The acts of this tax commission in all cases are merely advisory, and not otherwise. It recommends matters to the Legislature, but they are not binding. We need not discuss these, because legislative power is fixed by the Constitution." (Italics ours)

Referring to the statutes pertaining to the duties of the Commission, which are found in Article IV, Chapter 74, Revised Statutes of Missouri, 1939, and specifically Section 11027 thereof, it will be noted that the first paragraph of this section states that the Commission shall have certain powers and duties "subject to the right of the state board of equalization, finally to adjust and equalize the values of real and personal property among the several counties of the state."

Under Subsection 3 of this section, it seems that the General Assembly has provided that the Commission shall receive complaints as to property liable to taxation that has not been assessed, or that has been fraudulently or improperly assessed, and it is required to investigate the same and to institute such proceedings as to correct the irregularity complained of, if any irregularity be found to exist. Under this subsection, the Commission

might be authorized to hear such complaints and require the officers, whose duties it is to administer the Merchants Tax Act, to perform their duties, but we do not think this would authorize the Commission to review the assessment made by the County Board of Equalization.

Subsection 8 of this same paragraph authorizes the Commission to raise or lower the assessment of any real or personal property under certain conditions, but, from the ruling announced by the court in the Allen case, supra, this merchants tax is not personal property tax, but is more in the nature of a license tax.

Under Section 11028, Revised Statutes of Missouri, 1939, after the various assessment rolls required by law to be made shall have been passed upon by the several boards, it seems that the Tax Commission has jurisdiction to hear and review complaints pertaining to such rolls. However, it will be noted that this section provides as follows:

"The action of the commission, or member or agent thereof, when done as provided in this section, shall be final, when approved by the state board of equalization."

Therefore, it would seem that the complaints referred to in this section are those over which the State Board of Equalization has jurisdiction, and since the State Board of Equalization does not have jurisdiction over the merchants' assessments, then we do not think that this section would apply to merchants' assessments. Neither under the Constitution nor under the statutes do we find that the State Board of Equalization has any jurisdiction over merchants' assessments.

Again, in State ex rel. Thompson v. Jones, 41 S. W. (2d) 393, 396, the court, in discussing the question of the duties and powers of the Tax Commission and the Board of Equalization and the opinions of the courts therein, said:

"But in the later case of Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 323 Mo. 180, 19 S. W. (2d) 746, 751, we have ruled otherwise and said:

"The state tax commission is given general supervision over all the assessing officers of the state, with power to enforce its orders; it has all the powers of original assessment; it may receive complaints as to property liable to taxation that has not been assessed, or that has been fraudulently or improperly assessed, and apply the proper corrective measures; it can raise or lower the assessed valuation of real or personal property either in specific instances or by class; and it has authority, on the complaint of any taxpayer and after the various assessment rolls have been passed upon by the several boards of equalization, but before the delivery of the tax rolls to the proper officers for collection, to hold hearings for the purpose of determining whether any property subject to taxation has been omitted from the assessment rolls and whether any property thereon has been improperly valued, and to make such changes with respect thereto as shall be necessary to make the assessment rolls conform to the facts as found by them.

"It is no doubt true that the state tax commission was not intended to supplant local assessing officers and boards, but very clearly it is given full and adequate power, not only to supervise, but to review, their work, and where it finds assessments which were not made conformably to law to revise them -- and this by inserting where necessary, after a hearing, its own valuations in lieu of those made by the local authorities.

It is also true that its revision of the assessments as made by county assessors and boards, in so far as it affects the equalization of the values of property among the respective counties of the state, whether such revision be made before or after the state board has acted, is subject to the approval of that board. And in this connection it should be said that, even though the action of the state board of equalization in the first instance completes the assessment judgment, that fact does not preclude a revision of such judgment by the tax commission, subject to the board's final approval.\* \* \*

We are further supported in our views herein by the fact that the officers administering the Merchants Tax Law seem to have resorted only to the Act in the enforcement of the same. It will also be noted that all of the actions for the enforcement and collection of the tax have been brought by a suit on the bond, and in not one of those cases has the question been raised that the party complaining of the tax could have proceeded in any other manner or should have referred his complaint to the Tax Commission for review and investigation.

The statutes having failed to provide for the merchant to appeal from the County Board of Appeals, he cannot appeal to the Tax Commission or any other taxing body. State ex rel. Orschlein Bros. Truck Lines, Co. v. Public Service Commission of Missouri, 98 S. W. (2d) 126.

#### CONCLUSION

From the foregoing, it is the opinion of this department that the Merchants Tax Act and the Tax Commission

Hon. Jesse A. Mitchell

-14-

October 2, 1941

Act do not provide for a review by the State Tax Commission  
of the assessments of merchants and manufacturers.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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