

TAXATION

MERCHANTS: Ad valorem tax due even though merchant commences business after first Monday in June and is pro-rated.

November 18, 1939

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Gentlemen:

This will acknowledge receipt of your letter of November 7, 1939, which is as follows:

"The County Court and the Assessor of Pemiscot County have asked us to write you with reference to an opinion on the following set of facts:

A new mercantile establishment was opened between the 1st and 15th of August. What, if any, merchants and manufacturing tax should they pay for the year 1939? Should it be pro rated or should they pay for a full year?"

The statutes which govern the answer to this question appear in Article 17, Chapter 59, R. S. Mo. 1929, and amendments thereto. This Article provides for the imposition of an ad valorem tax on merchants equal to that levied on real estate, on the highest amount of all goods, wares and merchandise on hand at any time between the first Monday in March and the first Monday in June of each year (Section 10077 R. S. Mo. 1929). The tax report of the merchant is required to be made on the first Monday in June in each year (Section 10081, Laws of 1931, page 360).

It is at once apparent that these sections reach and apply to merchants that commence business on or after

January 1 and continue in said business to the first Monday in June in each year. Section 10101, Laws of 1935, page 407, reaches those merchants that commence business after the first Monday in June each year. This section provides:

"When any person or corporation shall commence the business of merchandising in any county in this state after the first Monday in June, in any year, he shall execute a bond as provided for in section 10078, conditioned that he will, on the first day of January next succeeding, furnish to the collector of his county a statement, verified as herein required, of the largest amount of goods, wares or merchandise which he had on hand or subject to his control, whether owned by himself or consigned to him for sale, on the first day of any month between the time when he commenced business as a merchant, and the said first day in January next succeeding; upon which statement he shall pay the same rate of tax as other merchants, to be estimated as the time from the day on which he commenced business to the first Monday in June next succeeding shall be to one year."

In determining the amount due from this latter merchant, the last clause of the above section is to be noted. This clause provides the merchant is to pay the same rate (the rate on real estate) as other merchants, "to be estimated as the time from the day on which he commenced business to the first Monday in June next succeeding shall be to one year".

We think this clause may best be explained by illustration.

Assume that a merchant commences business on September 3, 1939; that the largest amount of stock he had on hand was

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on October 1, 1939, and this amount was One Thousand Dollars (\$1,000.00), and that the rate on real estate is One Dollar (\$1.00) per hundred dollars valuation. Under these facts, the merchant's tax would be \$6.66 ~~26~~. This sum is arrived at in the following manner: The period from September 3, 1939, to the first Monday in June 1940 (June 3, 1940) is exactly eight months. Eight months is two-thirds of one year. The tax as a whole would have been Ten Dollars (\$10.00) and two-thirds of this figure is \$6.66 ~~26~~.

CONCLUSION

Therefore, it is our opinion that a merchant commencing business after the first Monday in June of any year is liable for an ad valorem tax, and the amount due computed in accordance with Section 10101, supra, is to be pro-rated.

Respectfully submitted,

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APPROVED:

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LLB:RT