

Opinion No. 18-2105

June 22, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: State Tax Commission, Santa Fe, New Mexico.

"Average Value of Merchandise" as Used in Taxation Law, Defined.

OPINION

We have your letter of recent date wherein you ask for an opinion from this office as to what is meant by, "average value of merchandise," as used in Section 5437, of the 1915 Codification. Average value is used in this Section in connection with the method of valuation of merchandise stocks, for the purpose of taxation. We presume you need no definition of the word value, as used herein, but that your real desire is as to the meaning of the word average, as herein used.

In this connection, it must be remembered that stocks of merchandise are uncertain, as to value, and the value of such stocks are constantly fluctuating. At certain seasons of the year the stocks are greatly in excess of what they are at other times of the year. It was because of this that the legislators attempted to fix some method by which a fair valuation of such stocks could be had. It would be manifestly unfair to assess the stock at its value, at the time it is most complete, and it would also be unfair to the State to tax it at the time it is lowest. Hence, the use of the words "average value," in this Section of the Statutes.

The word average, has a very settled meaning: It means, "to find the mean of some certain quantities which are not equal." "Average is necessarily an intermediate amount, number or quantity between two extremes."

Swift vs. Board of Assessors, 115 La. 321; 38 Southern, 1006.

By way of illustration: If a stock of merchandise at the time of its greatest value, is worth \$ 20,000.00, and at the time of its lowest value it is worth \$ 10,000.00, to average the average value of this stock, you would add the two sums together and divide the result by two, which would give the average value of the stock. In the illustration given, it would be \$ 15,000.00.

The most fair plan that could be had for determining the average value of a stock of merchandise for an entire year, would be to have a monthly inventory of the stock, and at the close of the year, add the twelve inventories together, divide the result by twelve, which would give the average value. This plan, however, is impracticable, and I presume could be nowhere successfully carried out. The most feasible plan I can see for the obtaining of the average value of these stocks, would be to require two

inventories a year: one at the time the stock is at its highest value, and the other at the time of its lowest value, then add these two inventories together, and divide the result by two.

We are informed that some merchants use merchandise account as standard from which to gather average value of the stock. This account could be successfully used if it were in all instances, truly and correctly kept, but in so many cases this account is not correctly kept. In some cases there is no account kept at all, so that I feel it is very doubtful as to whether or not, merchandise account could be used as a safe guide in all instances.

It is obvious that it is impossible to secure the exact and certain, average value of any stock of merchandise. There appears to be no rule laid down in the books, and it is clear that no exact rule can be laid down. The assessor in each case must endeavor to determine the value between the two extremes. When he has done this, the intent of the legislators will have been carried out.

I regret that I am unable to give you a more fixed standard by which you can determine the value of these stocks, but I believe if you could arrange for the merchants to make the two inventories, at the time suggested herein, and then take the average between these two, you would get as near the correct average value, as it is possible to obtain.

In regard to the second question contained in your favor, as to whether or not the assessment of a stock of merchandise at its full value, as of January 1st, in a case where the stock had been brought into the State a few weeks, or a few days prior to January 1st, is valid. It occurs to me that this assessment would be valid, and perhaps fairer that it would seem at first glance. If it is considered that when a stock of merchandise is brought into the State it is rarely complete, and generally much is added to it after its location, it is seen that the assessment of the full value of the stock just brought it does not work any hardship upon the person assessed. We are inclined to believe that in the majority of cases the assessment would be unfair to the State, but as an assessor can have no standard to go by, I see no other way for him to do, but assess it at its full value.