TAXATION — MERCHANTS AND MANUFACTURERS' LICENSE TAX IN CITY OF ST. LOUIS.—State ex rel. International Shoe Co. v. Chapman, License Collector et al. December, 1925. 276 S. W. 32. —— Mo. ——.

The relator, the International Shoe Co., a Delaware corporation licensed to do business in the state of Missouri and having a place of business in the city of St. Louis, seeks to set aside and annul a tax levied by the merchants and manufacturers' board of equalization under a city ordinance, Section 411 of the 1914 Revised Code of St. Louis. The issue was as to the validity of the tax upon its license as a manufacturer levied on goods made outside the city of St. Louis and sold and delivered to customers in other states, the relator being willing to pay the tax on the sales of goods made in St. Louis regardless of the place of sale, and on all shoes sold in St. Louis regardless of the place of manufacture. It was the contention of the relator that as to the goods manufactured outside the city of St. Louis and sold to customers in other states, it was engaged in interstate commerce, which constituted a right not subject to tax under city ordinance. *Held* that for the purpose of levying a tax on the relator's privilege as a manufacturer, the city ordinance did not authorize a computation of the tax upon the value of shoes manufactured beyond the limits of the city.

The tax in question is a license tax levied upon the privilege of being merchants and manufacturers under section 411 of the 1914 Revised Code of the city of St. Louis. The ordinance provides that there shall be an *ad valorem* tax of one-fifth of one per centum on the value of the largest amount of goods, wares, and merchandise situated within the city, and a further tax of one dollar on each one thousand dollars of sales made during the year.

In 1912, the Missouri Supreme Court held that imported jute butts became subject to tax when they were intermingled with other goods or applied to the purpose for which they were imported. That while the goods remained in the original packages they were not subject to tax as such a tax would discourage importation and contravent constitutional intent. That, however, the goods cannot be imported and allowed to remain in the original package for a long period in order to avoid the tax, as in the case where they are stored in order to take advantage of a rising price, or stored longer than the proper time to supply the plant with raw materials. In addition, the court held, that the tax applied to goods manufactured in St. Louis and sold in other states, and was not a violation of the commerce clause (Art.

1, Sec. 8, of Fed. Const.). The court also held, that the tax did not cover sales made through the St. Louis office, but shipped from a New York branch to a purchaser in Texas. Am. Mfg. Co. v. City of St. Louis, 238 Mo. 267, 142 S. W. 297.

In 1917, the same court held, that the tax could be levied upon goods manufactured in St. Louis but stored in another state and shipped direct from the place of storage to the customer. It was the court's view that the tax was a tax upon the privilege of doing business, and that when the goods were manufactured the obligation to pay the amount of tax represented by the value of the goods accrued. Am. Mfg. Co. v. City of St. Louis, 270 Mo. 40, 192 S. W. 402. The United States Supreme Court affirmed the decision. Justice Pitney, in the opinion, said, "It produces no direct burden on commerce in the goods manufactured, whether domestic or interstate, and only the same kind of incidental and indirect effect as that which results from the payment of property taxes or any other and general contribution to the cost of government . . . it has not the effect of imposing a tax upon property or the business transactions of the plaintiff in error outside the state of Missouri, and hence does not deprive plaintiff in error of its property without due process of law." 250 U. S. 461.

The same year, the Missouri Supreme Court held that goods distributed by a parent corporation to a subsidiary corporation formed by the parent corporation which controlled the subsidiary corporation was such a sale as to be subject to the occupational license. Simmons Hdwe. Co. v. City of St. Louis, 192 S. W. 394.

The tax was declared a burden on interstate commerce when the question was raised on demurrer in Am. Mfg. Co. v. City of St. Louis, 296 Fed. 899. But later on a full hearing, the tax was held not invalid as a burden on interstate commerce. The court said that neither a tax on goods manufactured in St. Louis and shipped to customers in other states, or a tax on goods manufactured in St. Louis but shipped and stored in warehouses in other states and sold from those warehouses was a direct burden on interstate commerce. Am. Mfg. Co. v. City of St. Louis, 8 Fed. (2nd) 447.

As is said in Am. Mfg. Co. v. St. Louis, 270 Mo. 40, 192 S. W. 402, the tax is an occupational tax on the privilege of doing business. The fact that the tax is levied according to the value of the goods sold merely affords a means of determining the amount of the tax. 8 Fed. (2nd) 447. It makes no difference where the goods are sold, according to such a construction, as the obligation to pay the tax accrues when the goods are manufactured. The burden is the same as that which

results from payment of a property tax or any other general contribution to the expense of government. 250 U. S. 459, 63 L. Ed. 1084. The reasoning from these short excerpts clearly justifies the decisions previously discussed. When the goods are manufactured in St. Louis the tax applies, and the amount is determined by the sales value, regardless of the place of sale. When the goods are shipped into St. Louis and sold in St. Louis the tax applies as a sales tax. When, however, the tax is applied to goods shipped into St. Louis and from there shipped to customers in other states, the tax cannot be levied on the goods, for as such it is a burden on interstate commerce.

M. L. S., '27.