

TAXATION: Defense Bonds Series E, F, and G, not taxable as personal property.

June 26, 1941

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Honorable Dan M. Nee  
Internal Revenue Collector  
Kansas City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of June 20, 1941, as follows:

"We have had several requests for information from taxpayers regarding savings bonds and defense bonds issued by the United States Government. These bonds do not mature until 10 years after they have been purchased but are subject to be turned in at any time within 60 days after date of purchase and interest is paid on such bonds after they have been owned for more than one year.

"The question arises as to whether such savings bonds or defense bonds must be reported on personal tax statements. We are advised by the City Counselor that they must adopt the same ruling as that authorized by the state authorities and that if such bonds are not to be reported for state and county personal tax, they are not to be reported for city personal tax.

"We would thank you to give us a ruling as to whether Government bonds should be reported on the state and county personal tax forms."

Section 10936, R. S. Missouri, 1939, is as follows:

"For the support of the government of the state, the payment of the public debt, and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section."

Section 10937, R. S. Missouri, 1939, the statute granting certain tax exemption, in no way purports to exempt bonds of the United States from being taxed as personal property to the owner thereof.

Section 10950, R. S. Missouri, 1939, enumerates what property shall be returned to the Assessor for purposes of taxation. It does not expressly name bonds of the United States, but is broad enough to include them. This statute first calls for a list of all real estate and then for a list of personal property. The eleventh item, following the specific enumeration of certain personal property, provides that "all other property not above enumerated \* \* \*, and its value," be returned for taxation and requires that "under this head shall be included \* \* \* every other species of property not exempt by law from taxation."

Our view as to the conclusion which we must reach makes it only necessary to say that, without question, bonds of the United States are personal property in the hands of the owners thereof, and that the statutes heretofore quoted are broad enough to include them. There can be no other conclusion, since the Missouri Constitution, Article X, Section 7, makes void all laws exempting property from taxation except that enumerated in Article X, Section 6, which is the same as that granted in Section 10937, supra. However, since the bonds in question are obligations of the National Government, we are governed by the rule under the Constitution of the United States and laws of Congress.

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31 U S C A, 742, which is all inclusive in its scope, provides:

"Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority."

The bonds about which you inquire are designated as United States Defense Savings Bonds, series E, F and G, issued pursuant to the Second Liberty Bond Act, 31 U S C A, 752, 754, 757, as amended 31 U S C A, 752, 754, 757b - 1940 Cumulative Annual Pocket Part - as again amended H. R. 2959, 77th Congress (approved February 19, 1941).

Section 4 of the amendment last mentioned provides:

"Interest upon, and gain from the sale or other disposition of, obligations issued on or after the effective date of this Act by the United States or any agency or instrumentality thereof shall not have any exemption, as such, \* \* \* \* \* under Federal Tax Acts now or hereafter enacted; \* \* \* \* \*"

The adoption of Section 4 lifts the tax exempt status of bonds of the United States theretofore fixed in 31 U S C A, 742, supra, and in 31 U S C A, 747, 748, 749, as amended 31 U S C A, 748a, 754b, 757c (c) - 1940 Cumulative Pocket Part. These latter amendments exempt these bonds "both as to principal and interest" from all taxation, except estate or inheritance taxes and graduated additional income taxes when held in sums of more than a fixed amount. The exception to tax exemption on income tax was thereafter removed.

So far as we can ascertain, the tax status of said bonds has remained the same from the removal of the income tax exception from exemption. That is, Congress has decreed that they shall be exempt from all taxation except estate and inheritance taxes. However, the adoption of Section 4, supra, again changed the tax status. Upon the authority of this section the Treasury Department has issued circulars pertaining to the sale of bonds of series E, F and G.

Circular 653, April 15, 1941, pertaining to Series E, provides, in Part II, Section 4:

"For the purpose of determining taxes and tax exemptions, the increment in value represented by the difference between the price paid for United States Savings Bonds and the redemption value received therefor (whether at or before maturity) shall be considered as interest, and such interest on Defense savings bonds is not exempt from income or profits taxes now or hereafter imposed by the United States. The bonds shall be subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but shall be exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority."

Circular 654, April 15, 1941, pertaining to Series F and G, provides, in Part II, Section 7:

"For the purpose of determining taxes and tax exemptions, the increment in value of savings bonds of Series F represented by the difference between the price paid and the redemption value received therefor (whether at or before

maturity) shall be considered as interest, and such interest on such bonds of Series F, and interest on bonds of Series G, is not exempt from income or profits taxes now or hereafter imposed by the United States. The bonds shall be subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but shall be exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority."

Under the case of *Weston v. City Council of Charleston*, 2 Pet. 449, 7 L. Ed. 481, a state is without power to impose a property tax upon bonds of the United States. The court, speaking through Chief Justice Marshall, said at l. c. (L. Ed.) 487:

"Congress has power 'to borrow money on the credit of the United States.' The stock it issues is the evidence of a debt created by the exercise of this power. The tax in question is a tax upon the contract subsisting between the government and the individual. It bears directly upon that contract, while subsisting and in full force. The power operates upon the contract the instant it is framed, and must imply a right to affect that contract.

"If the States and corporations throughout the Union, possess the power to tax a contract for the loan of money, what shall arrest this principle in its application to every other contract? What measure can government adopt which will not be exposed to its influence?

"But it is unnecessary to pursue this principle through its diversified application to all the contracts, and to the various operations of government. No one can be selected which is of more vital interest to the community than this of borrowing money on the credit of the United States. No power has been conferred by the American people on their government, the free and unburdened exercise of which more deeply affects every member of our Republic. In war, when the honor, the safety, the independence of the nation are to be defended, when all its resources are to be strained to the utmost, credit must be brought in aid of taxation, and the abundant revenue of peace and prosperity must be anticipated to supply the exigencies, the urgent demands of the moment. The people, for objects the most important which can occur in the progress of nations, have empowered their government to make these anticipations, 'to borrow money on the credit of the United States.' Can anything be more dangerous, or more injurious than the admission of a principle which authorizes every State and every corporation in the Union which possesses the right of taxation, to burden the exercise of this power at their discretion?

"If the right to impose the tax exists, it is a right which in its nature acknowledges no limits. It may be carried to any extent within the jurisdiction of the State or corporation which imposes it, which the will of each State and corporation may prescribe. A power which is given by the whole American people for their common good, which is to be exercised at the most critical periods for the

most important purposes, on the free exercise of which the interests certainly, perhaps the liberty of the whole may depend; may be burdened, impeded, if not arrested, by any of the organized parts of the confederacy.

"In a society formed like ours, with one supreme government for national purposes, and numerous State governments for other purposes; in many respects independent, and in the uncontrolled exercise of many important powers, occasional interferences ought not to surprise us. The power of taxation is one of the most essential to a State, and one of the most extensive in its operation. The attempt to maintain a rule which shall limit its exercise, is undoubtedly among the most delicate and difficult duties which can devolve on those whose province it is to expound the supreme law of the land in its application to the cases of individuals. This duty has more than once devolved on this court. In the performance of it we have considered it as a necessary consequence from the supremacy of the government of the whole, that its action in the exercise of its legitimate powers should be free and unembarrassed by any conflicting powers in the possession of its parts; that the powers of a State cannot rightfully be so exercised as to impede and obstruct the free course of those measures which the government of the States united may rightfully adopt.

"This subject was brought before the court in the case of *M'Culloch v. The State of Maryland*, 4 Wheaton, 316, when it was thoroughly argued and deliberately considered. The question decided in that case bears a near resemblance to that which

is involved in this. It was discussed at the bar in all its relations, and examined by the court with its utmost attention. We will not repeat the reasoning which conducted us to the conclusion thus formed; but the conclusion was that 'all subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend, are upon the soundest principles exempt from taxation.' 'The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission;' but not 'to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States.' 'The attempt to use' the power of taxation 'on the means employed by the government of the Union in pursuance of the Constitution, is itself an abuse, because it is the usurpation of a power which the people of a single State cannot give.'

"The court said in that case, that 'the States have no power by taxation, or otherwise, to retard, impede, burden, or in any manner control the operation of the constitutional laws enacted by Congress, to carry into execution the powers vested in the general government.'

"We retain the opinions which were then expressed. A contract made by the government in the exercise of its power, to borrow money on the credit of the United States, is undoubtedly independent of the will of any State in which the individual who lends may reside, and is undoubtedly an operation essential to the important objects for which the government was created. It ought, therefore, on the principles

settled in the case of M'Culloch v. The State of Maryland, to be exempt from State taxation, and consequently from being taxed by corporations deriving their power from States."

We note that the Chief Justice advanced as one reason for the National Government's tax exemption the very reason for the issuance of the bonds with which we are dealing. The necessity that the right to raise funds in time of "war, when the honor, the safety, the independence of the nation are to be defended, when all its resources are to be strained to the utmost," must not be hindered by burdening that power with local taxation.

See also State ex rel. Missouri Insurance Company v. Gehner, 281 U. S. 313, 74 L. Ed. 871, 1. c. 876, wherein it is stated:

"It is elementary that the bonds or other securities of the United States may not be taxed by state authority. That immunity always has been deemed an attribute of national supremacy and essential to its maintenance. The power of Congress to borrow money on the credit of the United States would be burdened and might be destroyed by state taxation of the means employed for that purpose. \* \* \* \* \*

This rule has been maintained in an unbroken line of decisions since first laid down by Chief Justice Marshall, and bonds of the United States have never been taxable as property except as Congress waives the constitutional immunity, which it seems it may do. Tradesmen's Nat. Bank v. Okla. Tax Commission, 309 U. S. 560, 60 S. Ct. 688.

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The Acts of Congress above set forth only purport to waive the National Government's immunity as to interest or gain derived from the ownership or disposition of the bonds. There is no waiver of the immunity attached to the principle, or bond itself.

It is, therefore, our opinion that National Defense Bonds, Series E, F and G, are not taxable as personal property to the owner thereof, under the laws of Missouri.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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