

INTERSTATE BRIDGE: The State of Missouri may tax that portion of
TAXATION: an interstate bridge owned by Richardson County,
Nebraska, which lies within the state of Missouri.

September 5, 1949

9/10/49

Honorable Clarence Evans
Chairman, State Tax Commission
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your recent request for an official opinion, which request is stated by you as follows:

"Richardson County, Nebraska, the owner of the Rulo Toll Bridge, has filed, under protest, a report of the Bridge for Ad valorem tax. One-half of said Bridge is in Holt County, Missouri.

"Their attorney, G. Lee Burns of Kansas City, Missouri has filed with the report a letter setting out in detail why they claim this Bridge is not taxable in Missouri.

"We attach the letter of Mr. Burns' and would be pleased to have your opinion as to whether, under the law, we should assess that part of the Bridge that is in Missouri."

The Missouri statute authorizing the taxing of interstate bridges is Section 11295, Mo. R.S.A. 1939. That section reads:

"All bridges over streams dividing this State from any other state owned, controlled, managed or leased by any person, corporation, railroad company or joint stock company, and all bridges across or over navigable streams within this state, where the charge is made for crossing the same, which are now constructed, which are in the course of construction, or which shall hereafter be constructed, and all property, real and personal, including the franchises owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe

lines, and express companies, shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons. And taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for the taxation of railroad property in this state, and county courts, and the county and state boards of equalization are hereby required to perform the same duties and are given the same powers in assessing, equalizing and adjusting the taxes on the property set forth in this section as the said courts and boards of equalization have or may hereafter be empowered with in assessing, equalizing, and adjusting the taxes on railroad property; and the president or other chief officer of any such bridge, telegraph telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, or express company or the owner of any such toll bridge, is hereby required to render statements of the property of such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, or express companies in like manner as the president, or other chief officer of the railroad company is now or may hereafter be required to render for the taxation of railroad property."

This section, 11295, supra, has been construed by several Missouri cases, none of which, however, presented the same fact situation which is present in the instant case. State ex rel. v. Railroads, 215 Mo. 479, was a case in which the interstate bridge, which was the subject of the litigation, was owned by a private corporation and was leased to a railroad. Substantially the same fact situation was present in the cases of State ex rel. Glenn v. Mississippi River Bridge Company, 134 Mo. 321, and State ex rel. v. Hannibal and St. Joseph Railroad Company, 89 Mo. 98. The above listed cases are the only Missouri cases construing Section 11295, supra. For guidance in this matter we must therefore look to decisions in other states which present fact situations similar to the one in this instant case.

It may be conceded that, while the bridge is unquestionably subject to taxation, taxes may not be levied and assessed unless there is a statutory authority providing for the assessment and collection of such taxes. We have a general statute providing for the assessment and collection of taxes on all property, real and personal, in the state which is applicable to all classes of property not covered by a special plan or scheme of assessment.

This statute, Section 10950, R. S. 1935, as amended Laws 1945, pages 1785, 1787, would authorize the assessment of this bridge as real property by the county assessor in the same way as other real estate is assessed.

Section 11295 is one of several statutes providing for the assessment of special classes of property. It describes the property as "All bridges over streams dividing this state from any other state owned, controlled, managed or leased by any person, corporation, railroad company or joint stock company, * * *" This description may be intended to exclude bridges owned by a municipal corporation or subdivision of this state. It is unnecessary in answering your inquiry to determine this. Counsel for the owner of this bridge urges that, because the ownership is vested in a county of the State of Nebraska, the statute is inapplicable because counties are not named. The meaning of the word "person" in this section may properly be held to include a foreign county. Section 11211, R. S. 1939, defines "person" as, "person, firm, company, corporation or otherwise, whenever the case may so require its use or application." Since Section 11295 provides a general plan for the assessment of toll bridges, the word "person" is properly held to include all entities capable of holding title to the property.

Section 11295 must be construed in connection with the constitutional provisions and other statutes relative to taxation and assessment.

The Constitution of 1875, as well as the Constitution of 1945, provides that all property in the state shall be subject to taxation, except that certain exemptions are authorized. Among the exemptions authorized is that of property owned by counties. The statute providing for this exemption is Section 10937, R. S. 1939. The pertinent part of this statute is:

"The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, lands and lots, public buildings and structures with their furniture and equipments, belonging to the United States; third, lands and other property belonging to this state; fourth, lands and other property belonging to any city, county or other municipal corporation in this

state, * * * (Underscoring ours.)

It is plain that the bridge, being real property in the State of Missouri, is subject to taxation unless the exemption granted to counties is applicable. No Missouri case is found directly in point, but the question has been passed on in numerous cases in other jurisdictions. These cases uniformly hold that exemptions granted to "counties" are applicable only to counties of the particular state and not to foreign municipal corporations or political subdivisions.

We think the case of *People ex rel. Murray v. City of St. Louis*, 126 N.E. 529, is very pertinent here and supports the theory of this department because the same question which you have propounded was before the Supreme Court of Illinois, in relation to the taxing of the Municipal Bridge in St. Louis which terminates on the east bank of the river in Illinois. In discussing this question, the Court said: (L.c. 531)

"Section 3 of Article 9 of the Constitution of 1870 provides:

'The property of the state, counties and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property.'

"(4-7) Under this constitutional provision it cannot very well be argued that this bridge is exempt as a municipal corporation's property, as the municipality

owning it is not a municipality of this state. Moreover, there is a provision in this state for taxing bridges across navigable streams forming the boundary line between Illinois and other states. Hurd's Stat. 1917, sec. 354, p. 2497. All property is subject to taxation unless exempted by the Constitution or statutes passed in accordance therewith.
* * * * *

And, at l.c. 532, the Court further said:

"(8) It is also argued by counsel for appellant that as this bridge was constructed under the authority of an act of Congress it cannot be taxed by the state authorities. It is clear that by this act of Congress the federal government did not retain exclusive power of legislation on all matters pertaining to this bridge; therefore, under the reasoning of Moline Water Power Co. v. Cox, 252 Ill. 348, 96 N.E. 1044, the state authorities retained the power to tax the bridge. The federal government has authorized the construction of several railroad bridges over the Mississippi river near St. Louis, and one of them--the Eads bridge, as we understand it--is not only used by railroads, but it is used for street cars, vehicles, and pedestrians, and yet it has been taxed by the state authorities. People v. St. Louis Merchants' Bridge Co. (No. 12580) 291 Ill. 95, 125 N. E. 752."

In further support of this point we direct your attention to 81 A.L.R., page 1518, which states:

"II. Taxation of property belonging to political division of another state.

"Where a public service plant belonging to a municipality is situated in another state, it is taxable therein, and a statute of the state where the plant is located exempting the property of municipalities is not applicable.

"Thus, in *Augusta v. Timmerman* (1916; C.C.A. 4th) 147 C.C.A. 222, 233 Fed. 216 (affirming decree of (1915; D.C.) 227 Fed. 171), it appeared that a city in Georgia owned land in South Carolina, the use of which was essential to its water supply system. Holding that a South Carolina statute exempting municipal waterworks from taxation was not applicable to that land, the court said: 'Unless otherwise expressed, all legislation of a state relating to cities and towns refers to the cities and towns of that state, and not of another state or country. This is for the reason that the state has no control of cities and towns in other states, and from a governmental standpoint no interest in them. For a state to attempt to promote the development of cities and towns outside of its borders by exempting property owned by them from taxation exacted of its own citizens would be so anomalous and contrary to legislative history and governmental policy that nothing but the clearest affirmative expression would warrant such an inference. The general assembly of South Carolina legislating concerning taxation and exemptions of cities and towns, had no thought of cities and towns not subject to its legislation. The plain purpose was to exempt certain governmental agencies of its own municipal corporations.'

"The provisions of the Constitution of Illinois exempting municipal property from taxation has reference only to municipal corporations in Illinois. Hence, a portion of a bridge and approaches thereto in Illinois territory, the property of a Missouri city, may secure no exemption under such provision. *People ex rel. Murray v. St. Louis* (1920) 291 Ill. 600, 126 N. E. 529.

"Similarly, the exemption from taxation of the property of the state and any of its municipalities provided for in the Constitution and statutes of Kansas refers to the municipalities of Kansas, and not to those of another state. Thus, a waterworks plant owned by a Missouri city, but located in Kansas, is taxable in the latter state. *State ex rel. Taggart v. Holcomb* (1911) 85 Kan. 178, 50 L.R.A. (N.S.) 243, 116 Pac. 251, Ann. Cas. 1912D, 800 (writ of error dismissed in (1912) 226 U.S. 599, 57 L. ed. 375, 33 S. Ct. 112) The court in this case said: 'So it may be said here that when a city of the state of

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Missouri comes into Kansas, it comes as a private party and brings with it none of the prerogatives of sovereignty. The general rule is that all property not expressly exempted is taxable, and the fact that the state does not tax itself and its municipalities to obtain revenue for itself is no reason why a foreign municipality, who is here in the capacity of a private proprietor and whose property receives protection from the state, should contribute nothing toward that protection or should escape paying the taxes imposed upon other owners of property. It is clear that the exemptions from taxation, provided for the state and for cities and municipalities of the state, are only declaratory of the immunity that would be granted on fundamental principles of government, and that the cities and municipalities referred to in the statute and Constitution are those of our own state."

We would call your further attention to 99 A.L.R., page 1144, which states:

"II. Taxation of property belonging to another state or political subdivision thereof.

"a. In general

"(Supplementing annotation in 81 A.L.R. 1518.)

"As a general rule, property of a municipality located in another state has been held taxable therein; and the courts are fairly in agreement that exemption in the state of the situs of municipal and/or other public property has no application to such property, on the theory that by entering another state the political unit has forfeited all claim to sovereignty.

"Where land situated in New Orleans was devised to the city of Baltimore and the city of New Orleans in trust to provide for the education of the poor of each city, the tract belonging to the city of Baltimore was held, in New

Orleans v. Salem Brick & Lumber Co. (1914)
135 La. 828, 66 So. 237, liable to taxation
in New Orleans, since the city of Baltimore
had not entered the state of Louisiana with
the attributes of sovereignty."

From the above it is the opinion of this department that Section 11295, supra, in that portion of the section which states that: "all bridges over streams dividing this state from any other state-owned, controlled, managed or leased by any person, corporation, railroad company or joint stock company, * * * where the charge is made for crossing the same, * * * shall be subject to taxation * * *," includes all toll bridges not exempted by Section 10937, R. S. Mo. 1939, and that the portion of bridges owned in foreign states which lie in Missouri may be taxed in Missouri regardless of ownership.

We may add that this opinion which we are rendering in this instant case is in accord with an opinion rendered by this department on January 19, 1942, to Mark Morris, prosecuting attorney of Pike County, Missouri, which opinion held that the state of Illinois could tax that portion of a bridge owned by Pike County, Missouri, which lay in the state of Illinois.

CONCLUSION

It is the conclusion of this department that the state of Missouri may tax that portion of an interstate bridge owned by Richardson County, Nebraska, which lies within the state of Missouri.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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