TAXATION AND REVENUE: Highway Bonds issued by the State are not exempt from taxation in the hands of individuals.

Acc 9742-43 RS Mo 1929

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September 11, 1933.

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Mr. Herbert M. Braden,
Prosecuting Attorney, Livingston County,
Chillicothe, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

> "I am writing you for an opinion as to whether Highway Bonds of the State of Missouri in the hands of private individuals are taxable for State and County purposes or are such Bonds exempt from taxation?"

Article 10, Section 6 of the Constitution of Missouri provides as follows:

> "The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real and personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

Article 10, Section 7 of the Constitution of Missouri provides as follows:

> "All laws exempting property from taxation, other than the property above enumerated, shall be void."

Section 9742, R. S. Mo. 1929, provides 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 9743, R. S. Mo. 1929, provides as follows:

"The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, lands and lots, public structures and buildings 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, including market houses, town halls, and other public structures, with their furniture and equipments and all public squares and lots kept open for health, use or ornament; fifth, lands or lots of ground granted by the United States of this state to any county, city or town, village or township, for the purpose of education, until disposed of to individuals by sale or lease; sixth, lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for schools or for purposes purely charitable, shall be exempted from taxation for state, county and local purposes."

Under the foregoing constitutional and statutory provisions taxes must be levied on all property within the territorial jurisdiction of the state, except that expressly enumerated as exempt. State v. Baker, 293 S. W. 399, where it is said at 401:

"It is a well settled policy of our law that taxes shall be levied and collected for public purposes on all property within the territorial jurisdiction of the state, except that expressly enumerated as exempt."

In State ex rel. v. Gehner, 294 S. W. 1017, the court, reaching the same conclusion, says at page 1018:

"The policy of our law, constitutional and statutory, is that no property than that enumerated shall be exempt from taxation. Sections 6 and 7, Article 10, Constitution of Missouri; Section 12753, R. S. Mo. 1919."

It is apparent from the above that Highway Bonds issued by the State of Missouri are subject to taxation unless they be expressly exempted.

Section 44a of Article 4 of the Constitution of Missouri providing for the State Highway system and the issuance of Bonds, does not exempt Highway Bonds from taxation. We fail to find any constitutional or statutory provision exempting Highway Bonds from taxation.

It has been further held that the Legislature could not increase the list of tax exemptions contained in Sections 6 and

7 of Article 10 of the Constitution. State ex rel Tompkins v. Shipman, 234 S. W. 60, where it is said at page 63:

> "These exemptions are not taxed at all, and the law making power cannot increase the list of exemptions. Section 7, Article 10 of the Constitution."

In State ex rel. St. Louis County v. Gordon, 188 S. W. 160, the court had for consideration the act authorizing the county court to issue bonds for the building of roads. The act also provided that such bonds should be exempt from taxation for any purposes. The court, in disposing of this proposition, says at page 163:

> "It is also urged that the provisions of Section 3 of this act, which provides that 'no bond shall bear a higher rate of interest than 5 per cent, and all bonds shall be exempt from taxation for any purpose,' is, as to the attempted exemption from taxation, null and void, because contrary to the provisions of Sections 6 and 7, Article 10, of the Constitution. We think this is to self-evident that discussion of it would not clarify but merely muddle. However commendable may be the spirit of the Legislature in attempting to make the state a partner with the buyer and holder of these road bonds, it is obvious that the effort must prove abortive, because it is in the very face of the Constitution. We do not hesitate then to hold as utterly void so much of the said sentence which we quote, as seeks to make this exemption from taxation."

It is apparent, therefore, from the foregoing that the Legislature cannot increase the list of exemptions contained in Section 6 of Article 10 of the Constitution. Section 6 of Article 10 of the Constitution and Section 44a of Article 4 of the Constitution do not contain any provision exempting Highway Bonds in the hands of individuals from taxation. It is, therefore, the opinion of this Department that Highway Bonds in the hands of individuals are taxable for state and county purposes in view of the constitutional and statutory provisions above and the decisions of our Supreme Court construing them.

Very truly yours,

Frank W. Sayers

Assistant Attorney General

APPROVED:

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Attorney General.

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