

Bank Shares - Place of Assessment Sec 9765
RS Mo 1929

9765-66 - RS Mo 1929

January 31, 1933

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Hon. Jos. L. Gutting
Prosecuting Attorney
Clark County
Kahoka, Missouri

Dear Sir:

Your letter of January 27, 1933 addressed to the Attorney General has been handed the undersigned for attention. You submit to this department, the following statement of facts:

"I have been asked by the Collector of Clark County for an opinion on the assessment of the taxes on bank stock on which I would like to have a ruling by your office, as the same question has arisen in connection with the stock of two different banks here in the County.

"The stock in banks located at Revere and Kahoka is held partly by individuals living in various School Districts through the County. On account of the fact that the School taxes in both of the above mentioned towns is much higher than in rural districts, some of these stockholders take the position that their bank stock is personal property and should therefore be assessed in their home school district along with other personal property that they own rather than in the school district in which the bank is located and are withholding payment of the tax on their stock.

"This condition has been in existence right along, that is, the assessment has always been run according to the location of the bank but it has just now been brought to me by several of those concerned and I will certainly appreciate whatever assistance you can give me on it."

Section 9765, R.S. Mo. 1929, provides in the first portion thereof, that:

"The property of manufacturing companies and other corporations, where not otherwise provided for by law, shall be assessed and taxed as such companies or corporations in their corporate names."

The assessment to be made against banks and trust companies as provided in the next portion of the same section, is to be arrived at by valuation of the stock to be determined as therein provided, said section of the statutes being as follows:

"Persons owning shares of stock in banks, or in joint stock institutions or associations doing a banking business, shall not be required to deliver to the assessor a list thereof, but the president or other chief officer of such corporation, institution or association shall, under oath, deliver to the assessor a list of all shares of stock held therein, and the face value thereof, the value of all real estate, if any, represented by such shares of stock, together with all reserved funds, undivided profits, premiums or earnings and all other values belonging to such corporation, company, institution or association; and such shares, reserved funds, undivided profits, premiums or earnings and all other values so listed to the assessor shall be valued and assessed as other property at their true value in money, less the value of real estate, if any, represented by such shares of stock."

Section 9766, R.S. Mo. 1929, provides:

"The taxes assessed on shares of stock embraced in such list shall be paid by the corporations, respectively, and they may recover from the owners of such shares the amount so paid by them, or deduct the same from the dividends accruing on such shares; and the amount so paid shall be a lien on such shares, respectively, and shall be paid before a transfer thereof can be made."

So far as we have been able to ascertain, the exact point of your inquiry has never been passed upon in this state. We find, however, in the opinion by Valliant, C.J., in State ex rel v. Lesser, 237 Mo. 310, the following language:

"The law as it now is does not by express terms impose a tax on shares of stock in any corporation except in banks, or concerns that do a banking business, insurance companies, concerns owning steamboats or other water craft, and building associations; the property of all other corporations is taxed like property of persons. Banks and insurance companies pay taxes only on their real

estate, their personal property is taxed indirectly by taxing the shares of stock. The reason for that system of taxation is that national banks usually have a large part of their capital invested in Government bonds which are not subject to taxation, but an act of Congress authorizes the State to tax the stock of the bank according to its real value, which includes in its estimate the non-taxable bonds, and the General Assembly, to avail itself of that act, put state banks and insurance companies on a plain with national banks. (State ex rel. v. Shryack, 179 Mo. 424.) The peculiar character of steamboats, here to-day and beyond reach to-morrow, is the reason for requiring the resident owner of such stock to include it in his list to be returned to the assessor, and the peculiar nature of interests in building association also furnishes a good reason for making an exception as to such stock.

"The reason for making exceptions of banks, insurance companies, steamboat companies and building association is the difficulty in reaching the tangible property in those concerns; the stock is treated as representing the property and taxed in lieu of taxing the property."

It will be also noted that the section requires that the assessor be furnished with a list of the shares. In a number of cases, this has been treated as a requirement to furnish the number of shares and the name or names of the persons owning such shares. This is due possibly to the fact that under Section 9766, R.S. Mo. 1929, such shareholders are rendered secondarily liable for the payment of the tax. The omission of the Legislature to require that the residence of such owners be furnished by the executive officer to the assessor is possibly due to the fact that the Legislature had in mind that a large number of such shareholders might be non-residents of the state.

In the case of State ex rel Donnell, Collector, v. Peoples Bank of De Soto, 263 S.W. 205, while not passing upon the proposition here discussed, Walker, J. in the course of his opinion said:

"The manifest purpose of section 12775, R.S. Mo. 1919 (now Section 9765, R.S. Mo. 1929) is to afford the assessor, authentic information as to the owners of the shares

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of stock in a corporation, that such shares may be properly assessed against them. St. L. Bldg. & Sav. Assn. v. Lightner, 42 Mo. l. c. 426. Why thus assessed when the banking corporation is required to pay the taxes on the shares, and be repaid by the shareholders, is of no concern to us in the solution of the question at issue. The Legislature, in its wisdom, saw fit to prescribe this manner of assessing and collecting taxes of this character, and therefore our inquiry is limited to ascertaining and determining whether the statute has been substantially complied with in furnishing the assessor with the required information to enable him to make a valid assessment. "

It would appear from the language of Section 9766 that the intention of the Legislature was (for the purpose of taxation) to completely separate the stock from its owner because the payment of the tax is made mandatory upon the bank, and the bank is rendered primarily liable for the payment thereof. It is true that the statute gives the bank a lien upon the stock for the recovery of the amount of tax so paid, but such repayment or the enforcement of the lien so given is left optional with the bank.

Following the reasoning of the court in the above cited case together with the omission of the statute to furnish the residence of the shareholder and the fact that the assets of the banking institution, which fixes the value of the shares of the capital stock, are located at the banking institution, it is the opinion of this department that the tax upon such shares should be ascertained by the assessor upon the tax rate in the township of the county where the banking institution is located.

Very truly yours,

Approved:

Carl C. Abington,
Assistant Attorney-General

Roy McKittrick,
Attorney-General