

TAXATION: DEPOSITS IN UNITED STATES POSTAL DEPOSITORIES  
HELD TAXABLE.

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April 21, 1933

Hon. Owen C. Rawlings  
Prosecuting Attorney  
Marshall, Missouri

Dear Sir:

In your letter of April 19, 1933, you make the following request for an opinion from this office:

"Please advise us as to whether or not money or a deposit in United States Post Office, situate in Saline County, Missouri, is taxable under the State law. I have reference to such deposits referred to in Sections 751 to 760 inclusive, of Chapter twenty (20), Title thirty-nine (39), The Postal Service, of United States Code, but I do not refer to United States bonds as mentioned in the above Section 760.

This information is desired by the Board of Equalization, Saline County, Missouri, and we should have this information by Saturday of this week."

Section 9742, R.S. No. 1928, 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 provides for certain exemptions, though no mention is made of deposits in United States Postal Depositories.

In the case of "State v. Gehner" 9 S.W. (3d) 631, the Court held:

"Money deposited in bank becomes the property of the bank and is never the property of the depositor. The relation of debtor and creditor thereafter obtains between the depositor and the bank. Vandagriff v. Masonic Home, 242 Mo. 136, 145 S.W. 448;

37 Cyc. 838. The property of the depositor therefore is a credit which has no situs for taxation purpose except at the domicile of the depositor. It is true that the statute requires a taxpayer to list in his return all money deposited in bank or other safe place. That does not mean that he owns the money deposited in bank, but that such deposit is the measure of the bank's indebtedness to him. It is a credit to that amount."

At this point it might be well to observe that by the postal savings act, June 25, 1910, 36 Stat. 818, a trust with named trustees was created. No part of the fund went into the Treasury of the United States or became the property of the United States. "The contract involved is not with the United States. It is a contract providing that the deposit is to be paid out of the funds deposited under the postal saving system, and the act itself and the regulations promulgated in pursuance thereof are written into and become a part of the contract" Teka, Adm. v. U.S. 69 Court of Claims Reports l.c. 88. That Court continues and on page 90 says:

"The fund or deposit of which the certificates were merely the evidence had its permanent situs in the State of Utah under the provisions of the act, and was under the control of the laws of that state, if an administrator had been appointed."

The fund then is not the property of the United States. Under the debtor-creditor theory of the Gehner case, supra, the depositor then is not a creditor of the United States, and an exemption could not be allowed on that ground.

In view of the foregoing, and in view of the fact that Section 9743 R. S. Mo. 1929 makes no provision for an exemption of these deposits, it is the opinion of this office that deposits in an United States postal savings depository are taxable by the State of Missouri.

Very truly yours,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General

APPROVED:

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Attorney General

JWH-Jr.  
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