

FROM: Grain stored in elevators is subject to taxation against
REVENUE: the individual owner or corporation owner, according to
the general laws regulating other property.

11-23
November 16, 1933.



Mr. James S. Rooney,
Prosecuting Attorney,
Liberty, Missouri.

Dear Sir:

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

"We have several grain elevators in this county which are owned by Railroad companies and are leased out to individuals or corporations. The railroads pay taxes on the elevators, but we have not been receiving any taxes on the contents. The grain in the elevators is owned by individuals and corporations, and I should be pleased to have an expression of your opinion as to whether or not this grain may be taxed."

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."

Neither the next section nor any constitutional provision exempts grain stored in an elevator from taxation. Not being exempt, it is subject to taxation.

In *Mullins v. Cemetery Association*, 239 Mo. 681, 689, it is said:

"It is settled law that statutes creating exemptions from taxes, whether general or special, are strictly construed, and the right of exemption exists only when expressed in explicit terms and must be established beyond a reasonable doubt."

Grain stored in an elevator being personal property located within the state is therefore subject to taxation. The question then arises to whom should the property be assessed.

Section 9746, R. S. Mo. 1929, provides as follows:

"Every person owning or holding property on the first

day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

In State ex rel. v. Haphe, 31 S. W. (2d) 788, 791, the court says:

"Both the person 'owning' and the person 'holding' personal property are liable for taxes thereon, and such taxes may be assessed against either or both. But with respect to each they do not become a debt unless and until they are duly assessed against him in the manner prescribed by law."

In view of the foregoing it is apparent that the grain may be assessed against the "holder" who would be the individual or corporation leasing and in possession of the elevator, or against the "owner" of the grain. It can only be assessed against the owner, if an individual in your county, if the individual lives in your county. If the owner lives in another county then it shall be assessed under Section 9745, R. S. Mo. 1929, which is as follows:

"All personal property of whatever nature and character, situate in a county other than the one in which the owner resides, shall be assessed in the county where the owner resides, except as otherwise provided by section 9763; and all notes, bonds and other evidences of debt made taxable by the laws of this state, held in any state or territory other than that in which the owner resides, shall be assessed in the county where the owner resides; and the owner, in listing, shall specifically state in what county, state or territory it is situate or held."

If the grain is owned by a business and manufacturing corporation and such corporation is located in your county, then the grain may be assessed in your county. If the corporation is not located in your county, then it is to be assessed as provided in Section 9764, R. S. Mo. 1929, which is as follows:

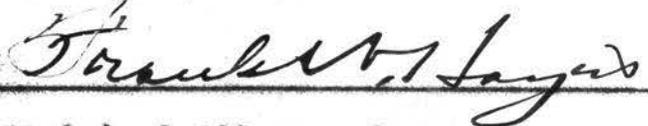
"All personal property of business and manufacturing corporations shall be taxable in the county in which such property may be situated on the 1st day of June of the year for which such taxes may be assessed, and every business or manufacturing corporation having or owning personal property on the 1st day of June in each year, which shall, on said date, be situated in any other county than the one in which said corporation is located, shall make return thereof to the assessor of such county where situated, in the same manner as other personal property is required by law to be returned. This section shall not apply to railroad or banking corporations."

We believe that the foregoing citations are decisive of the questions contained in your letter. Grain stored in elevators is not exempt from taxation, and the same rule of taxation applies to the assessment of grain as applies to the assessment of other personal property. The mere fact that the grain is commingled in one mass will not prevent its taxation. Each individual or corporation owns a certain number of bushels of grain of a definite value. Their warehouse receipt gives them the right to receive so much grain. They are all the time the owner of an undivided interest in the total mass of grain stored by the elevator company. They are in much the same situation as the owner of a one-sixteenth undivided interest in 1,000 acres of land. Such owner cannot point out any particular acres that belong exclusively to him, but his interest is a portion of the entire tract. No one would contend that such property owner would have an interest in the land which might not be assessed in his name.

The situation is also similar to the person who has a bank deposit on the first day of June. He has a taxable wealth equal to the value of his deposit, yet the \$1,000 upon which he is taxed is not set aside to him and held separately, but it is all commingled in the vaults of the bank and loses its identity as his specific property. The banker issues him a credit just as the elevator company issues to his customer the warehouse or store receipt.

It is therefore the opinion of this department that grain owned by individuals and corporations and stored in elevators is subject to taxation. It may be assessed under Section 9746, against the holder, being the elevator company, or the owner. If assessed against the holder it may be assessed in your county, and if assessed against the owner, it may be assessed in your county if the owner is an individual and is a resident of your county, and it may be assessed against the corporation owner in your county if the corporation is located in your county. If either the individual or corporation owner is a non-resident of the county, then it must be assessed against the owner in the county where the individual resides or where the corporation is located.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.