

BANKING AND BANKING:

Delinquent taxes are a preferred claim against the assets of a closed bank.

7-4  
June 26, 1933.



Hon. Henry C. Salveter  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri

Dear Mr. Salveter:

Your letter of June 13th with request for an opinion received, which letter is as follows:

"I would appreciate an opinion from your department as to whether or not a political sub-division of the State (in this instance Pettis County) can establish a preferred claim against a defunct National Bank for delinquent taxes due the county from the bank, which taxes are assessed on the stock of the bank.

In years past taxes were assessed against the stock and the banks in this county have paid this assessment. Since the failure of these National Banks, this stock assessment has not been paid. They have paid their real estate tax, but the taxes against their stock is unpaid, and we desire to know if in your opinion we can establish a preferred claim."

In approaching this subject it will be necessary to examine the statutes to discover the method of assessing National Banks in Missouri, which is found in Section 9765 R. S. 1929, as amended by Acts of 1931, at page 357, and Sections 9765a, 9766 and 9767, R. S. 1929, which sections are

as follows:

"Sec. 9765. ASSESSMENT OF MANUFACTURING AND BUSINESS COMPANIES AND STOCK IN OTHER CORPORATIONS.--The property of manufacturing companies and other corporations named in article 7, chapter 32, insurance companies organized under the laws of this state and all other corporations, the taxation of which is not otherwise provided for by law, shall be assessed and taxed as such companies or corporations in their corporate names. 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, less, also, the value of stock in other corporations held by such bank or joint stock institution or association doing a banking business: Provided, however, that no deduction shall be allowed on account of stock in any one manufacturing or business company in excess of forty per cent. of the capital, surplus and undivided profits of such bank or joint stock institution or association doing a banking business. Private bankers, brokers, money brokers and exchange dealers shall make like returns and be assessed and taxed thereon in like manner as hereinbefore provided: Provided, however, that the license hereafter required to be paid by any such bankers, brokers and dealers in addition to such taxes shall not exceed one hundred dollars per annum. It is hereby made the duty of the county clerk to include in his abstract of the assessor's books required

to be sent to the state auditor, valuation of all property assessed under this section under the head of 'corporate companies,' and, in addition thereto, he shall make out from the lists delivered to the assessor as above provided, and send the same to the state auditor to be laid before the state board of equalization, on or before the twentieth day of February, in each year, an abstract of the assessment of all corporations or persons doing a banking business in his county, showing the name of each bank, the number of shares of stock and their face value, the amount of reserve funds, undivided profits, premiums or earnings, and all other values, together with the assessed value thereof, also the value of the real estate deducted as above provided, and the assessed value of such real estate as shown by the real estate book."

"Sec. 9765a. PRECEDING SECTION SOLE METHOD TAXING NATIONAL BANKS.--That the tax provided in section 9765, R. S. 1929, is hereby declared to be the sole method of taxing national banking associations, their income, shares therein and dividends from such shares."

"Sec. 9766. SUCH TAXES, HOW PAID AND RECOVERED.--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."

"Sec. 9767. PENALTY ON CHIEF OFFICER OF CORPORATION.--If the president or other chief officer of any such corporation fail to comply with the provisions of this article, he shall forfeit to the state the sum of one thousand dollars, to be recovered by indictment in any court of competent jurisdiction."

It will be seen by Section 9765, supra, as Amended by Acts of 1931, at page 357, that a different method is used to assess banks than the property of manufacturing companies and other corporations named in Art. VII, Chap. 32, R. S. 1929, as the assessment of the banks is against the shares of stock and not against the corporation ex solidum.

It is unnecessary in this opinion to go extensively into the method used in assessing National Banks in this State, but we will go to the root of your inquiry, that is, may a preferred claim be established against a defunct National Bank for delinquent taxes due the state and county from said bank. We are assuming that the assessment was made prior to the closing of the bank.

Under Section 9765a, supra, Section 9765, supra, is made the sole method of taxing National Banking Associations etc., and so far as the question involved in your query is concerned the same procedure as to assessment is used in assessing National Banks as in assessing State Banks.

In the case of *Greeley v. The Provident Savings Bank et al.*, Sexton, Collector, 98 Mo. 458, quoting from the syllabus, it was held that,

"The state has a right paramount to other creditors to be paid taxes due it from assets in the hands of a receiver, and the court should see that such taxes are paid before distribution to other creditors, although the demand was not presented by the collector within the time prescribed by the court for the presentation of claims."

The case of *State ex rel. Donnell, Collector etc., v. A Peoples Bank of DeSoto*, 263 S. W. 205, which was,

"A suit, at the relation of the collector of the revenue of Jefferson County, against the People's Bank of DeSoto, in charge at the time, of a special deputy bank commissioner, appointed under the statute, to assist in the liquidation of the business of the bank, it being insolvent. The action is based on a claim for unpaid back taxes alleged to be due the county for the year 1920, in the sum of Two Thousand Four Hundred Twenty-three Dollars and sixty-six cents, including interest and the collector's commission."

In this case the judgment went for the collector and defendant bank appealed and judgment of the lower court was affirmed. It was also held in this case that the delinquent taxes had priority over other claims against the bank.

The more recent case of State ex rel. Wyatt, Collector of Revenue of Mississippi County v. S. L. Cantley, State Finance Commissioner in charge of the Peoples Exchange Bank of Charleston, 325 Mo. 1. c. 74, 26 S. W. 1. c. 979, which was a suit for taxes in the circuit court of Mississippi County. From a judgment in favor of plaintiff in the sum of Two thousand three hundred ninety-five Dollars and eighteen cents, and a order making said judgment a preferred claim, defendant appealed. The court said,

"In view of the foregoing decisions of this court and particularly the case of State ex rel. Donnell v. People's Bank of DeSoto, supra, we are constrained to hold that the assessment and tax bill in this case were not void and that the contention of appellant to the contrary must be overruled.

This brings us to the final contention of appellant which is, 'that the assessment and payment of this personal tax by the corporation itself is a mere matter of convenience, the banking corporation serving as the agent of the stockholders, which agency ceased when the banking corporation closed its doors and discontinued the banking business, said corporation not being responsible for any taxes falling due after the date of the closing of such institution.'

Whether or not, as between the bank and its shareholders, the bank is their mere agent for the payment of their taxes, the statute in plain terms makes the bank directly responsible for the payment of the taxes assessed against the shareholders. The duty of the bank to pay the tax, if it has assets with which to pay it, is a personal liability of the bank to the tax collector. (State ex rel. Bay v. Citizens State Bank, supra, pages 68 to 71.) It affirmatively appears from the agreed statement of facts that the Peoples Bank of Charleston had ample assets to pay the taxes and that said assets were transferred to the Peoples Exchange Bank in consideration of the agreement of the latter bank to assume the liabilities of the former bank. Under the facts in this case the Peoples Exchange Bank must be held liable for the payment of the taxes assessed against the shareholders of the Peoples Bank.

(State ex rel. Bay v. Citizens State Bank, supra.)

The reasons for the existence of the statute requiring a failed or closed bank to pay the tax assessed against its shareholders out of its assets in the hands of its liquidating officer or of the successor bank, which takes over its assets and assumes its liabilities, are, to say the least, just as controlling as they are where the bank is a live and going concern when the assessment against its shareholders is made.

Assuming, as appellant contends, that the collector may proceed against the individual shareholder, if he can reach him, and may collect from him directly the tax on his shares assessed against him, it does not at all follow that the collector may not assert his claim against the assets of the bank made liable for the tax in the first instance and collect the tax from any person, corporation or officer in possession of such assets and standing in the shoes of the bank whose shareholders were assessed."

We think the above cases are controlling and settle the question asked in your letter, and it is, therefore, the opinion of this office that a preferred claim for delinquent taxes against the bank may be established against a bank in liquidation where the assessment was made prior to the closing of said bank.

Yours very truly,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED: \_\_\_\_\_

ROY McKITTRICK  
Attorney-General.

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