

TAXATION:

Fact that a foreign insurance company pays tax upon premiums does not excuse it from paying a property tax upon office fixtures located within the State; live stock located within this State on June 1st, is taxable in the name of the holder or agent, though owner is a non-resident.

10-13  
October 11, 1933.

FILED

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Mr. Arch M. Skelton,  
Prosecuting Attorney,  
Lexington, Missouri.

Dear Sir:

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

"There has been some contention between our assessor and the Metropolitan Life Insurance Company over the question as to whether the county has the right to assess and tax personal property, such as office fixtures and equipment, located in the county and belonging to the Metropolitan Life Insurance Company. Section 5979, Laws of 1931, page 242, with reference to tax on premiums states that insurance companies have been taxed at 2% per annum on all premiums received in lieu of all other taxes. It is kindly submitted for your opinion whether this section exempts the insurance company from paying the tax on such personal property above mentioned to the county.

Another question for your opinion is herewith submitted. Where a tax is paid on live stock in the State of Texas January 1st, 1933, and shipped to a county in Missouri before June 1st, 1933, is such live stock subject to taxation in the county where the property is located in this state? Further, if the live stock above mentioned is shipped here under contract for feeding purposes, the person in whose care and control they are receiving a percentage for his work in feeding them, as such live stock is subject to taxation is the feeder or the owner, who is a non-resident, liable for the tax."

Section 5979, Laws of Missouri, 1931, page 242, provides as follows:

"Every insurance company or association, not organized under the laws of this state, shall, as hereinafter provided, annually pay tax upon the premiums received, whether in cash or in notes, in this state or on account of business done in this state, for insurance of life,

property or interest in this state at a rate of two per cent. per annum in lieu of all other taxes, except as in this article otherwise provided, which amount of taxes shall be assessed and collected as hereinafter provided: Provided, that 'Fire and casualty' insurance companies or associations shall be credited with canceled or return premiums, actually paid during the year in this state, and with premiums on reinsurance with companies, authorized and licensed to transact business in Missouri, which reinsurance shall be reported by the company reinsuring such business; but no credit shall be allowed any such insurance company or association for reinsurance in companies not licensed to transact business in Missouri."

The above section in various forms has been upon our statute books for many years. As it now stands every foreign insurance company is required to pay a premium tax at the rate of 2% per annum in lieu of all other taxes. Under the various laws dealing with cities of various classes, such cities have a right to exact license tax upon a great variety of occupations including insurance companies. In *City of Lamar v. Adams*, 90 M. A. 35, the question arose as to the meaning of the foregoing section. The court at page 42 says:

"By reference to the emergency clause of the act it will be seen that, after all, the main purpose intended by it was to withdraw from the counties, cities and towns, the power which was conferred upon them under the statute of 1899, supra, to tax foreign insurance companies on their annual premiums, or in other words to eliminate from the then existing statutes the power thereby given to the various local authorities to impose taxes on the annual premiums received by them. And these local taxes so abolished were we think, the 'other taxes' referred to in the second section of the act."

In *Massachusetts Bonding Company v. Chorn*, 201 S. W. 1122, the court had under consideration the identical section which we are now discussing. The court says at page 1124:

"The payment of the tax entitles the company under the laws of the State to transact this business in its capacity as a corporation. The amount of the tax is fixed at 2% on premiums received whether in cash or in notes in this State on account of business done in this State. That this is a tax upon the business done in this state under the protection of its laws, there can be no doubt."

Again at page 1125, the court says:

"In addition to what we have incidentally said on that subject in the preceding paragraphs, we will say that

this tax is not imposed upon property in any sense. The only property right involved in this tax is the right of appellant to acquire property by the exercise of its corporate capacity in this State purchased and paid for by the payment of this tax."

It will be seen from the foregoing that the tax of 3% which the Metropolitan Life Insurance Company pays under Section 5979 on its premiums is not a property tax in the sense that the tax on its office fixtures and equipment would be. The court above says that the above tax entitles the Company to do business in this State. In the City of Lamar case above the court held that the "other taxes" mentioned in the section meant other taxes on its premiums which cities and counties might levy. It was certainly never intended that a foreign insurance company, by the payment of its premium tax, which entitled it to do business in this State, should be exempt from paying taxes upon its tangible property located within your county. Bear in mind this situation is not similar to a tax laid upon the net assets of a corporation, or upon its capital stock where its tangible property is reflected and contained in the net assets of the company. This, as we understand it, is purely a tax upon the premiums, and, while under said section it is no longer possible for cities and counties to exact a tax on premiums from such companies, yet we do not believe that the payment of the premium tax exempts such corporation from the other constitutional and statutory provisions of this State.

Section 6 of Article X 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 or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

Section 7 of Article X of the Constitution of Missouri provides as follows:

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

Under Section 6 above the Constitution provides what property in this State shall be exempt from taxation. Section 7 above provides that any laws exempting property from taxes other than the

property enumerated in Section 6 shall be void. We do not find any provision in the Constitution or in the statutes of this State that exempts from taxation tangible property such as furniture and fixtures owned by foreign insurance companies and located within your county. Not being expressly exempted it, therefore, must be taxable. In view of Sections 6 and 7 above, any attempt made to exempt from taxation office fixtures of this Insurance Company would be void. It is therefore our opinion that Section 5979, Laws of Missouri, 1931, page 242, does not exempt the Metropolitan Life Insurance Company from paying a property tax upon its office fixtures and equipment when assessed by your county.

Your next inquiry is whether live stock belonging to a person in Texas, upon which a tax was paid January 1st, 1933, would be subject to a tax within this State where such stock was shipped into Missouri for feeding purposes and was found here on June 1st, 1933.

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."

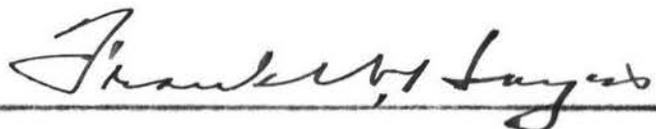
The live stock shipped from Texas here before the first of June, 1933, and located here on the First day of June, 1933, was found here on said date, within the meaning of the foregoing Section. So far as this Section is concerned it is immaterial what the contract between the owner and the bailee or holder is. The property may and should be assessed to the holder or agent, regardless of the fact that the owner resides in Texas.

In *Leavell v. Blades*, 237 Mo. 695, 702, the rule is announced as follows:

"The personal property of a resident actually situated beyond the limits of this State, is without its jurisdiction, and cannot be assessed for taxation in this State; but the property of a non-resident is taxable here if it be found situate within the local jurisdiction, whether in the hands of the owner or his agents." The reasoning upon which that pronouncement is rested appears in the following excerpt: "In reference to taxation, personal property does not necessarily follow the domicile of the owner, nor does its liability to taxation depend upon his residence, merely, but rather upon the local situation--the situs--of the property. The property is subject to taxation in consideration of the protection which it receives from the laws of the place where it is found, and where the owner or his agent is resident!"

It is therefore our opinion that live stock found in Missouri on June 1st, 1933, is taxable in the hands of the agent, even though the owner is a non-resident and living in Texas. Taxes cannot be assessed against the non-resident owner but should be assessed against the agent in whose hands the property is found.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frank M. Sawyer", is written over a horizontal line.

Assistant Attorney General.

FWH:S

APPROVED:

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Attorney General.