

FEDERAL CHECK TAX: Does not apply to County warrants.

August 25, 1933.



Hon. Edward D. Summers,
Prosecuting Attorney,
Crawford County,
Steelville, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of July 31, 1933, which is as follows:

"I would like to ask your opinion as to whether or not the tax on checks levied by the Federal Government is binding upon a County or subdivision of this State. In this County there has been no allowance made for the payment of this tax and apparently the treasurer is out of money and has no funds with which to pay it.

They are still auditing the Crawford County Farmers Bank and expect that the auditing will be completed within the next three weeks. I expect then to ask the Judge of this Circuit to call a Grand Jury for the investigation of its affairs and I shall let you know at the earliest time possible as to the date of its convention."

The Section to which you refer is Section 3751, found in Title 26, U.S. Code Annotated, Part 6, entitled "Tax on Checks, etc." Said section is as follows:

***** (a) There is hereby imposed a tax of 2 cents upon each of the following instruments presented for payment on or after the 15th day after the date of the enactment of this act and before July 1, 1932; checks, drafts or orders, for the payment of money drawn upon any bank, banker or trust company, such tax to be paid by the maker or drawer.

(b) Every person paying any of the instruments mentioned in subsection (a) as drawer of such instrument shall collect the amount of the tax imposed under such subsection by charging such amount against any deposit to the credit of the maker or drawer of such instrument, and shall on or before the last day of each month make a return, under oath, for the preceding month, and pay such taxes to the collector of the district in which his principal place of business or if he has no principal place of business in the United States, to the collector at Baltimore, Maryland. Such returns shall contain such information and be made in such a manner as the commissioner with the approval of the Secretary, may by regulations prescribe. Every person required to collect any tax under this section is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section."

In the foregoing section you can readily determine that counties, or subdivisions of the State are not subject to such tax. Further than that, the Treasury Department, which has the power to make the rules, has expressly exempted warrants of the character to which you refer. Article 36 being as follows:

"The regulations state that checks, drafts and orders drawn by officers of the United States, or of a state, county or municipal or of a foreign government in their official capacity, against public funds, are not subject to tax."

Hon. Edward D. Summers

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August 25, 1933.

It is therefore the opinion of this department that the tax on checks is not applicable to warrants issued by the county.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General

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