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December 16, 1933.

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Mr. Andy W. Wilcox, Chairman,
State Tax Commission,
Jefferson City, Missouri.

Dear Sir:

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

"This Department is asking your opinion on the following:

I. Is grain held in storage in an elevator in Missouri assessable as personal property to such elevator company as of June 1st?

II. Is grain purchased and owned by an elevator company assessable to such company as personal property?

III. Is grain stored in an elevator, title to which is in some resident of Missouri, assessable to such elevator company or to the owner?

IV. Is grain temporarily held in an elevator but destined for reshipment out of the State assessable to the elevator company holding same on June 1st?

V. Would an elevator company be classed as a merchant, and would its stock of grain owned and held under consignment or on storage be liable to assessment for merchants ad valorem tax?"

The constitutional provisions involved in your inquiry are as follows:

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."

In support of the above constitutional provisions the Legislature has enacted the following general statutes which are pertinent to your inquiry.

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."

Section 9743, R. S. Mo. 1929, provides as follows:

"The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, all lands and lots, public buildings and structures with their furniture and equipments, belonging to the United States; third, lands and other property belonging to this State; fourth, lands and other property belonging to any city, county or other municipal corporation in this state, including market houses, town halls and other public structures, with their furniture and equipments and all public squares and lots kept open for health, use or ornament; fifth, lands or lots of ground granted by the United States or this state to any county, city or town, village or township, for the purpose of education, until disposed of to individuals by sale or lease; sixth, 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, when the same are used exclusively for religious worship, for schools or for purposes purely charitable, shall be exempted from taxation for state, county or local purposes."

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."

Under Section 6 of Article X of the Constitution the people of the State have determined what property shall be exempt from taxation. Under Section 7 above, they have provided that none other than enumerated in Section 6 shall be exempt. The Legislature in Section 9743 has declared the exemptions under the foregoing constitutional provisions. It does not appear that either the constitution or the laws of the state exempt from taxation grain held in storage by an elevator company, as distinguished from any personal property subject to taxation.

In *Mullins v. Cemetery Association*, 239 Mo. 681, 689, the Supreme Court says:

"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."

In view of the foregoing, therefore, it is our opinion that grain stored in a elevator within the State of Missouri has not been exempted from taxation.

Section 9746, quoted above, provides that every person "owning" or "holding" property on the first day of June, including property purchased on that day, shall be liable for taxation.

In *State ex rel. v. Haphe*, 31 S. W. (2d) 788, 791, the Supreme 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."

We therefore answer your inquiries as follows:

I.

We are of the opinion that grain held in storage in an elevator in Missouri is assessable as personal property to such elevator as of June 1st.

II.

We are of the opinion that grain purchased and owned

by the elevator company is assessable to such company as assessable property.

III.

We are of the opinion that grain stored in an elevator, the title of which is in a resident of Missouri, is assessable to either the elevator company or to the owner. If the owner lives in the county wherein the grain is stored, then it should be assessed against the owner in such county. If the owner does not reside in the county wherein the grain is stored, then under Section 9745, R. S. Mo. 1929, the grain should be assessed to him in the county where the owner resides.

IV.

We are of the opinion that grain held by an elevator company on the first day of June is assessable even though it is contemplated that such grain later may be shipped out of the State.

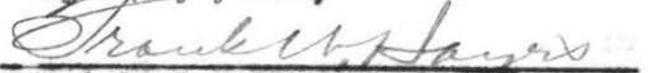
V.

Section 10075, R. S. Mo. 1929, which declares who is a merchant, provides as follows:

"Every person, corporation or copartnership of persons, who shall deal in the selling of goods, wares and merchandise, including clocks, at any store, stand or place occupied for that purpose, is declared to be a merchant."

We do not believe that an elevator company conducts its business in such a way as would make it a merchant under the above section. However, whether or not it is a merchant is a mixed question of fact and law, and if they are engaged to a considerable extent in the business of selling, then they may be merchants within the above definition. We, however, conclude, with a showing to the contrary, that the ordinary elevator company is not engaged in the business of a merchant so as to make them subject to the merchant's ad valorem tax.

Very truly yours,


Assistant Attorney General.

APPROVED:

Attorney General.