TAXATION: Postal Saving Deposits subject to taxation for state and local taxation.

April 7, 1934.

4-11

Hon. Gordon P. Do rris
Prosecuting Attorney
Oregon County
Alton, Missouri

Dear Mr. Dorris:

Acknowledgment is herewith made of your request for an opinion of this office on the following matter:

> "Will you please advise me if Postal Saving Deposits are subject to state and county taxation; if subject to taxation would the County Assessor have a right to ask the postmaster to furnish list of such depositors?"

I.

APPROPRIATE CONSTITUTIONAL AND STATUTORY PROVISIONS.

Before proceeding to a consideration of your questions we desire to call to your attention certain pertinent constitutional and statutory provisions. We shall first direct your attention to the constitutional provisions respecting the exemption of property from taxation. Section 6 of Article X enumerates the property which shall be exempt from taxation in this state and reads 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 of 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 is short but effective and reads as follows:

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

Section 9742 R. S. Mo. 1929, declares what property shall be subject to taxation and reads 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."

The following section, Section 9743, enumerates the exemptions substantially in the same manner as the constitutional provision, Section 6 Article X, hereinbefore quoted. From this section it is evident that the legislative intent is that all property both real and personal, except that which is specifically exempted, shall be subject to taxation. We realize of course that although property may be "subject to taxation," unless provision is made for the assessment and collection of taxes on such property, the owner thereof cannot be required to pay taxes thereon. As to the assessment, we direct your attention to Section 9756 R. S. Mo. 1929, parts of which read as follows:

> "The assessor or his deputy or deputies shall between the first days of June and January * * * *proceed to take a list of the taxable personal property in his county, town or district, and assess the value thereof, in the manner following to-wit: * * * * *Such lists shall contain:* * * * *sixth, money deposited in any bank, or other safe place;* * * * * * eleventh, all other property not above enumerated (except merchandise, bills and accounts receivable, and other credits of a merchant or manufacturer, arising out of the sale of goods, wares and merchandise, which have been returned for taxation, under sections 10081 and 10111 R. S. 1929, and its value;* * * *"

With these constitutional and statutory provisions in mind we turn to a discussion of your question.

II.

DEPOSITS IN POSTAL SAVINGS DEPOSITORIES ARE TAXABLE.

It is the general rule that all tax exemption laws are to be construed strictly against the one claiming the exemption. The constitutional provisions hereinabove referred to, to-wit, Sections 6 and 7 of Article X of the Constitution, are to be construed so as to subject to taxation all property other than that specifically enumerated. This is plainly stated in the case of State ex rel. Publishing Company vs. Gehner, 294 S. W. 1017, l. c. 1018:

> "* * *The policy of our law, constitutional and statutory, is that no property than that enumerated shall be exempt from taxation. Sections 6 and 7, Art. 10, Const. Mo.;* * * *"

An examination of these constitutional provisions result in the conclusion that postal savings deposits do not fall within any of the enumerated exemptions, nor is there any other constitutional provision in this state that would exempt such deposits from taxation.

There being no such constitutional provision running in favor of these deposits we turn to the statutory provisions. It appears that under either of the two classifications of Section 9756 herein quoted, the owners of such deposits are required to return the same to the County Assessor for taxation. The first classification hereinbefore quoted reads:

> "* * *sixth, money deposited in any bank, or other safe place;* * * *"

There can be little question in the mind of the ordinarily observant person that postal savings accounts are in the nature of bank deposits and are most certainly to be considered as money deposited in a safe place. It is further apparent from an examination of the federal law on the subject, as set out in Chapter 20 of Title 39, U.S.C.A. that Congress has placed postal savings

depositories in the same catagory as savings banks and consider the relation of a depositor in a postal savings depository as comparable to a depositor in a bank. As an example, we refer to Section 766 of said Chapter, reading as follows:

> "The faith of the United States is solemnly pledged to the payment of the deposits made in postal savings depository offices, with accrued interest thereon as herein provided."

Also, parts of Section 758 as amended in 1933, which reads as follows:

> "Any depositor may withdraw the whole or any part of the funds deposited to his or her credit with the accrued interest only on notice given sixty days in advance and under such regulations as the Postmaster General may prescribe; but withdrawal of any part of such funds may be made upon demand, but no interest shall be paid on any funds so withdrawn except interest accrued to June 16, 1933: * * * * *"

While it is clear to us that postal savings deposits fall within the sixth classification herein referred to they are certainly returnable for taxation under the last provision of Section 9756, to-wit:

> "eleventh, all other property not above enumerated * * * *and its value;"

This subdivision has been construed to be the "catch all" of our property tax law. It has been held to cover accounts receivable, credit or any demand for money (which would certainly cover the issue here involved). See the Gehner case supra, l. c. 1018 for the following quotation:

> "Accounts receivable are amounts owing to a creditor on open account. Newport Nat. Bank v. Herkimer County Nat. Bank, 225 U.S. loc. cit. 184, 32 S. Ct. 633, 56 L. Ed. 1042. They are in the nature of credits which, under the statute (section 12967 R. S. 1929) include 'every claim or demand for money, interest, or other valuable thing, due, or to become due.' Thus defined they are declared by the statute above cited to be personal property. As such they are proper subjects of taxation within the limitations stated."

In making this statement the Court held this clause was not to be strictly construed so as to confine its effect to property of the same character but was to cover all other property of whatsoever kind or nature. Judge Walker remarked, l. c. 1018:

> "We are therefore, of the opinion that the rule of ej usdem generis cannot be invoked in this case to relieve accounts receivable from the burden of taxation. To conclude otherwise would be, despite the comprehensive purpose of statutes of this character, to hold that the general words in section 12766, as amended supra, and the statement required to be made in the taxpayer's oath as to the return of this class of property, are meaningless.* * *"

We conclude that in this State postal savings deposits are subject to taxation and that the legislature has established appropriate machinery for the taxation of such deposits.

III.

TAXATION OF POSTAL DEPOSITS NOT CONFLICTING WITH FEDERAL LAW.

We shall again return to the congressional enactment establishing postal savings depositories. A n examination of this Act, 39 U. S. C. A. 751-69, reveals that the only provisions respecting taxation are found in Section 760. This section provides:

> "Any depositor in a postal savings depository may surrender his deposit, or any part thereof, in sums of $20, $40, $60, $80, $100, and multiples of $100 and $500, and receive in lieu of such surrendered deposits, under such regulations as may be established by the board of trustees, the amount of the surrendered deposits in United States coupon or registered bonds* * * *The bonds herein authorized shall be exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority.* * * *"

By this section a depositor is privileged to exchange his deposit for tax free bonds, made tax free by the provisions of this section. No similar provision is to be found anywhere applying to the deposits. No such exemption is given to owner or holder of savings deposits. To obtain such exemption, the deposit must be converted into a bond, payable upon the expiration of a term of years.

In view of this provision it cannot be said that Congress overlooked the possibility of state taxation of deposits in postal savings accounts. Specific exemption has been made for the bonds issued under the foregoing section. We find that in other cases Congress has been diligent in exempting obligations of the United States Government and its agencies from local taxation when it so desired. Federal Intermediate Credit Banks, 12 U.S.C.A. 1111; Federal Land Banks and Farm Loan Associations, 12 U.S.C.A. 931; Federal Reserve Bank, 12 U.S.C.A. 531; Agricultural Credit Corporation, 12 U.S.C.A. 1261. As congress, has failed to affirmatively act in this matter, it cannot be said that state taxation of these deposits would conflict with the Congressional enactment.

CONCLUSION.

It is therefore the opinion of this office, that deposits in postal savings depositories are subject to taxation in this state for state and local purposes and that the County Assessor may request a list of such depositors so as to enable him to assess such property against the owners thereof.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
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