

Prosecuting Attorney:

1. (a) Postal Savings Certificates held taxable.
(b) Postmasters not required to give information concerning such to assessors.
2. (a) Failure to place revenue stamp on deed of conveyance is a misdemeanor with fine not more than \$100 for each offense.
(b) Unstamped deed is neither invalid nor inadmissible in evidence.

April 10, 1934.

Mr. Gordon P. Dorris,
Prosecuting Attorney,
Alton, Missouri.

Dear Mr. Dorris:-

We have your letter of December 20, 1933, in which was contained a request for an opinion as follows:

"Will you please give us your opinion on the following questions:

"Are Postal Savings Certificates subject to state and county taxes; if so, are Postmasters required to give information to local Assessors as to who holds such certificates?

"A deed of conveyance showing consideration of certain amount requires a revenue stamp, 50¢ for each \$500.00; what is penalty for failure to so stamp the deed; and what effect does it have on deed of conveyance when no revenue stamp is affixed."

Concerning your first question, this office has already rendered an opinion holding that such Postal Savings Certificates are taxable by the State of Missouri. We therefore attach hereto a copy of that opinion in answer to your inquiry.

As to whether postmasters are required to give information to local assessors as to who holds such certificates, we call your attention to Title 39, Section 762 of the Postal Savings Depositories Act in the United States Code Annotated, which provides in part as follows:

"Section 762. * * * * and no person connected with the Post Office Department shall disclose to any person other than the depositor the amount of any deposits unless directed to do so by the Postmaster General. * * * *".



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From the above it is evident that not only is the postmaster not required to give out information concerning the amount of such certificates, but on the contrary is expressly forbidden to do so except upon the order of the Postmaster General. This is tantamount to the postmaster's not being required to disclose who holds such certificates since for the purposes of taxation the knowledge of who holds such certificates would be of no value unless the amount thereof were also known. Of course, should the Postmaster General so order, such information must be given; but in the absence of such an order we take the law to be as stated above.

Concerning your inquiry as to what is the penalty for failure to place a revenue stamp on a deed of conveyance, we refer you to Title 26, Chapter 18, said Chapter being entitled "Stamp Taxes on Specific Objects." Section 908, sub-section (a) of that Chapter provides as follows:

"Section 908. Tax on certain enumerated documents and instruments; offenses. Whoever--

"(a) Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being paid; * * * is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense."

The Revenue Act of 1926 omitted the Stamp Tax on Conveyances section but has since been amended to include same; hence such section is now a part of the above mentioned Chapter 18 and the above quoted penalty section applies.

Regarding what is the effect on a deed of conveyance when no revenue stamp is affixed, it is difficult to answer such a general inquiry. According to the decisions involving the failure to stamp instruments, many factors arise in different situations, no hard and fast rule being drawn. The effect of the failure to stamp depends on what is in issue in each particular case, and on how the matter is raised. (See note to Section 901, Title 26, U. S. C. A. at page 620 et seq.).

The language of the Supreme Court of the United States in the case of *Cole v. Ralph*, 252 U. S. 286, 64 L. Ed. 567 is, however, illuminating on this question. At page 576 of 64 Law Edition the court states as follows:

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"As to the absence of revenue stamps, it is true that the deeds showing title in some of the plaintiffs * * * * were without the stamps required by etc. etc. But this neither invalidated the deeds nor made them inadmissible as evidence."

We submit the above for your consideration.

Very truly yours,

CHAS. M. HOWELL, Jr.
Assistant Attorney General

CMHJr:LC

Approved:

Attorney General.