

BANKS AND BANKING:

Stock in National Banks after receivership
not exempt from taxes, if of any value.

1-15
January 10, 1934.



Hon. Albert Dunning
Treasurer, Henry County
Clinton, Missouri

Dear Sir:

This Department is in receipt of your letter of recent date with request for an opinion, which letter of request is as follows:

"I would like an opinion as to whether National Bank Stock, in Missouri, are exempt from taxes after having gone into receivership.

Or do the laws apply the same to State and National Banks?"

The statutory means and method of the assessment of banks in Missouri is set forth in Section 9765, R. S. Mo., 1929, as amended by Laws of Missouri, 1931, at page 357, which section is as follows:

"The property of manufacturing companies and other corporations named in article 7, chapter 32, insurance companies organized under the laws of this state and all other corporations, the taxation of which is not otherwise provided for by law, shall be assessed and taxed as such companies or corporations in their corporate names. Persons owning shares of stock in banks, or in joint stock institutions or associations doing a banking business, shall not be required to deliver to the assessor a list thereof, but the president or other chief officer of such

corporation, institution or association shall, under oath, deliver to the assessor a list of all shares of stock held therein, and the face value thereof, the value of all real estate, if any, represented by such shares of stock, together with all reserved funds, undivided profits, premiums or earnings and all other values belonging to such corporation, company, institution or association; and such shares, reserved funds, undivided profits, premiums or earnings and all other values so listed to the assessor shall be valued and assessed as other property at their true value in money, less the value of real estate, if any, represented by such shares of stock, less, also, the value of stock in other corporations held by such bank or joint stock institution or association doing a banking business: Provided, however, that no deduction shall be allowed on account of stock in any one manufacturing or business company in excess of forty per cent. of the capital, surplus and undivided profits of such bank or joint stock institution or association doing a banking business. Private bankers, brokers, money brokers and exchange dealers shall make like returns and be assessed and taxed thereon in like manner as hereinbefore provided: Provided, however, that the license hereafter required to be paid by any such bankers, brokers and dealers in addition to such taxes shall not exceed one hundred dollars per annum. It is hereby made the duty of the county clerk to include in his abstract of the assessor's books required to be sent to the state auditor, valuation of all property assessed under this section under the head of 'corporate companies,' and, in addition thereto, he shall make out from the lists delivered to the assessor as above provided, and send the same to the state auditor to be laid before the state board of equalization, on or before the twentieth day of February, in each year, an abstract of the assessment of all corporations or persons doing a banking business in his county, showing the

name of each bank, the number of shares of stock and their face value, the amount of reserve funds, undivided profits, premiums or earnings, and all other values, together with the assessed value thereof, also the value of the real estate deducted as above provided, and the assessed value of such real estate as shown by the real estate book."

And by the provisions of Section 9765a, R. S. Mo., 1929, which is as follows:

"That the tax provided in section 9765, R. S. 1929, is hereby declared to be the sole method of taxing national banking associations, their income, shares therein and dividends from such shares."

It will be seen from a reading of the above sections that National Banks are assessed in the same manner as State Banks are assessed in Missouri, and according to Section 9765, supra, the real estate is assessed to the corporation, the personal property is not assessed at all, but the value of shares of stock is assessed against the stockholders after deducting the value of the real estate owned by the bank and represented by such shares of stock. So, in the assessment of the shares of stock for taxation purposes, the purpose is to arrive at the true value in money of the shares of stock in the bank, less the value of real estate, if any, represented by such shares of stock. The real estate represented by such shares of stock is deducted for the reason that it is paid by the corporation and is paid where the land is located.

Your question is whether National Bank stock in Missouri is exempt from taxes after the bank has gone into receivership. The fact that the bank has been placed in the hands of a receiver does not exempt the bank or the shares of stock from taxation.

In Cooley on Taxation, Vol. 2, 4th Ed., Section 455, it is said:

"Property is not exempt from taxation because it is in the hands of a receiver."

While you do not state in your letter of request, we are assuming that your question pertains to an assessment made after the National Bank in question has been placed in the hands of a receiver, and we are basing this opinion upon that theory. If the shares of stock in the bank are assessed at their true value in money, less the value of the real estate, if any, represented by such shares of stock, the question for determination by the assessor and the other assessment officers would be the value of the shares of stock at the time of the assessment.

In the case of *State ex rel. United States Bank et al. v. Gehner et al.*, 319 Mo. 1048, 1. c. 1059, 5 S. W. (2d) 40, 1. c. 45, the Supreme Court said, in discussing the value of shares of stocks in banks, the following:

"It appears to our minds that such items of accrued taxes and of accrued interest are just as much debts and liabilities of relator banks, which must be paid and discharged by relator banks, as are the promissory notes and other paper obligations executed and issued by said banks, and outstanding on June 1, 1926, the date on which the value of the shares of capital stock of said banks is determinable for the purpose of assessment and taxation. By way of illustration, let us assume that the relator banks had closed their books of account and had gone into voluntary liquidation on June 1, 1926. What would have been the value of their assets on that date? What would have been lawfully distributable to the shareholders of said banks on that date; and what would have been the actual, true, or real value of the shares of the capital stock of relator banks on that date? Obviously, only the pecuniary value of the assets of said banks remaining for distribution to the shareholders after the payment and discharge of all debts and liabilities of said banks, including the items of accrued taxes and accrued interest owing by the banks on the date of liquidation, for certainly there could be no lawful distribution to the shareholders without first making provision for the payment and discharge of accrued taxes, accrued interest, and all other debts and liabilities, of whatever nature, owing by the banks on the date of liquidation. 14a C. J. 1196; *Avery v. Central Bank of Kansas City*, 221 Mo. 71, 85, 119 S. W. 1106. It

seems clear to us that the actual, real, and true value of the shares of the capital stock of relator banks can only be determined and ascertained by deducting from the gross value of the assets of said banks the accrued debts and liabilities of the relator banks here in controversy. The Constitution of this state (article 10, section 4) requires that 'all property subject to taxation shall be taxed in proportion to its value.' Under our Constitution, the species of property taxed (whether it be tangible property, real or personal, or whether it be the shares of the capital stock of a banking corporation) must be taxed 'in proportion to its value,' i.e., the actual or real value; not a false or fictitious value, but a value which is neither inflated nor deflated. In ascertaining and determining the true value of the shares of the capital stock of relator banks, for the purpose of assessing and taxing such shares, the corporate liabilities of the banks, whether such liabilities be in the nature of accrued taxes, interest, outstanding promissory notes, or bills and accounts payable, must be deducted from the total, or gross, value of the assets of said banks, because such corporate liabilities, regardless of their nature and form, affect the value of the capital stock of said banks. As we said in *State ex rel. Johnson v. Buder*, supra: 'Unless this deduction is made, the value of the stock will be, to that extent, inflated and fictitious.'

It is our opinion that shares of stock in National Banks in Missouri are not exempt from taxes after having been placed in the hands of a receiver, but the question would be as to the value of the shares of stock after receivership. If the receivership was justified, all of the liabilities and debts of whatever character, and costs of receivership, would have to be paid before

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any dividends could be declared to the stockholders on their shares of stocks, so it would be improbable that the shares of stock on an assessment made after receivership would have much value, but it is possible that the shares of stock would have some value for assessment purposes.

Your letter of request was very short and perhaps we have not touched the point involved in your letter. And if we have not, we shall be glad to take the matter up with you further.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

CRH:EG