

TAXATION AND REVENUE - BANK STOCK: Right to deduct interest from tax free bonds in computing value of shares under R. S. Missouri, 1929, Section 9765.

February 28, 1935.

Hon. David E. Impey,  
Prosecuting Attorney,  
Texas County,  
Houston, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of January 16, 1935, such request being in the following terms:

"Is a bank, incorporated under the laws of Missouri, in making out the statement of value of the shares of stock therein in compliance with Section 9765, entitled to deduct from the reserve funds, undivided profits, premiums and earnings of the bank such amount thereof as has been received as interest on Liberty Bonds and/or other tax free securities?"

I

CONSTRUCTION OF THE MISSOURI STATUTE

R. S. Missouri, 1929, Section 9765, provides in part as follows:

"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,

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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."

R. S. Missouri, 1929, Section 9785, provides as follows:

"The taxes assessed on shares of stock embraced in such list shall be paid by the corporations, respectively, and they may recover from the owners of such shares the amount so paid by them, or deduct the same from the dividends accruing on such shares; and the amount so paid shall be a lien on such shares, respectively, and shall be paid before a transfer thereof can be made."

These two statutes make it clear that in assessing the value of the shares of stock in banks, all the assets of the corporation are to be considered except the real estate, for if the terms of Section 9785, "all reserved funds, undivided profits, premiums or earnings", do not cover all such assets, then surely the following phrase in such section, which is "and all other values", is sufficiently comprehensive. Furthermore, the express deduction of real estate from total assets would impliedly exclude other unnamed deductions. Therefore, money received as interest on Liberty Bonds or other tax free securities would not be deductible by the terms of the statute.

## II

### CONSTITUTIONALITY OF THE MISSOURI STATUTE

The Supreme Court of the United States has held that a state statute could assess to the stockholders shares of stock in a bank, and measure the value of such shares by assets exempt from state taxation. In the case of *Des Moines National Bank v. Fairweather*, 263 U. S. 103 (1923) the court in discussing a statute of the State of Iowa, which was substantially the same as the Missouri statute in question, said:

"The next contention—that the statute subjects securities of the United States to taxation contrary to exempting laws of the United States in that it requires that the assessment be based on the aggregate of the capital, surplus and undivided

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earnings without any deduction or allowance on account of the investment in such securities-confuses the shares, which are the property of the stockholders, with the corporate assets, which are the property of the bank. It is quite true that the States may not tax such securities, but equally true that they may tax the shares in a corporation to their owners, the stockholders, although the corporate assets consist largely of such securities, and that in assessing the shares it is not necessary to deduct what is invested in the securities. The difference turns on the distinction between the corporate assets and the shares,-the one belonging to the corporation as an artificial entity and the other to the stockholders." (263 U.S. 112)

Long before the above decision the Supreme Court of the United States had upheld the predecessor of the present Missouri statute which is in question, in the case of Lionberger v. Rouse, 9 Wall. 468 (1870) which arose on a writ of error to the Supreme Court of Missouri (43 Mo. 67) in which the Supreme Court of the United States said:

"It is no longer an open question in this court, since the decision in the case of Van Allen v. The Assessors, that the shareholders in a National bank are subject to State taxation, although the entire capital of the bank be invested in the bonds of the United States, which cannot be taxed by State authority."

See also Home Savings Bank v. DesMoines, 205 U. S. 503 (1907). That the Supreme Court of Missouri agrees with this construction is evident from its opinion in State ex rel Campbell et al. v. Brinkop, 238 Mo. 268, 143 S.W. 444 (1911). See also State ex rel v. Gehner, 219 Mo. 1042, 5 S.W. (2d) 40 (1928) in which a bank had claimed a deduction under the statute in question for United States bonds which was disallowed by the Board of Equalization, and the right to make such deduction was not even argued in the Supreme Court of Missouri, the argument and opinion of the court being confined to a consideration of other phases of the ruling of the Board of Equalization.

If United States bonds are not deductible under Section 9765, then a fortiori money received as interest thereon would not be deductible in the hands of the bank.

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In conclusion it is our opinion that for the assessment of shares of bank stock under R. C. Missouri, 1933, Section 9765, no deduction can be made for money held by such bank which has been received as interest on United States bonds or other tax exempt securities, in computing the valuation of such shares of stock.

Very truly yours,

EDWARD H. MILLER  
Assistant Attorney General

APPROVED:

ROY McSITTRICK  
Attorney General