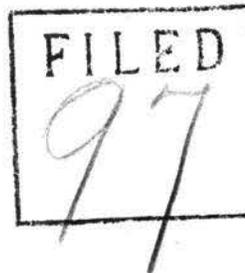


TAXATION:
CAPTIAL STOCK TAX:
STATE BANKS:
FEDERAL RESERVE STOCK:

Banks to include in returns for assessment
of the bank stock for full amount invested
in stock of the Federal Reserve Bank.

January 10, 1938

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

Dear Sir:

This office acknowledges receipt of your request for
an official opinion which is as follows:

"The State Tax Commission desires an
opinion from your office on the following
question:

Are banks in the State of Missouri
entitled to deduct from their return,
for assessment of the stock of their
bank, the amount invested by them in
stock of the Federal Reserve Bank?

We have information that the Federal
Reserve Bank of the Kansas City district
owns their building which is carried on
the books of their bank at approximately
75% of the value of their capital stock.
The Federal Act does not allow the
Federal Reserve Bank to exempt real
estate from taxation. Consequently,
they (The Federal Reserve Bank) are
compelled to pay state and county taxes
on the value of same. This condition
raises the question as to whether or
not it would be double taxation on the
State Bank if they are compelled to
return their federal reserve stock
for taxation.

This Commission is completing an audit
of the assessment of banks as rapidly
as possible. Therefore, your attention
at your early convenience will be
appreciated."

The statutes which are relevant to the subjects of
your inquiry are as follows:

Section 9765, page 357 Session Acts of Missouri, 1931 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 heretofore pro-

vided: 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."

Section 9765a R.S. Mo. 1929 provides as follows:

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

Section 9766 R.S. Mo. 1929 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."

Section 531 of Title 12 of chapter 4 on Banks and Banking U.S.C.A. provides as follows:

"Federal reserve banks, including the capital stock and surplus therein, and the income derived therefrom, shall be exempt from Federal, State, and local taxation, except taxes upon real estate."

In the case of *State ex rel. Bank of Eagle v. Leonardson*, 9 Pacific (2d) 1028, the court held that the state may tax national banks, property and capital stock only as congress consents, and then only in precise manner authorized.

Your inquiry particularly goes to the question of the authority of the taxing officials, in assessing the capital stock of banks which have their capital stock invested in the stock of the Federal Reserve Bank, to include in such assessment the stocks of the Federal Reserve Bank owned by such state bank, and if such Federal Reserve Bank owns real property which is carried as a part of the value of the capital stock upon which such Federal Reserve Bank pays a real estate tax, then should the bank which holds the Federal Reserve Bank stock be permitted in making its tax returns to value the Federal Reserve stock at its full value, reduced by such per cent as the investment in the real estate of the Federal Reserve Bank bears to the total value of the capital stock of such Federal Reserve Bank.

On the question of deducting from the returns for assessment of the bank the amount invested in the stock of the Federal Reserve Bank, we find that the Supreme Court of the United State 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 tax. 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 also states the same as Missouri statutes, said:

"The next contention that the statute subjects securities of the United States to tax, contrary to exemption laws of the United States in that it requires that the assessment be based on the aggregate of the capital, surplus and undivided 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 state 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 consists 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 of the Supreme Court of the United States had upheld the precedence of the present Missouri Statute which is in question, in the case of Lionberger v. Rowse, 9 U.S. 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 Commissioners, that the shareholders in a national bank are subject to taxation, although the entire capital of the bank be invested in the bonds of the United States, which cannot be taxed by state authority."

That the Supreme Court of Missouri agreed with this conclusion is evidence from its opinion in State ex rel. Campbell et al Brinkop, 238 Mo. 293.

In the case of State ex rel. Gehner, 319 Mo. 1048, 5 S.W. (2d) 40, in which a bank claimed the deduction under the statute in question for stock of the Federal Reserve Bank which claim 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.

It seems that it may be claimed that there would be a double taxation if the bank which holds Federal Reserve Bank stock as a part of its capital stock unless the bank is permitted to deduct from the value of its stock the proportionate part of such stock that is invested in real estate and upon which the Federal Reserve Bank pays the real estate tax.

On the question of the bank paying its capital stock tax based on the total value of the Federal Reserve Bank stock which it holds and not taking into consideration the value of the real estate owned by such Federal Reserve Bank and upon which the real estate tax has been paid, we find that the refusal to permit the bank to take credit for the proportionate value of the real estate of the Federal Reserve Bank, would not be double taxation. Volume 26, R.C.L. Section 233, states the rule as follows:

"Double taxation in its broader sense is permissible although the tax imposed by the laws of the same state *****. Mortgaged land may be assessed at its full value although the mortgage debt is included in the mortgagee's personal estate. (See cases cited there under.)"

Section 9765 Laws of Missouri, page 357, permits the bank which owns the real estate to deduct the amount it invests in real estate from its capital stock returns, but under a strict construction of the taxing statutes and the exempting statutes, we think the authority to deduct the value invested in real estate only applies to the bank which is making the return and which owns the real estate. We also find the rule of double taxation stated in 60 L.R.A., page 366 as follows:

"If a statute imposes the same tax more than once on the same subject and tax payer it is obviously unequal and not uniform."

Section 3, Article 10 of the Constitution of Missouri provides as follows:

"Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

The tax in question does not come within the above classification for it is not on the same persons.

While Section 9765 Laws of Missouri 1931, page 357 authorizes the officers of the bank in making returns to the assessor to list as a deduction from its valuation for assessment, "The value of stock in other corporations held by such bank or joint stock institution or association doing a banking business." Yet we think the law makers intended to include in this deduction only the stock of corporations which were taxable either through their stock or on their property.

We must assume that the act is constitutional and if possible give it such a construction. To give it a construction which would exempt taxable property would be unconstitutional.. Article 4, Section 10 Constitution of Missouri.

In the first place, the capital stock of banking corporations are taxable and they should only be relieved of paying the capital stock tax when the investments of the bank are in properties upon which a tax has been paid, either directly or indirectly. We think if the rule were otherwise, it would be in violation of Article IV, Section 10 of the Constitution of Missouri which provides that:

"All property subject to taxation shall be taxed in proportion to its value."

In the case of State ex rel. Orr et al v. Buder, Assessor et al, 271 S.W. 508, the Supreme Court held that the St. Louis Union Trust Company was authorized to list as a deduction in its returns to the assessor, the book value of stock it held in a realty company which consisted of non taxable securities. In this case the realty company had paid the tax which was assessed on the property of the corporations as provided by Section 9765 Laws of Missouri 1931, page 357, and the trust company was permitted to make this deduction, for to have required the payment of the tax would have been a double taxation which the legislature evidently did not intend to occur.

The stock of the Federal Reserve Bank is not otherwise taxed. Section 531 Title 12, chapter 4, Banks and Banking U.S.C.A. Therefore, to include such stock in the returns to the assessor would not be double taxation.

In the case of First National Bank v. Beaman, et al, 257 Fed. 729, the court held:

"Despite Federal Reserve Act, Dec.

23, 1913 (compiled statutes, 9785 9805), under Revised Statutes, p. 5219, (compiled statutes, section 9784,) stockholders of a national bank were not entitled, for purposes of assessment of state and county and municipal taxes, to any deduction of the value of their holdings on account of the bank's holdings of Federal Reserve Bank stock."

In the case of First National Bank v. Darr, 246 Federal l.c. 466, the court said:

"The stock purchased by the plaintiff in the Federal Reserve Bank is but a non taxable investment of a part of its capital surplus."

"The law does not consider the nature of the bank's investments not taxed in fixing the value of its stock. Palmer v. McMahon, 133 L.E.D. 772."

In the Darr case, supra, the court further said:

"Whatever values the shares issued by the plaintiff national bank possess, they are to that extent taxable in the hands of their owners and holders (cases cited). The courts have repeatedly ruled that in fixing the value of the shares of stock of national banks for taxing purposes, the value due to the banks ownership of non taxable United States Bonds as a part of its assets must be included. Cleveland Trust Company v. Lander 184 U.S. 111, 22 sup. ct. 394, 46 L.E.D. 456."

In the United States Bank et al v. Gehner et al, 5 S.W. (2d) 40 L.C. 42, the bank claimed a deduction under the statute in question for Federal Reserve Bonds. This deduction was disallowed by the board of equalization, and the right to make such deduction was not even argued in the Supreme Court.

Section 9765 Laws of Missouri 1931, page 357 amended Section 9765 R.S. Mo. 1929 by adding the deduction mentioned above which is as follows:

"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 banking business."

Considering this amendment as a whole, we are further convinced that the legislature intended to permit only deductions of stock in manufacturing or business companies which were taxable, for there would be no need to make the proviso of the amount if the stock was in a non taxable manufacturing or business company.

All of the stock of the banks are taxable in the first instance and it is the duty of the officials of the bank to return a list of such stock and the value thereof. Then, for the reason that the law makers did not want to double tax this stock it permitted the bank to deduct the value of its holdings in real estate because it had paid the tax on that property which makes up a portion of its capital stock; then, in 1931 the legislature and after the ruling in the case of State ex rel Orr et al v. Buder, et al. (The St. Louis Union Trust Company case) case desiring to take care of the double tax question raised in State ex rel Orr case, by the amendment, permitted the banks to deduct from its returns the value of stock in other corporations held by such bank.

If to include the value of stock in other corporations would result in double taxation, then the value of such stock may be deducted from the return but if it does not result in double taxation, then by the provisions of the constitution cited supra, it should be included in the return.

The legislature could not have exempted the stock of the bank from the taxes, for by the provisions of Section 6, Article 10, of the Constitution only certain properties are exempted which section is 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

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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."

Under the general rule of tax exemption laws they should be strictly construed against the tax payer. Under the rulings of the case the First National Bank of Cincinnati v. Buder, 267 Federal 729 and the statutes and cases cited therein, the Federal Reserve Bank stock in the hands of the national bank are to be included in the returns of such bank for assessment and taxation.

CONCLUSION

From the foregoing sections and authorities this office is of the opinion that the banks in making their returns to the assessing officials should include in the return for the assessment of the bank stock the full amount invested by them in the stock of the Federal Reserve Bank.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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