

TAXATION: Franchises must be taxed under Class 3 of Section 4, Article X, Constitution of 1945.



September 26, 1945

Honorable E. L. Bartram, Chairman
Taxation Revision Committee
of the General Assembly
Jefferson City, Missouri

Dear Sir:

Your request of August 20, 1945, presents the following question for our opinion:

In view of the provisions of Sections 4 and 5 of Article X of the new Constitution of Missouri, may the franchises of corporations be assessed for taxation in the same manner as other property of the corporation?

Under existing laws, franchises of corporations are taxed in the same manner as other property, under authority of Sections 11240 and 11241, R. S. Mo. 1939, and Section 11295, Laws of 1941, page 695. Your request mentioned these statutes and it is considered unnecessary to quote them herein.

Section 4, Article X, of the 1945 Constitution provides, in part:

"All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property. * * * Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of

excise or motor vehicle license taxes, or any other taxes of the same or different types.

" * * * Property in Class 3 and its subclasses shall be taxed only to the extent authorized and at the rate fixed by law for each class and subclass, and the tax shall be based on the annual yield and shall not exceed eight per cent thereof."

Further mention of franchises is found in Section 5, Article X, of the 1945 Constitution, in relation to railroad corporations, as follows:

"All railroad corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock."

Franchises are unquestionably intangible property, and the framers of the Constitution obviously intended to include them in Class 3, mentioned above in Section 4, for taxation purposes. If this view needed support, it could be readily found in the sentence which provides, "Nothing in this section shall prevent the taxing of franchises, * * *."

CONCLUSION

In view of the above, it is our conclusion that franchises may not be assessed for taxation in the same manner as other property of a corporation, under the 1945 Constitution of Missouri, but must be classified under Class 3 of Section

Honorable E. L. Bartram

-3-

September 26, 1945

4, Article X, and a tax imposed, based on the annual yield, not to exceed eight per cent of such yield, as provided in the 1945 Constitution.

Respectfully submitted,

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APPROVED:

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