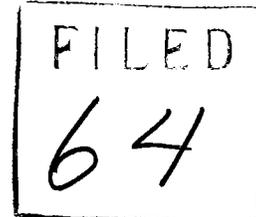


TAXATION AND REVENUE:

National banks not required to file return of income for Missouri income tax purposes.

November 19, 1946



Mr. M. E. Morris, Director  
Department of Revenue  
Jefferson City, Missouri

Attention: Mr. Haskell Holman, Supervisor  
Income Tax Unit

Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

"Will you please furnish this department with a written opinion advising whether or not national banks will be required to file a Missouri state income tax return for the year 1946 or 1947."

Consideration of the question presented involves a determination of the immunity from state taxation enjoyed by national banks. This became necessary by reason of the judicial decisions that such banks are instrumentalities of the federal government and that, therefore, no inherent power exists in the respective states to subject their capital, franchises or operations to taxation without the consent of the federal government.

We direct your attention to *Citizens' & Southern Nat. Bank v. City of Atlanta*, 46 F. (2d) 88, affirmed 53 F. (2d) 557, from which we quote:

"Since *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579, the banks of the United States have been considered instrumentalities of the federal government, whose capital, franchises, and operations are therefore not taxable by the states by virtue of

state powers of taxation, but only by virtue of such consent as the federal government may give. Owensboro National Bank v. City of Owensboro, 173 U. S. 664, 19 S. Ct. 537, 43 L. Ed. 850. \* \* \* The permission to tax national banks and their shareholders in force at present is found in 12 U. S. Code, sec. 548 (12 USCA sec. 548), as amended by the Act of March 25, 1926, and carefully observes this distinction. It permits no direct taxation of the bank on its property except its real estate, but allows a tax on its net income, or permits taxation of the shares, or of dividends on them to the owner, but any one form of the permitted taxation is in lieu of all the others. \* \* \*"

12 U.S.C.A., Sec. 548, referred to in the opinion supra, reads, in part, as follows:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause. \* \* \*" (Emphasis ours.)

(Note: Subdivision (c) contains no matter pertinent to this opinion.)

Pursuant to the authorization granted to the respective states under the above provision, the 63rd General Assembly has elected to tax shares of national banking associations located in this state in accordance with method (4) of the statute quoted. We direct your attention to Section 3 of House Bill No. 888 of the 63rd General Assembly, reading, in part, as follows:

"A. Every national banking association shall be subject to an annual tax according to and measured by its net income in accordance with method numbered (4) authorized by the Act of Congress of March 25, 1926, amending Section 5219 of the Revised Statutes of the United States, and every other banking institution as herein defined shall be subject to an annual tax for the privilege of exercising its corporate franchises within the State of Missouri according to and measured by its net income pursuant to the provisions of this Act."

In view of the fact that method (3) of 12 U.S.C.A., Sec. 548, does permit a state to adopt the taxation of net income, which method has been rejected by the General Assembly of Missouri by the enactment of House Bill No. 888, under which election has been made to tax such banks under method (4), we believe that the State of Missouri is thereby precluded from taxing the net income of such banks by virtue of the provision that such election, when made, and the tax imposed thereunder, shall be in lieu of the others.

One further matter might be discussed in connection with this opinion. It is true that under the construction of the Missouri income tax laws the Supreme Court of Missouri has held that such a tax is not one upon property. See *Ludlow-Saylor Wire Co. v. Wollbrinck*, 205 S. W. 196, 275 Mo. 339. From this it might be argued that, since the permission granted under 12 U.S.C.A., Sec. 548, is on its face directed to the question of the taxing of the shares of such banks, an income tax would not thereby be prohibited. This position, however, is not tenable in view of the fact that it has been held that the silence of Congress in failing to grant specific permission to impose other than property taxes is in itself a ban against imposition thereof by the respective states. See *Odland v. Findley*, (D.C. Ohio, 1941) 38 F. Supp. 563, reversed on other grounds, 127 F. (2d) 948.

Furthermore, under the federal rule, a tax on income is construed to be a tax on property, and therefore the decisions of the Missouri Supreme Court must give way to the construction placed on such taxes by the United States Supreme Court, when such decisions relate to a statute of the United States. We quote from *First National Bank v. Buder*, (D. C. Mo., 1925) 8 F. (2d) 883, 46 S. Ct. 557, 271 U. S. 461, 70 L. Ed. 1036:

"As to its own statutory and organic laws, the Supreme Court of Missouri may rule in such wise as to be conclusively binding on a federal court; but it may not say, as is here contended by defendants, what effect a local statute or decision shall have (Pryor v. Williams, 254 U. S. 43, 41 S. Ct. 36, 65 L. Ed. 120), when, as here, the question is as to the effect of such a local law or decision on a statute of the United States. If the Income Tax Act of Missouri shall have the effect to put a tax on property, within the purview of the federal decisions on this subject, then the tax in question is a tax on property, regardless of the view which may have been taken by the local state courts as to the nature and effect of such tax. I think it is clear, both upon reason and authority, that a tax upon income is a tax upon the property out of which such income accrued; at least, this is the federal rule (Pollock v. Farmers', etc., Co., 157 U. S. loc. cit. 596, 15 S. Ct. 673, 39 L. Ed. 759), by which alone I am bound here."

CONCLUSION

In the premises, we are of the opinion that national banks are not required to file a return of income under the laws of Missouri relating to taxation of income.

Respectfully submitted,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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