

TAXATION AND REVENUE: The word "taxes" found in the Credit Institutions Tax Act of 1946 includes all governmental impositions by the state or any of its political subdivisions.

July 17, 1949

Mr. T. R. Allen
Supervisor, Income Tax
Division of Collection
Department of Revenue
Jefferson City, Missouri



Dear Sir:

Reference is made to your request for an official opinion of this office reading as follows:

"Re: House Bill 948 63rd General Assembly --
Taxation and Revenue Relating to Taxation
of Credit Institutions

"In connection with the above-referred to law this department desires a ruling covering an item of deduction allowed in arriving at the tax imposed by this act. In making direct reference I refer to Form 43-1, item 27 under the heading of 'Deductions' which reads as follows: 'Less: Credit for all taxes paid to the State of Missouri or any political subdivision thereof during the relevant income period, other than taxes on real estate, contributions paid pursuant to the Unemployment Compensation Tax Law of Missouri, and taxes imposed by this Act', in which a deduction is allowed from the amount of tax computed in arriving at the net amount due.

"Will you kindly advise if the following taxes qualify under the above item of deductions: Franchise taxes; filing fees; licenses, such as automobile, occupation; anti-trust affidavits, and items of a kindred nature will fall within the meaning of the above act as described."

The act which you have referred to is now found as Sections 11456.201 to 11456.213, inclusive, Mo. R.S.A., and is known as the "Credit Institutions Tax Act of 1946." Included in the act appears Section 11456.203, including the following as paragraph (e):

"Each taxpayer shall be entitled to credits against the tax imposed by this Act for all taxes paid to the State of Missouri or any political subdivision thereof during the relevant income period, other than taxes on real estate, contributions paid pursuant to the Unemployment Compensation Tax Law of Missouri and taxes imposed by this Act."

It therefore becomes necessary to determine a meaning to be accorded the word "taxes" as it appears in the exemption provision quoted.

The word "taxes" is defined in 61 C.J., page 65, paragraph 1, in the following language:

"The terms 'tax' and 'taxes' have been defined as a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or state; burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes, and the enforced proportional contribution of persons and property levied by authority of the state for the support of government and for all public needs. * * * "

To the same effect, see 51 Am. Jur., page 35, wherein the following appears:

"A tax is a forced burden, charge, exaction, imposition, or contribution assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state upon the persons or property within its jurisdiction, to provide public revenue for the support of the government, the administration of the law, or the payment of public expenses. * * * "

That such definitions have been followed by the appellate courts of Missouri appears from *Lucas vs. Murphy*, 156 S.W. (2d) 686, l.c. 688, from which we quote:

" * * * 'Taxes are the enforced proportional contributions from persons and property,

levied by the state by virtue of its sovereignty for the support of the government and for all public needs.' 1 Cooley, Taxation, section 1, p. 61. * * * * "

Standing alone, there can be little doubt but that the word "taxes" is broad enough to encompass any and all impositions placed upon its citizens by a sovereign state. However, the word is frequently used so that when viewed in its context, it may have a more restricted and limited meaning. For a complete exposition of such varying uses, see 51 Am. Jur., pages 45 to 51, inclusive. We do not find a statutory definition of the term incorporated in the laws of Missouri except in two statutes dealing with cities and relating to the sales tax. The first two mentioned, being Sections 6372 and 6724, R. S. Mo. 1939, indicate that the General Assembly has in each of those instances defined the word to be one which must be construed in accordance with a meaning to be determined by the sense in which it is used. The third section, Section 11407, R. S. Mo. 1939, makes the definition one of limited application.

Were it not for the inclusion in the exemption provision of the phrase "contributions paid pursuant to the Unemployment Compensation Tax Law of Missouri," it might be very well held that the word "taxes" as used in such exemption provision would be limited only to those imposts bearing the characteristics of being levied in aid of the general revenue of the state and disregarding all other excise, privilege franchises and similar exactions. The latter are those generally paid in return for privileges extended by the state, and for that reason have, upon occasion, been distinguished from taxes which are levied for the purpose of general revenue.

However, the inclusion of the phrase quoted necessarily leads to a different view. Such contributions have been held to be in the nature of an excise. We quote from *Henry vs. Manzella*, 201 S.W. (2d) 457, wherein the Supreme Court of Missouri said, l.c. 459:

" * * * It is settled that an unemployment compensation tax is an excise upon the relation of employment. *A. J. Meyer & Co. v. Unemployment Compensation Commission*, 348 Mo. 147, 152 S.W.2d 184; *Lucas v. Murphy*, 348 Mo. 1078, 156 S.W.2d 686; *Streckfus Steamers, Inc., v. Keitel*, 353 Mo. 409, 182 S.W.2d 587; *Steward Machine Co. v. Davis*, 301 U.S. 548, 57 S. Ct. 883, 81 L.Ed. 1279, 109 A.L.R. 1293."

It seems, therefore, that the inclusion of this phrase by inference at least indicates that other and similar excises are to be included within the meaning of the word "taxes" appearing in the exemption provision. Further supporting this view are the provisions of paragraph (c) of Section 11456.205, Mo. R.S.A., which provides for the method of computing net income of credit institutions subject to the taxing act. The only taxes therein authorized to be deducted in computing net income are set forth as follows:

" * * * all taxes paid or accrued during the income period to the United States and all taxes paid or accrued on real estate to the State of Missouri or any political subdivision thereof; all contributions paid or accrued pursuant to the Unemployment Compensation Law of Missouri; * * * * "

This indicates that inasmuch as excise and other privilege taxes may not be deducted in computing net income, such imposts are to be included within the meaning of the word "taxes" as used in the exemption provision.

In your letter of inquiry you have referred to various types of excise and privilege imposts. However, without further information as to the exact factual situation respecting each institution seeking to deduct such taxes, and in the absence of information as to the imposition of such taxes with respect to whether or not they have been imposed by the State of Missouri or one or more of its political subdivisions, we can but lay down the general rule which will be applicable.

CONCLUSION

In the premises, we are of the opinion that the word "taxes" as used in the exemption provision of the Credit Institutions Tax Act of 1946, being Section (e) of Section 11456.203, Mo. R.S.A., includes all imposts of every nature imposed by the State of Missouri or any of its political subdivisions.

Respectfully submitted,

APPROVED:

J. E. TAYLOR
Attorney General

WILL F. BERRY, JR.
Assistant Attorney General

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