

TAXATION: Steamboat engaged in interstate commerce and owned  
STEAMBOATS: by Delaware company is not subject to ad valorem  
taxes in Missouri.

July 21, 1954



Honorable Raymond H. Vogel  
Prosecuting Attorney  
Cape Girardeau County  
Farmers & Merchants Bank Building  
Cape Girardeau, Missouri

Dear Sir:

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

"I hereby request your official opinion on the matter set out in the following paragraphs.

"A motor vessel, the Stanton K. Smith, is owned by the Missouri-Illinois Barge Line Company, a Delaware corporation. Fifty per cent of the stock of this corporation is owned by persons who reside in Cape Girardeau and fifty per cent is owned by persons who reside in Illinois. It appears that the State of Delaware has not assessed any tax against this property. The assessor of Cape Girardeau County has assessed personal property taxes against the property. The property is used to transport goods along the Mississippi River and its tributaries and the intra-coastal canal. Apparently, the property does not stay within Cape Girardeau County for very long periods of time. At present there is no repair dock in Cape Girardeau County for this property, although it is expected that one will be built in the future and repairs will be made in Cape Girardeau County.

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"May the assessor of Cape Girardeau County assess personal property tax against motor vessels and barges of a foreign corporation, which boats and barges are sometimes located within Cape Girardeau County but are almost continually operating in interstate commerce? Would it make any difference if the vessels are manned, serviced and repaired in Cape Girardeau County?"

Steamboats and other vessels used in navigating the waters of this state have been classified specially for the purpose of taxation under the provisions of Chapter 154, RSMo 1949. The pertinent statutes read as follows:

154.010:

"1. Steamboats and other boats and vessels used in navigating the waters of this state, and all shares, stocks and interest therein, are hereby declared a special class of property for the assessment and collection of taxes.

"2. All taxes on such property shall be assessed and collected in the county or city in which the owner or owners of said property may reside at the time of assessment."

154.020:

"1. Upon due return being made to the assessor of the proper county or city by the owner of any steamboat or other water craft, upon demand therefor the assessor shall issue a certificate for such boat setting forth the fact of the return, with the name of the owner and that of the boat and also the residence of the owner and the date of the return, stating the same to have been done in accordance with this chapter. The certificate shall be taken and held to be conclusive evidence, of the statements and facts therein made and recited, by all courts and officers in this state.

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"2. Such certificate shall be framed and hung up in the cabin of the boat in a conspicuous place."

Inasmuch as your letter of inquiry discloses that the steamboat under consideration is owned by a corporation, your attention is further directed to Section 137.095, RSMo 1949, which reads as follows:

"All tangible personal property of business and manufacturing corporations shall be taxable in the county in which such property may be situated on the first day of January of the year for which such taxes may be assessed, and every business or manufacturing corporation having or owing tangible personal property on the first day of January in each year, which shall, on said date, be situated in any other county than the one in which said corporation is located, shall make return thereof to the assessor of such county or township where situated, in the same manner as other tangible personal property is required by law to be returned."

In an early case entitled *City of St. Louis v. Wiggins Ferry Company*, reported 40 Mo. 581 (erroneously cited 580 in Mo. Dig.), the court had under consideration the validity of a tax imposed under a city ordinance upon a ferry-boat operating between Illinois and Missouri.

In upholding the validity of the tax the court made the following specifications:

"The facts stated show that the city of St. Louis was the domicil and home port of these ferry boats; that the owner, though a corporation created in another State, had a principal office and place of business in this city, and was a resident here within the meaning of our law; that the chief officers of the company resided here, and were the acting managers for the owner, and that the boats plied from and to their home port, and were subject to the immediate control of the officers and agents residing here. That the boats,

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when not in use, were laid up on the opposite shore, or that the harbor regulations did not permit them to lie at the city wharf longer at a time than was necessary for receiving and discharging freight and passengers, or that the company also had an office and place of business in Illinois, or that two-thirds of the stock was owned in this city and in other States than Illinois, are all immaterial circumstances. The property is not assessed to the stockholders, but to the corporation by name. It makes no difference where the shareholders reside-- Queen v. Arnaud, 9 Adolph & Ellis, 806; Ang. Corp. Sec. 109. The corporation is taxed as owner, and in respect of the boats as specific personal chattels, and not at all in respect of the stock or income. The personal property of the company which is permanently located, or actually situated in Illinois, is no doubt taxable there only, but these registered boats must be held to be taxable here only. \* \* \*

However, in a subsequent suit involving taxes of the same nature which ultimately reached the Supreme Court of the United States and is reported as City of St. Louis v. Wiggins Ferry Company, 78 U.S. 423, 11 Wall. 20 Lawyer's Edition 192, the action of the Circuit Court of the United States for the District of Missouri in holding the subsequent taxes invalid, was affirmed. The case was decided upon a factual issue in that the lower court had determined as a matter of fact that at no time was the ferry boat involved "within the City of St. Louis" as would have been necessary to confer jurisdiction upon that municipality to impose a tax thereon. In disposing of the case and referring to the factual determination made by the lower court the Supreme Court said:

" \* \* \* The court found that the boats, when not in actual use, were laid up by the Illinois shore, and were forbidden, by a general ordinance of the city of St. Louis regulating ferries and ferry-boats, to remain at the St. Louis wharf or landing longer than ten minutes at a time.' A tax was paid upon the boats in Illinois. Their relation to the city was merely that

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of contact there, as one of the termini of their transit across the river in the prosecution of their business. The time of such contact was limited by the city ordinance. Ten minutes was the maximum of the stay they were permitted to make at any one time. The owner was in the eye of the law a citizen of that state, and from the inherent law of its nature could not emigrate or become a citizen elsewhere. As the boats were laid up on the Illinois shore when not in use, and the pilots and engineers who ran them lived there, that locality, under the circumstances, must be taken to be their home port. They did not so abide within the city as to become incorporated with and form part of its personal property. Hays v. Pacific S. S. Co., 17 How. 599, 15 L. ed. 255; New Albany v. Meekin, 3 Ind. 481. Hence they were beyond the jurisdiction of the authorities by which the taxes were assessed, and the validity of the taxes cannot be maintained. R. Co. v. Jackson, 7 Wall. 262, 19 L. ed. 88. \* \* \* (Emphasis theirs.)

There are two later cases of the United States Supreme Court which bear upon the problem you have presented. In Ott v. Mississippi Valley Barge Line Company, et al., reported 336 United States 169, 69 Supreme Court 432, that court had under consideration the validity of a tax imposed by the State of Louisiana. The property owners were foreign corporations of that state and were engaged in interstate commerce up and down the Mississippi and Ohio Rivers. No taxes were imposed upon the physical assets of the corporations in the states of their incorporation.

The Supreme Court applied the rule that vessels engaged in interstate commerce are normally taxable solely at the domicile of the owner except in instances in which such property acquired an actual situs elsewhere. The Wiggins Ferry Company case, cited supra, was referred to in the course of the opinion as enunciating this rule. However, the validity of the Louisiana tax was sustained upon a finding that under the facts a taxable situs had been acquired within the State of Louisiana. However, the Supreme Court further declared that even in those circumstances a reasonable apportionment must of necessity be

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made by the taxing authority in order that neither the Due Process clause nor the Commerce clause of the Federal Constitution might be impinged upon. The decision turned to a great extent upon the assurance of the Attorney General of the State of Louisiana that the tax sought to be sustained in fact was only an average portion of the property of the foreign corporation permanently within the State of Louisiana throughout the taxing year.

Subsequently, the same court decided *Standard Oil Company v. Peck*, which is reported 342 U.S. 382, 72 Supreme Court 309. There under consideration was the applicability of the Ohio taxing statutes to the property of a domestic corporation of that state consisting of transportation barges, etc., which in fact did not come within the State of Ohio but were continuously used in the waters of foreign states. The State of Ohio again, upon language found in the *Wiggins Ferry* case cited supra, urged its power to tax the whole of the corporation property. The court declared, however, that the rationale of the earlier cases had been revoked in *Ott v. Mississippi Barge Line Company*, cited and discussed herein supra. The State of Ohio further urged that the facts in the case then under discussion did not disclose that any specifically defined portion of the domiciliary corpus had acquired a taxable situs elsewhere. The Supreme Court held that inasmuch as property so used was susceptible of being subjected to the taxing power of other jurisdictions wherein a taxable situs might be acquired, the State of Ohio could not tax the entire property of the corporation. The court used the following language:

" \* \* \* No one vessel may have been continuously in another state during the taxable year. But we do know that most, if not all, of them were operating in other waters and therefore under *Ott v. Mississippi Barge Line Co.*, supra, could be taxed by the several states on an apportionment basis. The rule which permits taxation by two or more states on an apportionment basis precludes taxation of all of the property by the state of the domicile. See *Union Refrigerator Transit Co. v. Commonwealth of Kentucky*, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150. Otherwise there would be multiple taxation of interstate operations and the tax would have no relation to the opportunities, benefits, or protection which the taxing state gives those operations."

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We have examined the statutory law of the State of Missouri and have given due regard to the facts relating to the operation of the steamboat as set forth in your letter of inquiry. We believe that neither the State of Missouri nor any of its subdivisions have the power to impee ad valorem tax upon the vessel mentioned in your letter of inquiry for the following reasons:

(1) The operations of the vessel are not such as to indicate that a taxable situs has been acquired within the State of Missouri; and,

(2) That even assuming that such a taxable situs has been acquired, no basis for the ratable apportionment of the valuation of such vessel has been established under Missouri statutes so as to avoid the inhibitions of the Due Process and Commerce clauses of the Federal Constitution.

#### CONCLUSION

In the premises we are of the opinion that a vessel engaged in interstate commerce and owned by a foreign corporation may not be subject to ad valorem taxation by the State of Missouri or any of its subdivisions.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

John M. Dalton  
Attorney General

WFB/vlw/vtl