INCOME TAX:
BANK TAX:
NATIONAL BANKS:
DIVIDEND CREDIT:

The payment of the seven per cent Missouri Bank Tax by a national bank is not a basis for allowing the dividend credit provided in Section 143.180, RSMo 1959.

OPINION NO. 95

October 3, 1963

FILED
95

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

Dear Mr. Morris:

This is in answer to your opinion request relative to an interpretation of Section 143.180, RSMo 1959. Your opinion request reads as follows:

> "Section 143.180 RSMo 1959 provides for credit to stockholders on dividends received from corporations which paid income tax to the state of Missouri for their last preceding taxable period.
>
> "This section also provides '. . .that stockholders of national banking associations shall be entitled to such credit computed as aforesaid but as if the national bank whose dividends are included in the stockholder's return was in fact a bank organized under the laws of this state and had paid income tax for which it would in such case have been liable for its last preceding taxable period.'
>
> "A taxpayer has presented the following interpretation of Section 143.180.

> 'Under the "Bank Tax Law of 1946", which is found in Sections 148.010 to 148.110 of the Revised Statutes of Missouri, a tax is levied on national banks in Missouri which is a tax on the income of the banks. The tax levied is seven per cent of the net income of the bank for the preceding year. . .
>
> 'Since this national bank did pay to the State of Missouri the taxes specified by the State on its net income for the calendar year in question, whether you call it an income tax or not, on what basis do you say that the payment of that income tax as specified under the Bank Tax Law of 1946 does not qualify the recipient of dividends from the corporation for the dividend credit on the Missouri Individual Income Tax Return?'
>
> "Please give us your opinion as to whether or not payment of the seven percent Missouri Bank Tax is basis for allowing the dividend credit provided in Section 143.180."

Initially, the states cannot tax national banks, their property or the shares of their capital stock otherwise than in conformity with the terms and restrictions embodied in the assent given by Congress to such taxation. Des Moines Bank vs. Fairweather, 263 U.S. 103, 106. The taxing authority of the states is limited by the restrictions placed on it by the national Congress. First National Bank vs. Anderson, 269 U.S. 341, 347. General American Life Insurance Company vs. Bates, 249 SW2d 458, 465. Buder vs. First National Bank, 16 F2d 990, 992.

Section 548 of Title 12 U.S.C.A. was amended in 1923 and 1926 to enlarge the authority of the states to tax national banks in the following language:

> "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. . ."
>
> (Subdivision (c) permits states to tax dividends received by shareholders of national bank stock on a nondiscriminatory basis.)

In conformity with the above Federal legislation, the State of Missouri enacted Chapter 148, RSMo 1959, entitled Taxation of Financial Institutions. Section 148.030 of this chapter provides:

> "1. Every national banking association shall be subject to <u>an annual tax according to and measured by its net income in accordance with method numbered (4) as provided in 12 U.S.C.A., section 548</u>, and every other banking institution shall be subject to an annual tax for the privilege of exercising its corporate franchises within the state according to and measured by its net income for the preceding year."

The tax imposed under this section on financial institutions is upon <u>both</u> state and national banks.

It is to be noted that the Missouri Legislature, when it enacted Section 148.030, RSMo 1959, rejected the alternative provided by the Congress in taxing "(3). . .such associations

on their net income", and instead specifically elected to subject such institutions to an annual tax "according to and measured by its net income. . .in accordance with method numbered (4) as provided in 12 U.S.C.A., section 548". Section 148.030, RSMo 1959. The only conclusion that can be drawn is that the State Legislature did not wish to impose an income tax under the authority granted it by 12 U.S.C.A., and instead imposed an annual tax measured by net income. In re Armistead, 362 Mo. 960, 245 SW2d 145, 152.

It also follows that having made the election under 12 U.S.C.A., section 548, the State of Missouri was then unable to impose an income tax on national banks as this would be in violation of 12 U.S.C.A., section 548 1(a). On the other hand, banks chartered by the state do not enjoy this status. Consequently, in addition to the bank taxes imposed under Chapter 148, RSMo 1959, according to and measured by their net income, state chartered banks must also pay income taxes under Chapter 143, RSMo 1959.

After the enactment of Chapter 148 taxing financial institutions, the legislature, in 1957, amended Section 143.180, RSMo 1959, which provides for dividend credits to contain the following language: (The added language in the 1957 revision is underlined.)

> "For the purpose of this chapter, the tax on income included in the return of any stockholder of any corporation, joint stock company and/or joint stock association, received or earned during the taxable period, shall be credited with the amount obtained by multiplying the rate of the Missouri state tax on corporate income by the amount or portion of such dividends, or net earnings of any corporation, joint stock company and/or joint stock association upon which such corporation, joint stock company and/or joint stock association, paid income tax to the state of Missouri for its last preceding taxable period, provided, however, that stockholders of national banking associations shall be entitled to such credit computed as aforesaid but as if the national bank whose dividends are included in the stockholder's return was in fact a bank organized under the laws of this

> state and had paid income tax for which it would in such case have been liable for its last preceding taxable period. Whenever the withholding for, or payment of, at the source, any tax on income under any law of this state, be authorized by any law of this state, then a like credit shall be allowed to the extent of the amount so withheld or paid on account of such taxpayer claiming such credit."

The shareholders of national banking associations prior to the 1957 revision of Section 143.180, RSMo 1959, could not be entitled to any dividend credit for the reason that national banks did not pay income tax to the State of Missouri--the only basis of computation of such dividend credits which was allowed under this section. However, after the 1957 revision, Section 143.180, supra, allowed shareholders of national banking associations to obtain a dividend credit ". . .computed as aforesaid but as if the national bank whose dividends are included in the stockholder's return was in fact a bank organized under the laws of this state and had paid income tax. . ." The whole effect of this additional language was to put shareholders of national banks in the same (but no more) favorable position as shareholders of state banks for the purposes of the dividend credit provisions of Section 143.180, RSMo 1959. This interpretation is fully born out by the concluding language in the 1957 revision of Section 143.180, supra.

> ". . .and had paid income tax for which it would in such case have been liable for its last preceding taxable period." (Emphasis supplied)

"Such case" as used in the revision could only apply to the situation as it would be if the national bank were a state bank and, therefore, had paid income tax upon which a dividend credit could be computed. The net effect of the 1957 revision clearly recognizes that unlike state banks, national banks do not pay income taxes which form the basis of the computation of dividend credit under Section 143.180, supra, but nevertheless, allows shareholders of national bank stock to compute their dividend credit on the same basis as shareholders of state bank stock.

To interpret this section as the taxpayer contends would be to allow shareholders of national bank stock a dividend credit based upon the seven per cent bank tax, and at the same time, limit shareholders of state bank stock (which also pay the seven per cent bank tax) to a dividend credit based upon the two per cent tax provided in our income tax statutes. This construction might well be in violation of Article X, Section 3 of the Missouri Constitution 1945, providing:

> "Taxes. . .shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

CONCLUSION

It is the opinion of this office that the payment of the seven per cent Missouri Bank Tax is not a basis for allowing the dividend credit provided in Section 143.180, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert D. Kingsland.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

RDK:bj