TAXATION:
REVENUE: TANGIBLE
PERSONAL PROPERTY:
SITUS:

In regard to taxation of tangible personal property including deposits, nomey, notes, etc.

May 6, 1942

5-16

FILE
62

Mr. Jesse A. Mitchell, Chairman
State Tax Commission
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an opinion from this department on the following statement of facts:

> "Is personal property, money, notes, or other intangible property subject to assessment in the State of Missouri, when owned by a resident of some other state?"

Under section 10936 R. S. Mo., 1939, taxes are levied on all property, real or personal, except certain properties which are exempt. Since the exemption section does not refer to your question, we will not make further reference to it.

Under Section 10939 R. S. Mo., 1939, all personal property, tangible or intangible, situated in a county other than the one in which the owner resides is assessed against the owner, except property belonging to estates. This section also provides that notes, bonds, and evidences of debt, which would include bank deposit slips, are made taxable in this state, provided the owner resides in Missouri, even though they are held in another state.

Under Section 10940 R. S. Mo., 1939, every person owning or holding property on the first of June is liable to pay taxes thereon for the ensuing year.

Under Section 10950 R. S. Mo., 1939, it is the duty of the assessor to call at the office, place of doing business or residence of each person required to list his property for taxation and to require such person to make a correct statement

of all taxable property owned by him or under the care, charge or management, except certain properties therein mentioned, which are not pertinent to the question here.

Under Section 10950 R. S. Mo., 1939, it will be noted that the taxpayer is required to list money which he has deposited in a bank or other safe place.

Since the question pertains to the question of taxing property on a basis of its situs rather than on the domicile of the owner, we quote the following principle, announced in 110 ALR 715, which would be applicable here.

> "The maxima 'mobilia sequuntur personam' has never been allowed to stand in the way of the power of a state to tax property having an actual permanent situs within its jurisdiction; and it has always been held, assumed, or conceded that tangible personal property having an actual situs in a state, is there taxable, regardless of the foreign domicil of its owner, the theory being that inasmuch as the property enjoys the protection of the state, it must be made to contribute to its maintenance. This principle is supported by the following authorities, some of which, however, as indicated, involved taxation of intangibles:"

The case of City of St. Louis v. Wiggins Ferry Company, 40 Mo., 581, involving tax on ships owned by a nonresident; and also the case of Curtis v. Ward, Administrator of John D. Meredith, 58 Mo. 295, involving intangibles, are cited under the above annotations. In the Curtis v. Ward case, supra, the court, at l. c. 296, said:

> "It is equally well established, that the personal property of a non-resident

> is taxable here if it be found situate within the local jurisdiciton, regardless of whose hands it may happen to be in."

And in the case of State of Missouri on petition of Taylor, Administrator of Lee, v. St. Louis Co. Court, 47 Mo. 594, 600, the court discussed and announced the principle of law involved here as follows:

> "That the situs of personal property is the domicile of its owner, is a fiction, though color is given to its truth by the law in relation to the distribution of personal estates. If a citizen and resident of St. Louis own a farm in Illinois, no one pretends that the farm has any different location than if the owner lived upon it. But how with the cattle in its fields and stables, and the corn in its granaries? On what principle can they be said to belong to Missouri, so long as they are upon the farm? There is this difference: they can be removed to Missouri, while the farm can not; but, until removed, their situs is the farm; they help to swell the wealth of the locality; they are protected by its laws, and should be subject to its burdens. The same rule should be applied to bonds and notes, though from the different nature of the property their actual situs may be more doubtful. But, if it be established, although not the residence of their owner, the same result should follow as to them. Thus, if money be left by a non-resident in the hands of an agent for investment and loan, the money itself, the instruments taken for it, and the various forms which it assumes, so long

> as they remain in the hands of such agent, are local property, and upon every principle should be subject to the public burdens imposed upon other local property of the same kind. What difference does it make in the benefits derived by the owner from the protection afforded this property by the administration of the law, whether he live near it or abroad? or what difference in the expense of such protection?"

According to this principle, if the State in which intangible personal property is situated furnishes to such property any governmental service such as police protection or the benefits of the court of that state, then such state is authorized to impose a tax thereon.

The fact that the property may also be taxed at the domicile of the owner would not alter this rule. The principle is announced in 110 A. L. R. page 718 as follows:

> "Since there is no constitutional inhibition against double taxation and the only objection against such taxation springs from the logical inconsistency inherent in the idea of attributing two different situses to the same property at the same time for purposes of taxation, it is generally agreed that tangible personal property having an actual permanent situs in a state is there taxable, irrespective of whether or not it is also subject to be taxed, or has been taxed, in another state or in its owner's domicil elsewhere. In such case the right of the actual situs to tax cannot be impaired by a tax imposed by the domicil on the strength of a fictional situs there."

In Coe v. Errol (1885) 116 U. S. 517, 29 L. ed. 715, 718, the Supreme Court in discussing the foregoing rule, said:

> "* * * If the owner of personal property within a State resides in another State which taxes him for that property as part of his general estate attached to his person, this action of the latter State does not in the least affect the right of the State in which the property is situated to tax it also.* * *"

The courts of Missouri have followed the rule that if the property, tangible or intangible is used in a business in this state then it may be taxed.

In State ex rel. American Automobile Insurance Company v. Gehner, City Assessor, 8 S. W. (2d) 1057, 1064, the Supreme Court in banc announced the principle as follows:

> "So to make debts and credits taxable in a state other than that of the domicile of the owner they must be used in an established business, and the proceeds of that business must be under a management in such locality, with discretion in the manager as to its proceeds. Otherwise, the situs of such credits and debts for the purpose of taxation is the domicile of the owner."

Following the various authorities cited in the Gehner case, supra, the court announced the following general principle at l. c. 1064:

> "A simple debt is taxable in the domicile of the creditor, no matter where the debtor.
>
> "It cannot be taxed in a different domicile of the debtor; under the decisions

> cited from the United States Supreme Court, such a tax would be unconstitutional.
>
> "This applies to money deposited in bank, subject to check by the management of the home office.
>
> "It applies to debts, such as premiums due on insurance policies.
>
> "It applies to interest due from a nonresident on bonds or notes held by a citizen of this state."

The opinion was rendered by the court in banc in July 1928, however, from the later ruling of the Supreme Court of the United States, hereinafter referred to, we find that this rule has been modified to the extent that whether or not such intangible property is used in an established business, if that property receives some benefits from the state then the state may tax it at its situs.

In the case of Smith et al. v. Ajax Pipe Line Co., 87 Fed. Rep. (2d) (1937) which was before the Circuit Court of Appeals of the Eighth Circuit, the question of the authority of the Missouri Taxing officials to assess and tax a bank deposit of a company authorized to do business in Missouri, was before the court. The company had its office in Green County, Missouri; it was a Delaware corporation and the bank deposit sought to be taxed wasin a bank in New York. At, l. c. 569, the court in treating this question held: "Bank deposits are not physical--tangible--property but choses in action--indebtedness--intangible property." In this case the court also held that under the Fourteenth Amendment, it is necessary for a state to have jurisdiction over property in order to subject it to ad valorem taxation.

And at l. c. 569, the court said:

> "In determining this taxation 'jurisdiction', or situs, two opposed considerations--place of ownership and place of property location--have caused the

legal difficulties. In respect to realty, the solution has been simple. In the respect to personalty, the difficulty has been and is very real. This difficulty arises from the common-law rule of mobilia sequuntur personam which is broadly applied in many legal situations of which taxation is but one. But that legal principle is not unassailable. It is a court made rule designed to work out practical justice. (Citing cases) * * * * * * * * * * * * * * * * * Being such, it is pushed no further than the reason for its existence justifies and where justice requires a departure therefrom exceptions are made, both in other fields of law and in taxation. (Citing cases) * In the field of taxation, these exceptions are the result of changed economic and business conditions (Wheeling Steel Corp. v. Fox, 298 U. S. 193, 210, 56 S.Ct. 773, 777, 80 L. Ed. 1143) and have constituted a development running through many decisions of the Supreme Court.

"This development has followed two lines which are somewhat parallel. The divergence arises from the respective tangible and the intangible characters of the property. Since the matter of situs was the problem of location, the law has long declared the rule that physical location of tangibles within a state gave tax jurisdiction if such location be of such permanence that theproperty could properly be regarded as a part of the property in the state. The questions in that connection have to do with physical location and permanency of such location. (Citing cases)* * * * * * * * * * * * * * * * * * *

"However 'when we deal with intangible property, such as credits and choses in action generally, we encounter the difficulty that by reason of the absence of physical characteristics they have no situs in the physical sense, but have the situs attributable to them in legal conception.' Wheeling Steel Corp. v. Fox, 298 U. S. 193, 209, 56 S. Ct. 773, 776, 80 L. Ed. 1143. This 'legal conception' has been a development analogous to and later than that as to tangibles. Wheeling Steel Corp. v. Fox, supra, 298 U. S. 193, at page 210, 56 S.Ct. 773, 777, 80 L. Ed. 1143. At first, the tendency was to apply the domicile, or mobilia sequuntur personam principle on the theory of the difficulty of ascertaining separate property situs although taxation was permitted also in the state where separate situs could be determined--as in the case of mortgages. Union Refrigerator Transit Co. v. Kentucky, 199 U.S. 194, 205, 26 S. Ct. 36, 50 L.Ed. 150, 4 Ann. Cas. 493. The moving consideration back of allowance of such double taxation was the 'practical consideration of collecting the tax upon such property, either in the state of the domicil or the situs.' Union Refrigerator Transit Co. v. Kentucky, supra, page 205, of 199 U.S. 26 S.Ct. 36, 38, 50 L.Ed. 150, 4 Ann.Cas. 493. The next step--in analogy to tangibles (Safe Deposit & Trust Co. v. Virginia, 280 U.S. 83, 93, 50 S.Ct. 59, 61, 74 L.Ed. 180, 67 A.L.R. 386)--was to accord a local tax situs 'other than at the domicile of their owner, if they have become integral parts of some local business.'"

So it seems from the principle applied in the Ajax Pipe Line case, supra, that the intangible property, in order to be taxed at its situs, must have a commercial or business situs. The court in that case held that the Missouri authorities were authorized to tax this bank deposit at the domicile of the owner. The question of the authority to tax this deposit at its situs in New York was not passed on in that case.

The most recent announcement of the principle by the Supreme Court of the United States is under date of April 27, 1942, in the case of State Tax Commission of Utah v. Malcolm P. Aldridge et al. In that case the court applied the principle that intangibles may be taxed in the domicile of the owner as well as at its situs regardless of whether or not such situs is a business situs. This principle has not been applied by the Missouri courts. In fact the principle which has been followed by our Missouri courts has been that such property may be taxed at its situs if it is a business or commercial situs. Applying the latest principle laid down by the Supreme Court of the United States, if intangible personal property has a situs in the State of Missouri and receives some of the benefits of sovereignty of the state, then they would be taxable providing the mode of assessment and taxing has been set up by the Legislature.

As we understand your question, you particularly refer to a bank deposit which is owned by a nonresident. Bank deposits receive the protection of the Missouri laws and of the courts and we think this service is sufficient to authorize the state to impose a tax on such intangibles.

As stated in the Ajax Pipe Line case, supra, the relation of debtor and creditor exists between the depositor and the bank. The law requires that every person owning or holding property shall be liable for taxes. We fail to find any authority to support the principle that the bank is the holder of the depositor's property. We do not think that it could be said that the deposit in the bank could be classed as property under the care, charge or management of the banker and that it is the duty of the banker to list such property. The bank owes the depositor an amount of money--it is not any specific property.

On the question of whether or not Missouri has provided for the taxing of such intangibles, we refer to the principle announced in State ex rel. v. Kansas City Power and Light Company 145 S. W. (2d) 116, 120, wherein the court said:

> "It is conceded that under our system of taxation there can be no lawful collection of a tax until there is a lawful assessment and there can be no lawful assessment except in the manner prescribed by law and of property designated by law for that purpose.* * * * * * * *"

In that case the court held that the taxing authorities had not been provided with a lawful plan of assessment therefore the tax judgment was void.

CONCLUSION

It is therefore, the opinion of this department that intangible personal property such as bank deposits, deposited in Missouri banks could be taxed in Missouri if a plan for assessment were provided.

We are further of the opinion that no lawful plan of assessment of such intangibles is now provided under the laws of this state.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

TWB:AW