TAXES:
INTANGIBLE TAX:

Political subdivisions to which intangible tax is distributed.

December 10, 1946

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

Dear Sir:

This is in reply to yours of recent date wherein you request an official opinion from this department as follows:

> "It is requested that you furnish this department with a written opinion setting forth what political subdivisions, in the state of Missouri, will receive portions of the tax collected under House Bills Nos. 868, 869, 888 and 948."

Under Section 4 (a) of Article X of the Constitution of 1945, property for the purpose of taxes is classified into three classes, namely Class I, real property; Class 2, tangible personal property; Class 3, intangible personal property. The taxes deprived under House Bills Nos. 868, 869, 888 and 948 are in Class 3, namely taxes on intangible personal property.

Section 14 of H.C.S.H.B. No. 868 requires the Director of Revenue to return the amount of intangible taxes collected, less two per cent thereof, to the county treasury of the county in which the taxpayer is domiciled or in which the tangible property, subject to tax, had its business situs. This return of the Director includes a statement of the exact amount due each political subdivision by applying the local rates of levy.

Under House Bills Nos. 869, 888 and 948, the Director of Revenue is required to perform like duties with respect to the distribution of the taxes on intangible personal property collected under those bills. The mode of collection and distribution of the tax on intangibles is provided for in Section 4 (c) of Article X of the Constitution of 1945 which reads as follows:

> "All taxes on property in Class 3 and its subclasses, and the tax under any other form of taxation substituted by the

> general assembly for the tax on bank shares, shall be assessed, levied and collected by the state and returned as provided by law, less two per cent for collection, to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy." (Emphasis ours.)

The answer to your question will depend upon what the term "political subdivisions" includes. Section 15 of Article X of the Constitution of 1945, defining the term "other political subdivisions," is as follows:

> "The term 'other political subdivisions', as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax." (Emphasis ours.)

It will be noted that under said Section 4 (c) of Article X that the tax is distributed to the counties and other political subdivisions in proportion to the respective local rates of levy. It should also be noted that under the definition of the term "other political subdivisions" as defined in Section 15 of Article X that the term is confined to governmental bodies "having the power to tax."

Having the power to tax raises the question as to what type of tax may be levied and assessed. In other words, is it a tax for governmental purposes or is it a special benefit tax for certain groups or organizations which may be authorized to impose taxes as one of the political subdivisions named in Section 15, supra. It seems that our courts have distinguished between taxes levied under benefit assessments and taxes levied for governmental purposes. The Missouri Supreme Court, in the case of Morrison v. Morey, 146 Mo. 543, l.c. 564, in treating the question of the authority of a levee district to levy taxes for benefit purposes and in distinguishing these levies from levies for taxes for governmental purposes, said:

> "But while it is a public subdivision of the State and not a private corporation, it does not follow that the money to be raised from the landowners to carry out the objects intended, is a tax. It is an assessment which is justified by the

> benefit, public and private, conferred. The cost of the abatement of nuisances, for the construction of sewers or for the improvement of a street, may be assessed against the property benefited, notwithstanding the public and the owner are both interested. As a tax it would be unconstitutional, because not uniform (Const., sec. 3, art. 10) and because not in proportion to the value of the property (Const., sec. 4, art. 10) and because it is prohibited by the limitations of section 12 of article X of our Constitution, but being an assessment of benefits and in no sense a tax it is a constitutional exercise of the power of the State. * * *
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> "Assessments for the construction of levees to protect from overflow may be and usually are levied on lands bordering on the stream of water from which the danger is anticipated, and are properly benefits, as contradistinguished from taxes, and laws authorizing them are constitutional.* * *" (Emphasis ours.)

In a recent opinion by the Missouri Supreme court, in the case of Pearson Drainage District v. Erhardt, 196 S.W. (2d) 855, in considering the question of the jurisdiction of that court over a drainage district matter and passing on the question of whether revenue laws were involved, said:

> "It is stated in appellant's brief that this court has appellate jurisdiction for the reason the case requires a construction of the revenue laws of this state. We have ruled to the contrary in State ex rel. Broughton v. Oliver, 273 Mo. 537, 201 S.W. 868. In that case and at page 542 of 273 Mo., at page 870 of 201 S.W., we stated:
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> "'When the Constitution speaks of the "revenue laws of this state," as it does in section 12 of article 6, supra, it has reference to that body of laws by which funds for public governmental purposes are raised, and not to that law or body of laws by which are authorized the

> assessment of benefits to meet the expenses of given improvements. In other words, the two purposes make up separate schemes: (1) revenues for public governmental purposes, and the assessment, collection, and expenditure thereof; and (2) special assessments and their collection and expenditure. It is to the first class supra that the constitutional provision under review applies, and not to the latter.' Chilton v. Drainage District No. 8 of Pemiscot County, 332 Mo. 1173, 61 S.W. 2d 744."

Section I of Article 10 of the Constitution of 1945 provides as follows:

> "The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under power granted to them by the general assembly for county, municipal and other corporate purposes."

Applying the principal announced by the Missouri Supreme Court in the Pearson Drainage District case that the Constitution refers to the power to raise revenues for public governmental purposes by assessment and collection, then it would seem that the term "having the power to tax" under the definition of "other political subdivisions" would only include those political subdivisions which have the power to tax for public governmental purposes. Public governmental purposes would consist of taxes for county, municipal and other corporate purposes. Section 11 (b) of the Constitution of 1945 places a limitation on taxes by municipalities, counties, school districts for their respective purposes. Section 11040 of H.C.S.H.B. No. 468 names the taxes which may be assessed, levied and collected for public purposes. It reads as follows:

> "The following named taxes shall hereafter be assessed, levied and collected in the several counties in this state, and only in the manner, and not to exceed the rates prescribed by the Constitution and laws of this state, viz: The state tax and taxes necessary to pay the funded or bonded debt of the state, county, township, municipality, road district, or school district, the taxes for current expenditures for counties, township, municipalities, road district and school districts,

> including taxes which may be levied for library, hospitals, public health, recreation grounds and museum purposes, as authorized by law."

This section does not seem to contemplate taxes imposed by benefit assessments. The term "power to tax" as defined in Words and Phrases, Per. Ed., Vol. 33, page 162, is as follows:

> "The 'power to tax' means the power to take from the citizen a sum for the support of the government, whether that be national, state, or municipal. A power to license is not a power to tax. Hoefling v. City of San Antonio, 20 S.W. 85, 87, 85 Tex. 228, 16 L.R.A. 608."

In Vol. 136, A.L.R., page 554, the case of Altman v. Kilburn et al., 116 Pac. (2d) 812, New Mexico Supreme Court, is reported and in this case, at l.c. 560, the court said:

> "* * * This court has, in a number of cases, affecting irrigation assessments, distinguished such assessments from taxes. We said in Lake Arthur D. D. v. Field, 27 N. M. 183, 199 P. 112, in holding special assessments for such improvements on state lands not to be a tax in violation of Sec. 3 of Art. VIII of the N. M. Constitution: 'Specific assessment on property for improvements, based upon benefits, the cost of which is assessed against the property, is not a tax within the constitutional sense.'"

The court further said at l.c. 561:

> "It might clarify somewhat the confusion which appellee senses as having arisen from some language we have used in earlier cases, particularly the case of State ex rel. Lynch v. District Court of McKinley County, supra, which we say, as we now do, although in levying these paving assessments the municipality was acting in a governmental <u>capacity</u> nevertheless such assessments are not levied for governmental <u>purposes</u>, and are, therefore, not taxes. The municipality exercises a

> governmental function in levying the tax (for otherwise involuntary payment of such assessments could not be exacted), but it is not for a governmental purpose."

It would seem from these cases that the power to tax, as used in the Constitution, means the power to tax for governmental purposes.

Then, following that principal of law, we think the lawmakers and the framers of the Constitution, when they defined "other political subdivisions" and included the various political subdivisions in Section 15 of Article X of the Constitution, that they meant such political subdivisions that have "power to tax" for governmental purposes. That being the case, any political subdivision which only imposes a tax for benefit assessments would not be included in the political subdivisions to which the intangible tax would be distributed. The local rates of levy which are to be used by the Director of Revenue in making the distribution of the intangible tax collected under the foregoing acts passed by the 63rd General Assembly are the levies for the ad valorem tax which are imposed on all the real and personal property in the political subdivision. A political subdivision in some cases may be authorized under the law to levy ad valorem taxes on all real and personal property within its boundaries and also to levy benefit assessments. In such cases, only the local rates of levy for the ad valorem taxes, which are imposed on all of the real and personal property in the political subdivision, could be used for the purpose of determining the distributive share of the intangible tax.

From a reading of the debates of the Constitutional Convention on the subject of political subdivisions and of the taxation of intangible personal property, it appears that the writers of the Constitution did not intend to deprive any political subdivision of the benefits of the taxes on intangible personal property which it had been collecting by levy, prior to the adoption of the new Constitution. The debates further reveal that when said Section 15 of Article X of the Constitution of 1945 was being debated that the opinions of the various courts of the states were not in harmony on the question of what subdivisions were included in political subdivisions. For that reason, it seems that the framers of the Constitution attempted to make said Section 15 include all subdivisions which had power to levy a tax. Political subdivisions which only had authority to levy benefit assessments would not be included.

CONCLUSION

From the foregoing, it is the opinion of this department that political subdivisions of the state, which have authority to impose ad valorem taxes on all the real and personal property in the political subdivision, which taxes are derived by a local rate of levy, would be entitled to a distributive share of the intangible tax collected by the Director of Revenue. We are further of the opinion that political subdivisions, which only assess benefit taxes which are not based on a local rate of levy, would not be entitled to a distributive share of the intangible tax based on the levies imposed for benefit taxes. However, if a political subdivision levies both a local rate and a benefit tax, then such political subdivision would be entitled to the portion of the intangible tax on the basis of the local rate of levy which it imposes on all of the real and personal property within its boundaries. From an examination of the statutes, we find the following political subdivisions which are authorized to levy taxes and which would be political subdivisions to which the intangible tax would be distributed: townships, cities, towns or villages, school districts, special road districts, except benefit assessment districts authorized to levy benefit assessments under Section 8720, R. S. Mo. 1939, public water supply districts, Sections 12624 and 12631, R. S. Mo. 1939, sewer districts in certain counties under Sections 12647 and 12649, R. S. Mo. 1939, library tax, Senate Bills Nos. 370 and 160 of the 63rd General Assembly. We further find the following political subdivisions are only authorized to impose benefit assessments in which cases the intangible tax would not be distributed to such division: levee districts organized by circuit courts under Chapter 79, Article 5, R. S. Mo. 1939, in which the tax is levied on the portion of benefits on all lands, railroad property to which benefits are assessed, under Sections 12511, 12535, and 12538 of R. S. Mo. 1939; levy districts formed by county courts under the provisions of Article 8 of Chapter 79 of R. S. Mo. 1939 and especially by the provisions of Sections 12557 and 12565 which are benefited by the improvement authorized under the organization of such levy district. Under Article 11 of Chapter 79, R. S. Mo. 1939, and especially Section 12619 thereof, a tax is authorized to be levied for the purpose of paying tax anticipation warrants issued by drainage or levee districts hereinbefore referred to. Since this tax is in the nature of a benefit tax, the district levying such a tax would not be authorized to demand a portion of the intangible tax when distributed.

APPROVED:

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Attorney General

Respectfully submitted,

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