TAXATION: Senate Bill No. 179 adopted by the 70th General Assembly relating to the assessment and taxation of the flight equipment of airline companies does not govern the manner, method, and procedure for the assessment of such flight equipment of said companies for the year 1959.

August 11, 1959

FILED
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Mr. James M. Robertson, Chairman
State Tax Commission of Missouri
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion, which request reads as follows:

> "The Seventieth General Assembly of Missouri, while in session, enacted Senate Bill No. 179 providing for the taxation of the flight equipment of Airline Companies. The Tax Commission is given the duty of assessing such property and distributing the valuation to the appropriate taxing jurisdictions. The Governor has signed the bill and it will become law during the year 1959.
>
> "Request is hereby made for an opinion as to whether or not the flight equipment of Airline Companies should be assessed and taxed under the provisions of Senate Bill No. 179 for the year 1959."

Senate Bill No. 179 adopted by the Seventieth General Assembly, to which you refer, establishes a scheme for the valuation and taxation of the flight equipment of airline companies operating in this state. Without going into detail it provides for the aggregate valuation for tax purposes of the flight equipment of airline companies operating within this state by the State Tax Commission and an apportioning of these values by said Commission under a prescribed formula to the various enumerated taxing authorities. Thereafter, taxes are to be levied on all flight equipment covered by said bill in the manner provided for the taxation of railroad property. See Chapter 151, V.A.M.S. relating to the taxation of railroad property.

Other pertinent parts of said bill will be discussed herein as the same may become necessary to a proper determination of the question presented.

Mr. James M. Robertson

Senate Bill No. 179, which has already been approved by the Governor, does not contain an emergency clause and therefore will not become effective until August 29, 1959, which date is ninety days after the close of the legislative session.

You inquire whether or not the flight equipment of airline companies should be assessed and taxed under the provisions of said bill for the year 1959. Suffice it to say that said bill does not specifically provide whether or not said property is to be assessed under its provisions for the year 1959.

We are faced at the outset with the question as to whether said bill would, if held applicable to the assessment and taxation of flight equipment for the year 1959, contravene that portion of Article I, Section 13, of the Missouri Constitution, prohibiting the enactment of laws retrospective in operation. Said constitutional provision provides:

> "That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

In the case of Reed vs. Swan, 133 Mo. 100, 108; 34 S.W. 483, 484, the Supreme Court of Missouri quoted with approval the following definition of a retrospective law:

> "'Every statute which takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions already past must be deemed retrospective.'"

See also Smith vs. Dirckx, 223 S.W. 104 at 106; Lucas vs. Murphy, 156 S.W. 2d 686, 690; and Barbieri vs. Morris, 315 S.W. 2d 711, 714, wherein the same definition was adopted by the Supreme Court.

The Supreme Court of this state has exhibited a distinct tendency to construe taxing statutes so as to render their operation prospective only. In the case of Smith vs. Dirckx, 223 S.W. 104, it was held that a 1919 amendment to the state income tax laws which was approved May 6, 1919, and which increased the rate from one-half of one per cent to 1 1/2 per cent was violative of Article I, Section 13, insofar as it applied to net income received prior to the effective date of the amendment. See also State ex rel. vs. Southwestern Bell Telephone Company, 292 S.W. 1037, relating to corporate income taxes.

In the case of First National Bank of St. Joseph vs. Buchanan County, 356 Mo. 1204, 205 S.W. 2d 726, the court held that the Bank Tax Act of 1946 which became operative July 1, 1946, and which operates as a substitute tax for the personal property tax was retrospective in its operation insofar as it purported to apply to the whole year 1946 and could not be effective "in any event" prior to the effective date of the act.

Lastly in the case of In re Armistead, 245 S.W. 2d 145, 362 Mo. 960, the court held that an assessment for the year 1947 under the Intangible Personal Property Tax Act, which act became effective July 1, 1946, and which assessment was based upon the yield for the preceding year, violated Article I, Section 13, insofar as it took into consideration yield prior to the effective date of the act.

Prior to the effective date of Senate Bill No. 179, the property encompassed by said bill was subject to assessment by the local authorities as other local property is assessed.

It is of course fundamental that the local assessment of property must be predicated upon presence within the taxing jurisdiction on the assessment date. Probably under the new act some property would be included in the aggregate valuation fixed and determined by the State Tax Commission for tax purposes which would have escaped taxation under the law existing prior to the effective date of Senate Bill No. 179 because located outside the taxing jurisdiction on the assessment date. Further where under the existing law, an airline company would report their property to the local assessing officials, they are required under the provisions of Senate Bill No. 179 to report their flight equipment to the State Tax Commission.

We note also that Senate Bill No. 179 provides that the Commission shall make an apportionment to a municipality which owns and operates an airport outside of its corporate limits.

The foregoing matters considered, we are of the opinion that Senate Bill No. 179 does impose new duties and create new obligations and if construed to be applicable for the year 1959, it would be in violation of the constitutional prohibition against the enactment of retrospective laws.

We here note Section 2 of said bill which requires the president or other authorized official of an airline company operating in air commerce in this state to file "each and every year" on or before the first day of May, a report containing certain specified information with the State Tax Commission. It is principally and primarily upon the information contained in this report that the assessment is made. Since the bill will not become effective until August 29, 1959, it would, of course, be impossible to comply with the foregoing provisions. Considered

as a whole, we are of the opinion that it was not the intention of the General Assembly in enacting said bill that it should govern the assessment and taxation of the flight equipment of airline companies for the year 1959.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that Senate Bill No. 179 adopted by the Seventieth General Assembly relating to the assessment and taxation of the flight equipment of airline companies does not govern the manner, method, and procedure for the assessment of such flight equipment of said companies for the year 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

DDG:gm