TAXATION: Scheme of taxation of national and domestic banking corporations provided in House Bill No. 888 is in lieu of all other taxes which might be imposed upon the tangible and intangible personal property of such corporations.

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April 30, 1946

Honorable William T. Shirley
Prosecuting Attorney
Adair County
Kirksville, Missouri

Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

> "I see by the morning paper that House Bill No. 888 has been passed by the House and signed by the Governor.
>
> "Section 11 provides 'It is the purpose and intent of the General Assembly to substitute the tax provided by this Act for the tax on bank shares which was imposed by Section 10959, Revised Statutes of Missouri, 1939, and for all taxes on all tangible and intangible personal property of all banking institutions subject to the provisions of this Act, and for all property taxes on the shares of such banking institutions'.
>
> "Query. Should tangible personal property of banking institutions such as fixtures be included in the assessment lists that they are to return to the County Assessor at this time?"

House Bill No. 888, referred to by you in your letter of inquiry, was signed by the Governor on the 23rd day of April, 1946. It does not become operative, however, until July 1, 1946, as is provided by Section 13 of the Act.

The rule with respect to the construction of statutory enactments has been declared by the Supreme Court of Missouri in the case of American Bridge Co. v. Smith, 179 S. W. (2d) 12, l. c. 15, from which we quote:

> "'The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and "the manifest purpose of the statute, considered historically," is properly given consideration.' Cummins v. Kansas City Public Service Co., 334 Mo. 672, 66 S. W. 2d 920, 925; Artophone Corporation v. Coale, 345 Mo. 344, 133 S. W. 2d 343."

In accordance with this rule, we think it might be well to examine the historical background of Section 10959, R. S. Mo. 1939, which is referred to in Section 11 of House Bill No. 888. Such statute reads, in part, as follows:

> " * * * Persons owning shares of stock in banks, or in joint stock institutions or associations doing a banking business, shall not be required to deliver to the assessor a list thereof, but the president or other chief officer of such corporation, institution or association shall, under oath, deliver to the assessor a list of all shares of stock held therein, and the face value thereof, the value of all real estate, if any, represented by such shares of stock, together with all reserved funds, undivided profits, premiums or earnings and all other values belonging to such corporation, company, institution or association; and such shares, reserved funds, undivided profits, premiums or earnings and all other values so listed to the assessor shall be valued and assessed as other property at their true value in money, less the value of real estate, if any, represented by such shares of stock, less, also, the value of stock in other corporations held by such bank or joint stock institution or association doing a banking business: Provided, however, that no deduction shall be allowed on account of stock in any one manufacturing or

> business company in excess of forty per cent of the capital, surplus and undivided profits of such bank or joint stock institution or association doing a banking business. Private bankers, brokers, money brokers and exchange dealers shall make like returns and be assessed and taxed thereon in like manner as hereinbefore provided: * * * "

In construing a prior enactment of this statute, which appeared as Section 12775, R. S. Mo. 1919, the Supreme Court of Missouri said in State ex rel. v. Gehner and State ex rel. v. Same (combined cases), 5 S. W. (2d) 40, l. c. 45:

> "The history, development, and purpose of the foregoing legislation, federal and state, respecting the assessment and taxation of shares of the capital stock of banking corporations, has been thoroughly and exhaustively reviewed in the prior decisions of this court. State ex rel. Miller v. Shryack, 179 Mo. 424, 78 S. W. 808; State ex rel. Koeln v. Lesser, 257 Mo. 310, 326; 141 S. W. 888; State ex rel. Campbell v. Brinkop, 238 Mo. 298, 143 S. W. 444; State ex rel. Johnson v. Buder, 295 Mo. 65, 242 S. W. 979; State ex rel. Orr v. Buder, 308 Mo. 257, 271 S. W. 508, 39 A. L. R. 1199.
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> "In State ex rel. Miller v. Shryack, supra, Marshall, J., speaking for this division of this court, in discussing the purpose and intent of our state statute aforesaid, said (179 Mo. loc. cit. 440 (78 S. W. 813)):
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> "'The conclusion is inevitable that the true meaning of the act of 1895 (now section 12775, R. S. Mo. 1919) is, that the real estate shall be assessed against the (bank) corporation, the personal property of the corporation shall not be assessed at all, and the shares of stock shall be assessed in the names of the shareholders. Thus the domestic (bank) corporations and the national banks are put on the same basis, there is no discrimination and the letter and form and substance of the power conferred by the federal statute are observed. The bank in question is a domestic

bank, but the law is the same as to it that it is as to national banks. After the assessment is thus made against the shares of stock in the names of the shareholders, it is legal to make the bank pay the tax and recover it from the stockholders. Section 9155, R. S. 1899; First National Bank v. Commonwealth, 9 Wall. 353 (19 L. Ed. 701); Aberdeen Bank (First Nat. Bank) v. Chehalis Co., 166 U. S. 440, 17 S. Ct. 629, 41 L. Ed. 1069).' (Parentheses ours.)

"In State ex rel. Orr v. Buder, 308 Mo. 257, 244, 271 S. W. 508, 509 (39 A.L.R. 1199), White, J., speaking for this court, in banc, said:

"'Section 12775, Revised Statutes 1919, for the purpose of taxation, divides corporations into two classes; it provides that "the property of manufacturing companies and other corporations named in Article VII, Chapter 90, * * * shall be assessed and taxed as such companies or corporations in their corporate names." It then provides that banks and other institutions doing a banking business shall list to the assessor all shares held therein at their face value, and the value of the real estate represented by such shares of stock, and "all other values", belonging to such corporation. The real estate owned by such corporation is assessed to the corporation, and "all other values" so listed are valued at their "true money value", as the values represented by such shares of stock, for the purpose of taxing them. The tax on such shares is first paid by the corporation which is reimbursed by the shareholders. Thus the shares in (the) corporations first mentioned are not taxed, but the corporations pay the tax on all taxable property held by them. The tax on shares of stock in banks, and in associations doing banking business, is paid by the shareholders. Under an Act of Congress, a state is authorized to tax the shares in national banks at their actual value. Van Allen v. Assessors, 3 Wall. 573 (18 L. Ed. 229); State ex rel. v. Shryack, 179 Mo. l. c. (loc. cit.) 439 (78 S. W. 808); State ex rel. v.

Lesser, 237 Mo. l. c. (loc. cit.) 326 (141 S. W. 888). Under the authority of that Act of Congress, section 12775, Revised Statutes (Mo.) 1919, provides for taxing shares of stock in a bank, or an association doing banking business, in the manner mentioned.'" (Emphasis ours.)

Examining House Bill No. 888 in connection with this previous construction placed upon Section 10959, R. S. Mo. 1939, referred to in the Act itself, we discover a close similarity. The more important changes are simply to require the filing of the return of taxable property with the director of revenue rather than with the local assessor, and the enactment of some additional clarification matters relating to the computation of income and the allowance of deductions. We reach the conclusion that the intent and purpose of the Act was simply to transfer from the local assessor to the director of revenue the duties imposed with respect to the assessment of the corporation owned property and to specifically enumerate items of income and of deductions which might be charged thereagainst in order to determine the proper valuation for imposition of the tax. No substantial change appears with respect to the method of computing the tax itself, and with respect to the tangible and intangible personal property owned by the corporation the statement found in Section 11 of House Bill No. 888 is but declaratory of what had been the law for many years, as exemplified in the Gehner case, cited supra. Said Section 11 has been quoted by you verbatim in your letter of inquiry and is not set out herein again.

CONCLUSION

In the premises, we are of the opinion that the tangible personal property of either domestic or national banking institutions is not to be included in the assessment lists to be returned to the county assessor, in view of the declaration of the General Assembly, found in Section 11 of House Bill No. 888, that the tax imposed under other sections of such Bill is to be in substitution of "all taxes on all tangible and intangible personal property of all banking institutions subject to the provisions of this Act."

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB:HR