

TAXATION:  
TANGIBLE PERSONAL  
PROPERTY:

The "in lieu" provisions in Sections 148.120 to 148.230, RSMo 1949, exempting Credit Institutions from paying tangible, personal property taxes are unconstitutional.



November 12, 1952

11/17/52 ✓

Honorable Henry H. Fox, Jr.  
Prosecuting Attorney  
Jackson County  
Kansas City, Missouri

Dear Mr. Fox:

This will be the opinion you requested whether Credit Institutions are liable for tangible personal property taxes for state, county and school purposes as owners of repossessed automobiles. Your letter requesting the opinion reads as follows:

"Several credit companies own thousands of automobiles which have been repossessed. They have been to the delinquent personal tax attorney of Jackson County, Missouri requesting receipts in order that they might purchase Missouri state license for such automobiles owned by them.

"Would you please advise whether these individuals and corporations are subject to a personal property tax for State, County and School purposes. In the event this is not necessary it would result in a large loss of revenue."

Your letter states that credit companies own large numbers of repossessed automobiles in Jackson County, Missouri. Your letter indicates, although it does not so state in terms, that individuals also in Jackson County, as well as credit companies, own certain repossessed automobiles upon which taxes are not paid in your county by the owners.

Correspondence with your office and with counsel for at least one of such credit corporations, and conferences with the delinquent tax attorney for Jackson County, reveal that such credit companies, doing business in Kansas City, Missouri, contend that, as they view the statutes, they are

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not liable for ad valorem taxes on their tangible personal property owned by them in this state, including repossessed automobiles, for state, county or school purposes, and state that application has been made by one credit corporation to the County Collector of said Jackson County at Kansas City, Missouri, for a certificate to the effect that no personal property taxes are due on its automobiles in Jackson County, Missouri. Automobiles are, under Subsection 3 of Section 137.010, RSMo 1949, to be defined as tangible personal property. The ultimate purpose of the credit companies being, it is said, if such certificate that no taxes are due be issued and transmitted to the applicant by the Collector, under Section 2 of House Bill 211, enacted by the 66th General Assembly, to use such certificates in the purchase of licenses for the automobiles it operates in the State of Missouri and which it desires to continue to operate in this State.

The County Collector of your county, we are advised, has declined to issue and transmit such certificate or certificates to the credit companies involved.

It is the opinion of this Department, and we so hold, that the County Collector is correct in his interpretation of the taxation law as contained in the Constitution and the statutes of this state, and that the Collector is not required by law to issue such certificates and transmit the same to such companies.

We are informed by counsel for one credit institution that it is their opinion that that credit company, and credit institutions, generally in this state, are "not subject to taxes other than those provided for in Sections 148.120 through 148.230, RSMo 1949."

The particular ground upon which credit institutions rely, it is said, in taking their position, is that they are made exempt from all tangible and intangible personal property taxes and all property taxes on the shares of such credit institutions by Section 148.230 of said Chapter which section reads as follows:

"148.230. Tax in lieu of certain other taxes.-- It is the purpose of the general assembly to substitute the tax provided by sections 148.120 to 148.230 for all

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taxes on all tangible and intangible personal property of all credit institutions subject to the provisions of said sections and for all property taxes on the shares of such credit institutions."

We observe at once, upon reading said Section 148.230, supra, that it is an "in lieu" or "substitution" statute; in other words, an "exemption" statute.

In the case of "credit institutions" the tax exemption or "in lieu" sections, in particular, are Sections 148.140 and 148.230, RSMo 1949. We have already quoted Section 148.230. Section 148.140, reads as follows:

"148.140. Credit institutions subject to annual tax--rate--credits.-- 1. Every credit institution as herein defined shall be subject to an annual tax for the privilege of exercising its franchise within the state of Missouri, according to and measured by its net income for the preceding calendar year.

"2. The rate of tax for each taxable year shall be seven per cent of such net income.

"3. Each taxpayer shall be entitled to credits against the tax imposed by sections 148.120 to 148.230 for all taxes paid to the state of Missouri or any political subdivision thereof during the relevant income period, other than taxes on real estate, contributions paid pursuant to the unemployment compensation tax law of Missouri and taxes imposed by said sections."

Section 148.230, supra, exempting Credit Institutions from property taxes on their tangible and intangible personal property has not been construed by the Courts of Missouri as to its constitutionality, nor have any of such "in lieu" sections, exempting other institutions named in said chapter from paying personal property taxes based on value, been construed by our Courts, except Sections 148.370 and 148.240 of said chapter relating to insurance companies.

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We are not concerned here with the terms of the sections of said chapter, except Sections 148.120 to 148.230, affecting credit institutions, and Sections 148.370 and 148.340 relating to tangible and intangible personal property taxes of domestic and foreign insurance companies, respectively. These sections must be considered together in our construction of their related terms in our determination of the questions submitted to us.

We are necessarily concerned with the terms of said Sections 148.370 and 148.340, as the "in lieu" sections exempting insurance companies from the payment of taxes on intangible personal property in Missouri by the payment, in lieu of a property tax, a 2% annual tax on the gross premiums of both domestic and foreign insurance companies, in the construction we must give to the "in lieu" provisions contained in Sections 148.120 to 148.230, relating to Credit Institutions, since our Supreme Court has construed and held invalid the "in lieu" provisions of said Sections 148.370 and 148.340.

The case of General American Life Insurance Company, et al. vs. Bates, et al., 249 S.W. (2d) 458, involving this precise question, was before the Supreme Court of this State for its decision on the validity of such "in lieu" provisions of said Sections 148.370 and 148.340 as exemption statutes relating to insurance companies, as measured by the terms of Section 6 of Article X of the present Constitution of this State. The construction given such statutes and the decision rendered by the Court in such "in lieu" statutes relating to insurance companies, holding such provision invalid, control us here in our construction of the "in lieu" provisions of Sections 148.120 to 148.230 and make it imperative for us to follow the decision of the Court in the General American case, in the preparation of, and to say, in our conclusion to, this opinion, that the "in lieu" provisions of Sections 148.120 to 148.230, provisions of like nature and of like purpose and effect as were the "in lieu" provisions of Sections 148.370 and 148.340, are unconstitutional and void because said "in lieu" sections are in conflict with Section 6, Article X of the Constitution of this State, 1945, which, as said by the Court, quoting from Section 6, l.c. 461, "after enumerating said property as proper subject matter for exemption from taxation, \* \* \* provides:

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'\* \* \* All laws exempting from taxation property other than the property enumerated in this article, shall be void.'

The General American Insurance case was an action filed by the insurance company of that name in the Circuit Court of Cole County, Missouri for a declaratory judgment against the Director of Revenue and another to enjoin the collection of intangible personal property taxes levied against that company.

Another insurance company and others intervened in the case. The Circuit Court of Cole County held the two statutes involved, constitutional. The defendant state officers appealed to the Supreme Court. The opinion is not yet published in the permanent reports, but is reported in the July 29th issue of the S.W. (2d) Advance Sheets. We will refer to and quote here the principal holdings of the Court.

The Court held that intangible taxes of insurance companies were property taxes and that no "in lieu" statute, in effect providing for an excise tax, could create an exemption to relieve such companies from paying intangible personal property taxes by substituting therefor another kind of tax. Subsections 1 and 2 of said Section 148.140 directly provide that the 7% annual tax to be paid by credit institutions in lieu of all other tangible or intangible personal property shall be an excise tax for the privilege of carrying on their business in this State.

The Court, in defining excise taxes, l.c. 462, said:

"(1-3) We consider the nature of the tax before taking up respondents' cases most directly in point. Taxes fall into three natural classifications; capitation or poll taxes, taxes on property, and excises. \* \* \* Excises include ' \* \* \* every form of taxation which is not a burden laid directly upon persons or property; in other words, excises include every form of charge imposed by public authority for the purpose of raising revenue upon the performance of an act, the enjoyment

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of a privilege, or the engaging in an occupation." \* \* \* \*".

Discussing cases cited by respondents, and their effect, the Court, further speaking of excise taxes, l.c. 462, said:

"(4) Respondents' case of *Stouffer v. Crawford*, Mo. Sup., 1923, 248 S.W. 581, 585 (10), involved Laws 1919, p. 718, which repealed and reenacted certain sections of the income tax law of 1917, Laws 1917, p. 524, and under Sec. 7, Laws 1919, p. 719, imposed an income tax of 1- $\frac{1}{2}$ % on corporations, except, so far as involved, 'insurance companies which pay an annual tax on their gross premium receipts in this state.' Foreign insurance corporations were required to pay an annual tax of 2% on premiums received on business done in this state 'in lieu of all other taxes, except as in this article otherwise provided.' Sec. 6387, R.S. 1919, from Laws 1895, p. 198, Sec. 2, Sec. 5958. The statement in *Stouffer v. Crawford* to the effect that the tax on the gross premium income of insurance companies in lieu of other taxes had been upheld, read in the light of the supporting citations, is not a holding that said tax was in lieu of 'property' taxes. Further, income taxes are not property taxes, and have been considered to be in the nature of an excise tax. 27 Am. Jur. 309, n. 8; 42 C.J.S., Income, page 536; *Bacon v. Ranson*, 331 Mo. 985, 56 S.W. (2d) 786, 787."

The Court, l.c. 461, referring to and quoting Sections 3 and 4 of the Constitution of 1945, classifying property for taxation, said:

"Sections 3 and 4 of Art. 10 Mo. Const. 1945, 1 Mo. R.S. 1949, p. 80, bear upon the issues and are quoted here.

"Section 3. \* \* \* uniformity \* \* \* Taxes \* \* \* shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. \* \* \* ."

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"Section 4(a). Classification of taxable property--taxes on franchises, incomes, excises and licenses.--All taxable property shall be classified for tax purposes as follows: class 1, real property; class 2, tangible personal property; class 3, intangible personal property. The general assembly, by general law, may provide for further classification within classes 2 and 3, based solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned. Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types.

"Section 4(b) Basis of assessment of tangible property--taxation of intangibles--limitation.--Property in classes 1 and 2 and subclasses of class 2 shall be assessed for tax purposes at its value or such percentage of its value as may be fixed by law for each class and for each subclass of class 2. Property in class 3 and its subclasses shall be taxed only to the extent authorized and at the rate fixed by law for each class and subclass, and the tax shall be based on the annual yield and shall not exceed eight per cent thereof.

"Section 4(c). Assessment levy, collection and distribution of tax on intangibles.--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."

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The Court held in the General American case, as we have seen, l.c. 462, that the case involved a property tax, expressly so designated in Section 4 of Article X of the Constitution, and made subject to specific constitutional inhibitions. The Court, holding that the "in lieu" provisions in Sections 148.370 or 148.340, could not exempt insurance companies from paying intangible personal property taxes by the payment of the 2% annual gross premium tax, l.c. 464, said:

"(6,7) We conclude on this the first and principally contested, issue that the 'in lieu' statute contravenes constitutional inhibitions, including that prohibiting the exemption of property from taxation, because:

"Under the 'in lieu' statute no 'tax upon intangible personal property' is exacted of respondents. 'Intangible personal property' constitutes 'Class 3' of the classes of property subject to tax under Sec. 4, quoted supra, of the constitution. The intangible personal property tax act imposes a tax on property. The other two classes of property under said Sec. 4 are 'real property' and 'tangible personal property'; and the General Assembly is authorized to further classify 'tangible' and 'intangible' personal property 'solely on the nature and characteristics of the property' by general law. While 'real property' and 'tangible personal property' are to be assessed on the basis of value, the tax on 'intangible personal property' 'shall be based on the annual yield,' not exceeding 8% thereof. The 2% premium tax of the 'in lieu' statute is not a tax on intangible personal property. Said statute does not classify intangible personal property 'solely on the nature and characteristics of the property.' The tax is not 'based on the annual yield.' It is not a property tax. It is an excise, or occupation, tax, imposed upon the privilege of conducting the business authorized under Arts. 2, 7, 17 and 6, of Ch. 37, R.S. 1939, Sections 376.010 et seq., 379.010 et seq., 379.205 et seq., 381.010 et seq., RSMo 1949,

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V.A.M.S., in this state. \* \* \* This distinction between property and excise taxes is recognized in the provision of said Sec. 4(a) reading: 'Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types.'

"Section 6, Art. 10, Mo. Const. 1945, effects two constitutional classes of property: (1) taxable, and (2) exempt. The 'in lieu' statute Laws 1945, p. 1023, exempts from the intangible personal property tax act, Laws 1945, p. 1914, the intangible personal property of respondents; and in so doing is an unauthorized attempt to reclassify as exempt property not enumerated in said sec. 6 as exempt but which is there constitutionally classified as taxable property. This, it has been held, the lawmaking power may not do. \* \* \* ."

We believe credit companies stand precisely in the same position under Sections 148.120 to 148.230 with respect to the unconstitutionality of the "in lieu" provisions of such statutes as did insurance companies under the "in lieu" provisions of Sections 148.370 and 148.340 which "in lieu" provisions of Sections 148.370 and 148.340 the Court held unconstitutional in the General American case. The attempted exemption of credit institutions and insurance companies from paying tangible and intangible personal property taxes respectively, by reason of such respective "in lieu" statutes express the same intended purpose and effect to exempt such respective institutions and companies from paying property taxes, and to establish such exemptions by such statutes as the public policy of this State.

The Supreme Court in the General American Insurance case, held such "in lieu" statutes unconstitutional on both of two grounds, first, on the ground that the two per cent tax was derived from gross annual premiums, and therefore an excise tax, as held by the Court, and which could not avail as a substitute statute to exempt insurance companies from the payment of taxes on intangible personal property, and, second, that the insurance "in lieu" statutes, 148.370 and 148.340 exempting insurance companies from personal property taxes, are in direct conflict themselves, independently,

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with Section 6 of Article X of the present Constitution of this State which expressly prohibits the Legislature from exempting from taxes any property not authorized by name in said Section 6 of Article X. The same result was reached by the Court in either event. And so here, under the clear and comprehensive decision of the Supreme Court in the General American case, where the Court held the "in lieu" provisions of Sections 148.370 and 148.340 unconstitutional, likewise the provisions of Sections 148.120 to 148.230, inclusive, in the Credit Institutions Act, must be and are, upon the same grounds, in our opinion, unconstitutional.

The Court, finally concluding its opinion, l.c. 467, said:

"Accordingly, the judgment is reversed and the cause is remanded with directions to enter judgment holding the 'in lieu' portion of the statute unconstitutional and the "yield" statute applicable."

Considering the decision of our Supreme Court in the General American case, and the conditions of fact existing in the question submitted to us, and, considering the "in lieu" provisions contained in said Sections 148.120 to 148.230, inclusive, in the Credit Institutions Act of 1946, whereby such provisions exempt from taxation the tangible personal property of credit institutions, by providing for the payment in lieu of such taxes a 7% tax rate in each taxable year upon the net income of such institutions for the preceding calendar year, it is apparent that such "in lieu" provisions contained in said Sections 148.120 to 148.230, inclusive, in the Credit Institutions Act of 1946, are unconstitutional and void, because such provisions are in conflict with Section 6 of Article X of the 1945 Constitution of Missouri. It is plain also that all tangible personal property in this State owned by credit institutions on the first day of January of each year is subject to tangible personal property taxes according to the value thereof under the taxation statutes of this State.

#### CONCLUSION.

It is, therefore, the opinion of this department, considering the premises, that the in lieu provisions of Sections 148.120 to 148.230, RSMo 1949, exempting tangible personal property of credit institutions from paying personal property taxes are unconstitutional and void; that credit

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institutions owning tangible personal property in this State on the first day of January each year are subject to personal property taxes thereon for state, county and school purposes for the ensuing year.

Respectfully submitted,

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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