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TAXATION OF ACCOUNTS OF  
CREDIT UNIONS, H.B. 407,  
64th GENERAL ASSEMBLY:

TAX RETURNS:

(1) It is mandatory under H.B. 407, 64th General Assembly, Laws Mo. 1947, page 236, for credit unions to file tax returns on calendar year basis. (2) Tax is to be computed on basis of dividends accruing at the end of the fiscal year occurring in the preceding calendar year. (3) Said H.B. 407 is unconstitutional, in so far as it provides for a 1947 tax based upon dividends declared on Sept. 30, 1946, which last mentioned date was prior to July 1, 1947, the effective date of said H.B., but is constitutional as to taxes for 1948 and succeeding years.

February 5, 1948

Honorable Haskell Holman, Supervisor  
Income Tax Unit  
Division of Collection  
Department of Revenue  
Jefferson City, Missouri

7/9



Dear Sir:

We are in receipt of your letter of recent date, in which you request a written opinion of this department. Your letter is as follows:

"It is requested that you furnish this department with a written opinion stating whether or not it is mandatory for Credit Unions in the State of Missouri to file tax returns on the calendar year basis under House Bill 407 as passed by the 64th General Assembly."

We have supplementary verbal information from you to the effect that the question is whether it is mandatory that the return be based on the calendar year as distinguished from the fiscal year, and that you would like for the opinion to cover in a general way the method of computation of the tax and also the constitutionality of the act in so far as it provides for a 1947 tax.

In order to arrive at an answer to these questions presented, it is necessary to consider House Bill No. 407 in the light of other sections of the Credit Union Law. Section 5527, R.S. Mo. 1939, contains the following provision:

"The credit union fiscal year shall end at the close of business on the thirty-first day of December. \* \* \*"

Under this section, therefore, the fiscal year coincided entirely with the calendar year. This section was in full force and effect until repealed by an act of the Legislature approved May 14, 1945. This last mentioned act enacted a new Section 5527 in lieu of the section last above quoted, which new section contains the following language (Section 5527, Laws of Missouri, 1945, page 692):

"The credit union fiscal year shall end at the close of business on the thirtieth day of September. \* \* \*"

Section 5538, R.S. Mo. 1939, which section has never been repealed, contains the following language:

"At the close of the fiscal year a credit union may declare a dividend from the net earnings. \* \* \*"

Section 5542, R.S. Mo. 1939, provides as follows:

"All parties holding stock or shares as owners or in trust in any credit union in this state \* \* \* shall be required to give a just and true list of the same to the assessor, with the actual cash value of each share on the first day of June of each year, and the tax shall be levied upon such shares, and collected from such holder or depositor of the same, as taxes on other personal property; \* \* \*"

House Bill No. 407, now under consideration, repeals this last mentioned Section 5542 and enacts a new Section 5542 in lieu thereof. Section 8 of this new section, being Section 8 of House Bill No. 407, provides as follows:

"This act shall constitute a classification of accounts of credit unions as intangible property, and the annual tax imposed hereby upon the dividends declared and credited to an account, which shall be the annual yield from such account, shall be in lieu of all general property taxes upon their intangible property."

The above mentioned act of May 14, 1945, which, as aforesaid, fixed the end of the credit union fiscal year at the close of business on September 30th, having no emergency clause, had not become effective at the close of business on December 31, 1945, the time when according to the old Section 5527, R.S. Mo. 1939, the fiscal year of 1945 should end, and accordingly the

fiscal year of 1946 commenced immediately thereafter, or, to be more explicit, at the close of business on December 31, 1945. However, the said act of May 14, 1945, had become effective before the close of business on September 30, 1946, the time fixed thereby for the ending of the credit union fiscal year, and accordingly the credit union fiscal year of 1946, which had started at the close of business on December 31, 1945, ended at the close of business on September 30, 1946, covering only a nine months' period.

Having this background in mind, we come to a consideration of House Bill No. 407, Laws of Missouri 1947, Vol. I, page 236, in its entirety. It is clearly apparent that the general objective of this House Bill No. 407, new Section 5542, was the repeal of old Section 5542, R.S. Mo. 1939, providing for a personal property tax on the shares of stock in credit unions and the enactment of a provision for a tax on the taxable portion of the dividends earned by said shares. As indicated by Section 8 of said act above quoted, the new act classifies accounts of credit unions as intangible property.

Section 3 of the act imposes on each person holding an account in a credit union an annual tax of two percent of the taxable portion of the dividend declared and credited to the account of that person "in the preceding year." (Under-scoring ours.) We must first determine what the term "in the preceding year" means as used by said Section 3. We are of the opinion that the term "in the preceding year" means in the preceding calendar year, because we believe it to be a well recognized principle of statutory construction that when a term is used in a statute, and the term is not limited by some qualifying word or term, there is a presumption that the commonly accepted meaning of the English used is intended by the statute, and we are of the opinion that the commonly accepted meaning of the term "year" is calendar year.

If the term "in the preceding year" means in the preceding calendar year, as we believe it does, then the tax that was intended to be payable on or before December 15, 1947, as provided in Section 4 of House Bill No. 407 in the following language, "for the year 1947 this tax shall be payable to the Director of Revenue on or before December 15," is a tax of two per cent on the taxable portion of the dividend declared in 1946. That dividend was declared in accordance with the above quoted Section 5538, R.S. Mo. 1939, on September 30, 1946.

Holding as we do, that the foregoing is the meaning of the term "in the preceding year," we must look again to Section 3 of said House Bill for light as to how the taxable portion of such dividend shall be arrived at. Upon this latter subject, said Section 3 of said House Bill No. 407 provides as follows:

"\* \* \* The taxable portion of such dividends shall be that proportion thereof which shall equal the proportion of the gross income of such credit union for the dividend year derived from its intangible property (other than obligations of or guaranteed by the United States) to its entire gross income."  
(Underscoring ours.)

We believe it to be obvious that the term "dividend year," as used by the statute in the last above quoted portion, in so far as the tax intended to be payable on or before December 15, 1947, is concerned, means the fiscal year beginning at the close of business on December 31, 1945, and ending at the close of business on September 30, 1946. We believe this for the reason that, as above set forth, Section 5527, Laws of Missouri 1945, at page 692, provides that the credit union fiscal year shall end at the close of business on the 30th day of September, and that Section 5538, R.S. Mo. 1939, provides, in substance, that a dividend from the net earnings may be declared at the close of the fiscal year.

If it be true then that the term "dividend year," as used by Section 3 of said House Bill No. 407, is synonymous with the term "fiscal year," as used in Section 5527, Laws of Missouri 1945, defining the credit union fiscal year, which in our opinion is true, it is apparent that the "dividend year" referred to in that portion of Section 3 of House Bill No. 407 outlining the method of computing the taxable portion of the dividends upon which the tax was intended to be paid on or before December 15, 1947, is the same as that fiscal year which began, as provided by Section 5527, R.S. Mo. 1939, at the close of business on December 31, 1945, and extended, as provided by Section 5527, Laws of Missouri 1945, page 692, to and including September 30, 1946.

Accordingly the intended method of computing the tax intended to be payable on December 15, 1947, is to compute two per cent of that proportion of the total dividends declared on September 30, 1946, by the credit union which shall equal the proportion of the

gross income of the credit union from the close of business on December 31, 1945, to the close of business on September 30, 1946, derived from its intangible property (other than obligations of or guaranteed by the United States) to its entire gross income for that period of time.

We are further of the opinion that the method of computation provided by this act for determining the tax payable on or before December 15, 1946, and succeeding years is the same as that outlined above for the 1947 tax, with the exception that the computation in these succeeding years is to be made on the basis of dividends declared for a full twelve months' fiscal year ending on the 30th of September of the calendar year preceding the year in which the tax is payable.

We believe that our opinion to the effect that the above quoted words "in the preceding year" applies to the preceding calendar year instead of the preceding fiscal year is supported by the language of Section 6 of said House Bill No. 407, which is as follows:

"If the gross income of a credit union is derived from business carried on both within and without this state, the credit union, in computing the tax, may take credit for the aggregate amount of taxes (other than ad valorem taxes on real estate and tangible personal property) and excises actually paid to such foreign state or states in the calendar year during which the dividends are credited; but the amount of such credit shall not exceed that proportion of the total of the taxes otherwise payable hereunder which equals the proportion that the gross income of such credit union for such year derived from assets or business in a foreign state or states bears to its entire gross income for such year."

We comment with reference to the language last above quoted that, if the term "in the preceding year" used in Section 3 were construed, in so far as the tax intended to be payable on or before December 15, 1947, is concerned, to mean in the fiscal year ending September 30, 1947, this section would be unworkable because, under that construction, the credit union could not take credit for any tax paid to a foreign state in that portion of the calendar year of 1947 which extended beyond the credit union fiscal year which ended on September 30, 1946; but, if said term

"in the preceding year" is construed, in so far as the tax intended to be payable on or before December 15, 1947, is concerned, as we construe it to mean the calendar year of 1946, then said Section 6 of said House Bill would be workable, if not otherwise objectionable, because taxes paid to a foreign state or states in that year were ascertainable in 1947 at the time when the return was intended to be made.

We now come to a consideration of the question as to whether a 1947 tax, based upon dividends declared at the end of a period prior to July 1, 1947, the effective date of said House Bill No. 407, as provided for by said House Bill, is collectible, or, to be more specific, whether said House Bill No. 407 is constitutional, in so far as it provides for taxes based upon such dividends so declared at a time prior to the effective date of the act. With reference to this question, we are of the opinion that said House Bill No. 407 is unconstitutional, in so far as it pertains to the tax intended to be collected in 1947 and intended to be based on dividends declared at the close of the fiscal year which ended on September 30, 1946, because of the provision of the Constitution "that no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation \* \* \* can be enacted." Constitution of Missouri 1945, Article I, Section 13. In this connection, we call attention to the opinion in the case of First Nat. Bank of St. Joseph et al. v. Buchanan County et al., 205 S.W. (2d) 726, which is a case construing the "Bank Tax Act," Laws of Missouri 1945, page 1921. In this case, the said Bank Tax Act was effective on July 1, 1946, and it provided that for the period in the taxable year of 1946 between July 1, 1946, the effective date of the act, and the end of the calendar year the tax shall be measured by the taxpayer's net income for the calendar year of 1945. The court, in discussing the question of the constitutionality of this portion of the Bank Tax Act, used the following language:

"\* \* \* The Constitution of Missouri, the old as well as the new, unlike most constitutions (annotations 11 A.L.R. 518; 109 A.L.R. 523; 118 A.L.R. 1153) provides 'That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, \* \* \* can be enacted.' Const. Mo. 1945, Art. 1, Sec. 13. The Schedule does not indicate that any exception to this provision of the Bill of Rights was intended by the Constitution or contemplated in the General Assembly's effectuating the new tax

pattern. Even though a tax to be assessed and collected in one year on the income of the preceding year 'is a tax for the year of its collection, and not for the year in which the income was received' (61 C.J., Sec. 2331, p. 1581), the tax imposed by the Bank Tax Act, however it is viewed, is retrospective in its operation and could not be effective in the circumstances of this case and in any event prior to July 1, 1946. \* \* \*

CONCLUSION

While we are of the opinion that the aforesaid House Bill No. 407 is unconstitutional, in so far as its provisions for the 1947 tax are concerned, we are of the further opinion that it is constitutional, in so far as its provisions for taxes for the year of 1948 and succeeding years are concerned, and we are of the opinion that returns for those years should be filed on the calendar year basis, and that the computation should be based upon dividends declared on that date in the preceding calendar year marked by the end of the fiscal year ending in said calendar year, which date is September 30th of each year.

Respectfully submitted,

SAMUEL M. WATSON  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General, *J.B.*

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