

10/24/48
TAXATION : Construction of House Bill No. 888 of the 63rd General
Assembly found Laws of Missouri, 1945, page 1921,
REVENUE : as applied to banks located within the City of St.
Joseph, Missouri.

FILED
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July 28, 1948

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

Dear Sir:

Reference is made to your request for an official opinion of this office, reading as follows:

"It is requested that you furnish this department with a written opinion stating whether or not banks, either national or state, located in Buchanan County are to file a return under House Bill 888 as passed by the 63rd General Assembly and show thereon the entire income for the calendar year 1946 or only for the period after July 1, 1946."

House Bill No. 888 referred to in your letter of inquiry, is an enactment of the 63rd General Assembly known as the "Bank Tax Bill", and now appears Laws of Missouri, 1945, page 1921, et seq.

Section 3 of the Act, in so far as applicable to your precise question, reads as follows:

"Section 3. National banking associations subject to tax for exercising its corporate franchises--how measured in 1946--how measured in 1947--rate of tax.--Every national banking association shall be subject to an annual tax according to and measured by its net income in accordance with method numbered (4) authorized by the Act of Congress of March 25, 1926, amending

Section 5219 of the Revised Statutes of the United States, and every other banking institution as herein defined shall be subject to an annual tax for the privilege of exercising its corporate franchises within the State of Missouri according to and measured by its net income pursuant to the provisions of this Act.

"C. For the taxable year 1947 and each taxable year thereafter the tax shall be measured by the taxpayer's net income as hereinafter defined for the preceding calendar year."

This particular statute and its applicability to banks located within the City of St. Joseph, has been the subject of judicial construction by the Supreme Court of Missouri. The case is found reported as First National Bank of St. Joseph et al. vs. Buchanan County et al., 205 S.W. (2d) 726. Both types of banking institutions, viz. national banks and state banks, were involved in the case.

We shall first consider the status of national banks located within the City of St. Joseph, with respect to the tax due for the year 1947. We think this to be controlled by the decision in the Buchanan County case, supra, wherein the Court said, l.c. 731:

"* * * The Bank Tax Act is certainly retrospective and inoperative as to all the parties in the City of St. Joseph prior to July 1, 1946. The various constitutional and legislative enactments having authorized cities of the first class to levy an ad valorem tax on national bank shares for the tax year 1946 the Bank Tax Act on net income could not be operative as to national banks in the City of St. Joseph after July 1, 1946 because 'The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, * * * .' 12 U.S.C.A. Sec. 548;

Buder v. First National Bank, 8 Cir.,
16 F.2d 990; State ex rel. Orr v.
Buder, 308 Mo. 237, 271 S.W. 508, 39
A.L.R. 1199; Board of Commissioners
of Oklahoma County v. State Board of
Equalization, 155 Okl. 183, 8 P.2d
732. * * * ". (Underscoring ours.)

We next consider the status of state banks located within the City of St. Joseph, with respect to the 1947 tax. We quote further from the same opinion, l.c. 731:

"* * * The only reason offered for the Bank Tax Act not being applicable to the state banks after July 1, 1946, is the state's policy of maintaining them on a parity with competing national banks. But no legal reason for their being exempted after July 1, 1946 is suggested and we know of none, consequently from and after that date the appellant state banks in St. Joseph are subject to the act and are entitled to the corresponding credits provided 'during the relevant income period.' Laws Mo. 1945, p. 1921, Sec. 3, Mo. R.S.A. Sec. 11456.103."

CONCLUSION

In the premises, we are of the opinion that national banks located within the City of St. Joseph, Missouri, are not required to pay the tax levied under Laws of Missouri, 1945, page 1921, for the year 1947.

We are further of the opinion that state banks located within the City of St. Joseph, Missouri, are required to include in their return of the tax imposed under the provisions of Laws of Missouri, 1945, page 1921, all income received subsequent to July 1, 1946.

Respectfully submitted,

APPROVED:

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WFB:lr