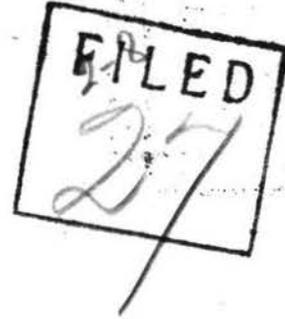


TAXATION:  
CREDIT UNIONS:

The owners of the shares of stock in a credit union who have no money borrowed on such stock for the purpose of reporting the value of such stock to the assessor shall take into consideration the entire assets of such credit union and deduct therefrom the liabilities of such union and this amount shall be the basis upon which the value of the stock is fixed for taxation purposes.

January 31, 1939



Mr. Clarence Evans, Chairman  
State Tax Commission  
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of recent date which was accompanied by a letter from the Missouri Mutual Credit League requesting an opinion from this department on the manner in which credit unions were taxed.

The law by which credit unions were authorized to operate in this state was enacted in 1927 and is now in the Laws of Missouri, 1929, at Article XV, chapter 22.

The powers of credit unions are set out in Section 5082, R. S. Missouri, 1929, which is as follows:

"A credit union shall have the following powers:

"(1) It may receive the savings of its members in payment for shares.

"(2) It may make loans to members, through the credit committee and on deposit in the way and manner hereinafter provided.

"(3) It may invest, through its board of directors, in the bonds of the United States, or of any state thereof or of any municipality, the bonds of which municipality are legal investments for savings banks in the state of Missouri. It may deposit its funds in savings

banks, state banks, trust companies and national banks. The funds of the credit unions shall be used first, however, for loans to members in the way and manner hereinafter provided and preference shall be given to the smaller loan in the event the available funds do not permit all loans which have passed the credit committee to be made."

From a reading of the statute pertaining to credit unions it seems that the purpose of the law authorizing their existence was to provide a convenient means for the members of particular groups to save their money and lend it to themselves. Only the members of such groups may pay into or receive any moneys from such credit unions. The business of the credit union is carried on by a board of directors selected by virtue of the provisions of Section 5087, R. S. Missouri, 1929. The credit unions obtains its capital and revenue by virtue of the provisions of Section 5090, R. S. Missouri, 1929, which is as follows:

"The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. A credit union shall have a lien on the shares of any member and on the dividends payable thereon for, and to the extent of any loan made to him and of any dues and fines payable by him. A credit union may, upon the resignation or expulsion of a member, cancel the shares of such member and apply the withdrawal value of such shares towards the liquidation of said member's indebtedness. A credit union may charge an entrance fee, as may be provided in the by-laws which shall, however, not exceed twenty-five cents. Fully paid up shares of a credit union may be transferred to any person upon election to membership, upon such terms as the by-laws may provide and upon the

payment of a transfer fee which shall not exceed twenty-five cents."

Section 5092, R. S. Missouri, 1929, authorizes the credit union to loan money to its members and charge a reasonable rate of interest. Section 5095, R. S. Missouri, 1929, provides as follows:

"All entrance fees, transfer fees and charges shall, after the payment of the organization expenses, be known as reserve income, and shall be added to the reserve fund of the credit union. At the close of the fiscal year there shall be set apart to the reserve fund twenty per cent of the net income of the credit union, which has accumulated during the year. The members, at an annual meeting, may increase the proportion of the profits which is required by this section to be set apart to the reserve fund, or to decrease it when it equals the paid in capital of the credit union. The reserve fund shall belong to the credit union and shall be held to meet contingencies and shall not be distributed to the members except upon dissolution of the credit union."

From this section it will be seen that receipts may come into the treasury of the credit union in other ways than by sale of stock to its members, namely: interest, entrance fees, transfer fees, and any other charges the board may be permitted to make. These moneys may be termed as earnings of the union. As they accumulate they would naturally enhance the value of the certificates which such union has issued to its members. Section 1, Laws of Missouri, 1933, page 467, provides as follows:

"All parties holding stock or shares as owners or in trust in any Credit Union in this state on which no loan has been obtained from such association,

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; and any failure on the part of such owner, holder or depositor of such shares shall subject such holder to the same penalties now provided for failure to give to the assessor a true list of all taxable property verified by affidavit."

From a reading of the original credit union act passed in 1927, it will be seen that the lawmakers did not provide for taxation of such unions and the 1933 act, supra, evidently was enacted for that purpose. By this 1933 law, if a member of a credit union owns a certificate in the union, if he has not obtained a loan upon such certificate, then he should report it, with its true value, to the assessor when he makes his return for the assessment. There is no doubt but that such certificates which have been reported by their owners to the assessor could not again be taxed against the credit union if there was a law authorizing such unions to be taxed. If such certificates were again taxed to the credit union that would be a double taxation and in violation of the provisions of Sections 3 and 4 of Article X of the Constitution of Missouri.

The lawmakers have provided only one way in which to tax credit unions, that is, by the 1933 law hereinbefore referred to and the taxing officials must follow that course. This rule is stated in the case of State v. Gehner, 8 S. W. (2d) 1068, l.c. 1070, in the following language:

"In the taxation of the property of corporations in this state, different methods have been employed. Such taxation has been effected by taxing the property, by taxing the capital

stock, and by taxing the shares of stock. When the Legislature has selected one mode, with respect to a designated class of corporations, there is no presumption, in the absence of an express provision, that it intended that taxes should be levied in accordance with either of the other two; this because such additional levies would result in double taxation. \* \* \* \* \*

By a comparison of the law taxing credit unions with the law taxing building and loan associations, it appears that the lawmakers have used the same provision in both acts which provides that only the shareholders who do not have money borrowed on their shares shall report their stock to the assessor for taxing purposes. We find that in the case of *Kansas City v. Building and Loan Association*, 145 Mo. 50, 52, where the court had under consideration the taxing of shares of a building and loan association, and it said:

"The property of building and loan associations is excepted from assessment and taxation by State law; that law providing for the assessment and taxation of such corporations by assessing the shareholders on their shares, and from them collecting the tax. \* \* "

It will be noted that from Section 9768, R. S. Missouri, 1929, that the borrowing member of the building and loan association is not required to report his stock to the assessor, that is, the stock upon which he has money borrowed. In discussing this particular provision of the building and loan section the court, in the *Kansas City v. Building and Loan* cases, supra, said at l.c. 53:

"And it does not matter that the legislation in question does not reach the

borrowing members of the association, because such an omission can not be supplied by the courts. It is true that the Constitution, section 7, of article X, declares that 'all laws exempting property from taxation ..... shall be void; ' but this section evidently refers to affirmative exemptions, not to those which do not in terms exempt certain property, not to mere casual omissions.

"While it is the clear duty of the legislature to see that no class of property in this State shall escape taxation, still unless the legislature exercises its legitimate functions and subjects certain property to taxation, it is evident that the constitutional provision above noted, can not, because of such lack of legislation, become self enforceive. \* \* \* "

Applying the same rule to the owner of shares of stock in the trade union if he has money borrowed on his stock, under the statute he is not required to report it to the assessor, that is, report on stock upon which he has money borrowed.

#### CONCLUSION

From the foregoing it is the opinion of this department that the only way in which trade unions may be taxed is by the tax paid by the stockholders. The stockholder who has no money borrowed on his stock is required to report such stock to the assessor when he makes his return for his assessment, but the stockholder who does have a loan on his stock is not required to include in his return for assessment the stock upon which he has a loan.

Respectfully submitted

APPROVED:

TYRE W. BURTON  
Assistant Attorney General

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J. E. TAYLOR  
(Acting) Attorney General

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