

TAXATION:  
SHARES OF STOCK:

Present attitude of Supreme Court indicates that shares of stock held by a resident of this state in a foreign corporation may be subjected to a personal property tax.

(27)

October 20, 1941

1681



Mr. George R. Clark  
County Assessor  
Court House  
Kansas City, Missouri

Dear Sir:

This is to acknowledge your letter of recent date, requesting an opinion from this department relating to the taxation of shares of stock held by a resident in this state in foreign corporations. Your request reads as follows:

"On numerous occasions recently the question has come up in this office as to the liability for State, County and School Tax purposes, of stock of a foreign corporation owned by a resident of this state.

" \* \* \* \* \*

"We would greatly appreciate a definite ruling from you in this respect, and your advise in detail as to what corporate stock is taxable and what corporate stock is exempt from taxation under the laws of the state of Missouri."

At the outset, it should be observed that for the support of the Government the state taxes shall be levied on all property, real and personal. Section 10936 of R. S. Mo., 1939.

It is provided by Section 10939 of R. S. Mo., 1939 that:

"All personal property of whatever nature and character, situate in a county other than the

one in which the owner resides, shall be assessed in the county where the owner resides, except as otherwise provided by section 10957; and all notes, bonds and other evidences of debt made taxable by the laws of this state, held in any state or territory other than that in which the owner resides, shall be assessed in the county where the owner resides; and the owner, in listing, shall specifically state in what county, state or territory it is situate or held."

Attention is also directed to Section 10950 of R. S. Mo., 1939, relating to what the assessment lists shall contain. In view of the fact that section of the statute is lengthy, we do not deem it necessary to set it out verbatim. Suffice it to say that in substance and effect, that section requires the listing of property embraced within eleven different classifications. If the shares of stock, to which you have referred in your request for an opinion, are taxable for state, county and school tax purposes, then such stock must be embraced within the eleventh classification, which reads as follows:

" \* \* \* eleventh, all other property not above enumerated (except merchandise, bills and accounts receivable, and other credits of a merchant or manufacturer, arising out of the sale of goods, wares and merchandise, which have been returned for taxation, under sections 11309 and 11339, R. S. 1939), and its value; under this head shall be included all shares of stock or interest held in steamboats, keelboats, wharfboats, and other vessels; all toll bridges, all printing presses, type and machinery therewith connected, and all portable mills of every description, and all vehicles used in the transportation of persons (except of railway carriages), and all paintings and statuary, and every other species of property not exempt by law from taxation. \* \* \*"

In view of the fact the Supreme Court of this state has had occasion to pass upon sections of the statutes above set forth, we do not attempt to construe such statutes, except in light of what has been said. In this respect, your attention is directed to the case of State ex rel. Koeln v. Lesser, 237 Mo. 310, 141 S. W. 888. That case was decided by the Court en banc on November 14, 1911. In that case the question, before the court for determination, was whether or not the revenue statutes of this state subjected to taxation, shares of stock owned and held by a resident in this state in foreign corporations, whose property is all beyond our borders. The court held that what is now Section 10950 of R. S. Mo., 1939 did not include shares of stock held by a resident of this state in foreign corporations. This was because that section of the statute did not specifically name that classification of property as being subject to a tax. The court pointed out that the statute classified the property subject to personal taxation by enumerating the various classes of property. At that time the statute contained ten specific classifications. It was contended that the tenth classification, which is now the eleventh classification, would subject the shares of stock owned by a resident in a foreign corporation to a personal property tax. The tenth classification at that time read in part as follows:

" \* \* \* tenth, all other property not above enumerated \* \* \* and its value; \* \* \* \* \*  
\* \* \* \* \* \* \* \* \* \* and every species of  
property not exempt by law from taxation. \*  
\* \* \*"

The court rejected this contention, and said:

" \* \* \* If by those two general terms the lawmaker intended to say that everything that a person might own or have any interest in, either direct or indirect, here or elsewhere, was to be listed for taxation, what was the use of specifying items either in that clause or in the preceding nine clauses? If shares of stock in a foreign corporation are 'property' within the meaning of that word as there used, so are shares of stock in steamboat companies, and so are printing presses and mills and wagons and paintings and statuary, yet all those things, and more, are especially

mentioned in that tenth clause, while the preceding nine other clauses are also industriously specific of items to be listed.

"Section 11519, on which appellant relies to sustain his contention that shares of stock in a foreign corporation are comprehended under the general terms 'property' and 'personal property,' defines the term 'property' 'wherever used in this chapter,' to mean and include every tangible or intangible thing being the subject of ownership, whether animate or inanimate, real or personal. If the General Assembly had intended by that definition to say that the taxpayer should list for taxation, not only his property in this State, including the items specified in section 11348, but also everything else on the face of the earth in which he had any interest, either within or without the State, it would require him to list not only the personal property, but also the real estate outside the State, which he might own or have an interest in. The reasonable construction of that clause of the statute is that it was intended to mean property in this State. That intention also appears in the definition in that section given the term 'personal property.' The definition is very comprehensive, and specifies stocks and bonds and many other things tangible and intangible, but it nowhere says of any of the items mentioned that they are included whether in this State or elsewhere, until it comes to 'ships, vessels or other boats,' and of them it says, whether 'within the jurisdiction of this State or elsewhere.' If it was intended to mean that all the personal property enumerated or interest therein, here or elsewhere, was included, why did it specify boats here or elsewhere? The distinction in this particular drawn between steamboats and other properites shows that the Legislature intended, except as to steamboats, etc., to include only property or interests within this State."

The Court finally, after considerable straying into the field of obiter dictum, held that there was nothing in our statute intending to render subject to taxation shares of stock held by a resident of this state in a foreign corporation, whose property is not in this state.

Attention is further directed to the case of State ex rel. Brinkop, 238 Mo. 298. That case was decided December 16, 1911. The Court en banc there reconsidered its conclusion in the Lesser Case, supra. The court said:

"We have just had occasion in another case decided at this term, State ex rel. v. Lesser, 237 Mo. 310, to review our revenue statutes from 1845 to this date, and we there reached the conclusion that it had never been the policy of this State to tax both the shares of stock and the property which they represent. \* \* \*"

Based upon a decision of the Lesser Case, the court further said:

"\* \* \* To take into account, in assessing the value of the shares of stock in this insurance company, property owned by the corporation outside of this State, would be equivalent in effect to requiring the shareholders to pay taxes on such property; our statutes do not authorize such taxation. \* \* \*"

This last quotation, it seems, demonstrates what was actually held in the Lesser Case, supra, to-wit, that since the shares of stock represented property located without the state, our statute did not subject such property to tax. Of course, the Court en banc, reached that conclusion by observing at page 320:

"\* \* \* The reasonable construction of that clause of the statute is that it was intended to mean property in this state. \* \* \*"

It seems therefore, that this court's construction of what is now Subdivision 11 of Section 10950, supra was based upon reasonableness, without regard to whether or not fundamental rules to be invoked in the construction of statutes should be applied. In other words, the court, at that time, apparently was not interested in determining the intention of the legislature, and therefore rendered practically a whole clause of the statute, there under consideration, a mere nullity.

Attention is also directed to the case of State ex rel. Globe Democrat v. Gehner, 294 S. W. 1017. That case was decided by the Court en banc in May, 1927. The court again referred to its decision in the Lesser Case, supra, and again explained its ruling there, to the effect that they had previously held that what is now Section 10950, supra was not to be construed as intending to include property beyond the territorial jurisdiction of the state. The Court said:

"The decisive ruling in State ex rel. Koeln v. Lesser, 237 Mo. loc. cit. 319, 141 S. W. 888, was that the shares of stock there sought to be subjected to taxation were beyond the jurisdiction of the state and that no law existed providing for their taxation. The additional holding, that the meaning of the general words in what is now section 12766, as amended, should be restricted to the meaning of the particular words, was not necessary to the determination of the matter at issue and does not rise to the dignity of a precedent in the construction of that section and may be regarded as obiter. A more forceful reason may be urged against the correctness of the ruling, in that the Lesser Case, as we have indicated, ignores the object and purpose of our laws of taxation and in so doing places an incorrect construction upon the duty imposed upon the taxpayer in making a return of his property for taxation." (Under-scoring ours.)

Your particular attention is directed to that portion of the quotation, respecting the court's observation, with respect to the general words in what is now Section 10950, supra.

Therefore, what was said by this court en banc in 1911, respecting the meaning of what is now the eleventh classification in Section 10950 supra was obiter, and should not be regarded as the true construction of the general language used in such classification. It is interesting to notice in this case that the court is beginning to depart from its holding in the Lesser Case. This is demonstrated by the case of In re Zook's Estate, 296 S. W. 778. That case was decided by Division 1 of this court in July, 1927, just two months subsequent to the Globe Democrat Case, previously noticed. In that case, the court had before it for consideration as to whether or not an inheritance tax could be imposed against the Estate of a Decedent. The estate consisted in part of shares of stock which the decedent owned in a corporation organized under the Laws of Nebraska. At the time of decedent's death, the certificates, representing the shares of stock, were not within the State of Missouri, but were kept for safety reasons in a safe deposit box in the City of Omaha, Nebraska. It was contended that the transfer of the stock in the Nebraska Corporation was not subject to the Inheritance Tax Laws of Missouri. Before ruling the proposition involved, the court observed:

" \* \* \* the corporate stock here in question is intangible property (13 C. J. 387; Foster v. Potter, 37 Mo. 526, loc. cit. 530; Armour Bros. Banking Co. v. St. Louis Nat. Bank, 113 Mo. 12, loc. cit. 20, 20 S. W. 690, 35 Am. St. Rep. 691), and the force and effect of whatever our ruling may be in this case will necessarily be limited to intangibles."

In support of the contention that the shares of stock there involved were not subject to an inheritance tax, the Lesser Case was again cited, and the court declined to follow it, and again explained its ruling there by saying:

" \* \* \* In fact, Leavell v. Blades and State ex rel. v. Lesser, supra, cases involving the direct taxation of property and holding that evidence of debt or shares of stock outside this state, though owned by a resident of this state, are not taxable in this state, were decided on the express ground that our statutes do not require that they be so taxed, \* \* \*"

By the above quotation, it is now apparent that the court is dissatisfied with their previous holding in the Lesser Case.

Attention is also directed to the case of State ex rel. American Automobile Ins. Co. v. Gehner, 8 S. W. (2d) 1057, 1065. That case was decided in July, 1928. In that case, the court again had before it for consideration what is now Subdivision eleven of Section 10950, supra, and in passing upon whether or not that classification embraced certain credits, said:

"The tenth item includes 'all property not enumerated (except merchandise),' mentioning several kinds of chattels and other property, 'and every other species of property not exempt by law from taxation.' If deposits in other states are not included in item 6, they are covered in item 10. That is comprehensive enough to cover everything, including debts, credits, which under the general rule are taxable. It only prevents the taxation of property exempt by law from taxation."

In that case the court again took the opportunity of considering their holding in the Lesser Case, supra:

"In State ex rel. v. Lesser, 237 Mo. 310, 141 S. W. 888, it was held, notwithstanding the statute, that shares of stock in a foreign company owned by a resident of this state were not taxable in this state. It was because all the property represented by the shares was in the state where the corporation was located and was taxed there. \* \* \*"

In spite of this observation, the court cited the case of In Re Zook's Estate, supra, and concluded:

" \* \* \* it seems that the policy of this state is to consider specific securities, bonds, stocks, and the like, as having a situs wherever they

happen to be. \* \* \* \*"

By this quotation, it is apparent this court recognizes that the interest which a person may have in a share of stock is a property right, separate and apart from that of the corporation, and being intangible property, the situs of such share of stock would be wherever such share of stock might be located or employed. The court further explained its ruling in the Lesser Case in the following language:

" \* \* \* In the Lesser and Leavell Cases, supra, in considering the statute relating to the taxable assets of a person or corporation, particular attention was paid to the statute specifying what shall be in a tax return for such property, on the ground that such statutes indicate the legislative intent with regard to taxable property."

This observation leads one to believe that the court is just awaiting the opportunity to overrule its previous holding, respecting the taxation of shares of stock owned by a resident in a foreign corporation.

Attention is also directed to the case of State ex rel. American Central Insurance Co. v. Gehner, 9 S. W. (2d) 621. That case was decided in July, 1928 by the Court en banc. The court emphasized its previous ruling in the American Automobile Insurance Case by stating:

"Property of an intangible nature, such as credits, bills receivable, bank deposits, bonds, promissory notes, mortgage loans, judgments and corporate stock, has no situs of its own for the purpose of taxation, and is therefore assessable only at the place of its owner's domicile."

The question, there before the court, was whether or not a certificate of deposit was an evidence of debt, within the meaning of what is now Section 10939 of R. S. Mo., 1939, relating to the assessing of personal property in a county in

which the owner resides. In ruling the question involved, the court considered the *In Re Zook's Case*, supra, and said:

"The latest deliverance of this court upon this subject was in the *Zooks Case* (Mo. Sup.) 296 S. W. 778. That involved an inheritance tax, but, whatever difference there might be between the application of an inheritance tax and a general tax so far as nontaxable property on account of its class is concerned, there should be no difference between the two so far as its location is concerned. In that case the property held taxable was shares of stock in a Nebraska corporation, a certificate of which was at the time out of the state for the purpose of safe-keeping. It was owned by a resident of Missouri. The language applied to it is in section 589, Revised Statutes 1919, where it was said that the property involved shall include all personal property 'within or without the state'. That is certainly not stronger than the statement in section 12755, in relation to evidence of debt held in any state or territory other than that in which the owner resides. \* \* \* #"

It is to be seen from these considerations of the cases subsequent to the ruling in the *Lesser Case*, that no logical pattern may be drawn with respect to what the present attitude of our Supreme Court may be respecting the taxability of shares of stock owned by a resident of this state in a foreign corporation. But, if the cases reviewed subsequent to this decision chart any course of action, it is reasonable to believe that if the question is again presented to the court, the holding in the *Lesser Case* will be overruled. This is made apparent when it is considered that the court held in the *Lesser Case*, in construing what is now Section 10950, supra that such section was only intended to mean property in this state. Since therefore the court has concluded, in the *American Central Insurance Case*, supra, that shares of stock may have a situs in this state, when owned by a resident in a foreign corporation, such shares of stock, may, under the present attitude of our Supreme Court, be subject to a tax under the provisions of Section 10950 of R. S. Mo., 1939.

APPROVED:

Very truly yours

VANE C. THURLO  
(Acting) Attorney General

RUSSELL C. STONE  
Assistant Attorney General

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