

TAXATION:
BONDS:

Railroad bonds on railroads in receivership
are subject to taxation.

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August 11, 1941

Mr. Jesse A. Mitchell, Chairman
State Tax Commission of Missouri
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion from this department under date of August 7, 1941, in which you state:

"We submit herewith a statement of facts relating to certain railroad bonds and certificates of deposit belonging to the estate of G. Adolph Cramer of St. Louis County, which the executors of the estate claim are not assessable for taxation."

A brief statement of the facts submitted us is as follows:

"The executors of the estate of G. Adolph Cramer, which estate was in St. Louis County, Missouri, refused to list for taxation the following bonds:

"10 Central of Georgia 5s of 1945;
10 Chicago & Northwestern 6 $\frac{1}{2}$ s of 1936;
10 Missouri Pacific 5s of 1981, C.Ds;
10 New York, New Haven & Hartford
4 $\frac{1}{2}$ s of 1967;
10 St. Louis San Francisco 4 $\frac{1}{2}$ s of
1978 C.Ds;"

In accordance with Section 10950, R. S. Missouri 1939, the county assessor of St. Louis County added the actual valuation of said bonds to the tax roll against the estate of G. Adolph Cramer. The executors appealed to the County Board of Equalization who rejected the appeal. The reason given by the executors in not listing the above described bonds was that the railroads described

in said bonds were in bankruptcy, receivership or in a failing condition. The executors relied on their failure to list said bonds on that part of Section 10950, R. S. Missouri 1939, which reads as follows:

"* * eighth, an aggregate statement of all solvent notes secured by mortgage or deed of trust; ninth, an aggregate statement of all solvent bonds, whether state, county, town, city, township, incorporated or unincorporated companies; * * * * "

The sections of the statutes applicable to the statement of facts set out above will be referred to in this opinion.

Section 10940, R. S. Missouri 1939, reads as follows:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

Section 10950, R. S. Missouri 1939, partially reads as follows:

"The assessor or his deputy or deputies shall between the first days of June and January, and after being furnished with the necessary books and blanks by the county clerk at the expense of the county, proceed to take a list of the taxable personal property and real estate in his county, town or district, and assess the value thereof, in the manner following to wit: * * * * * eighth, an aggregate statement of all solvent notes secured by mortgage or deed of trust; ninth, an aggregate statement of all solvent bonds, whether state, county, town, city, township, incorporated or unincorporated companies; * * * * *"

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. * * * * *

It is very noticeable in the above partial section that it specifically states:

"* * take a list of the taxable personal property * * * * *

In regard to taxation the Legislature saw fit to define "personal property" in Section 11211, R. S. Missouri 1939, where it said:

"* * * The term 'personal property,' wherever used in this chapter, shall be held to mean and include bonds, stocks, moneys, credits, the capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, * * * "

The above definition does not say "solvent bonds" but merely mentions bonds.

In construing statutes it has been held that all statutes referring to the same subject matter should be read together. In the case of *In Re Rosing's Estate*, 85 S. W. (2d) 495, pars. 5, 6, the court said:

"All sections of an act must be construed together and harmonize if possible. * * * * *

In reading the definition of "personal property" as set out above in Section 11211, supra, and in reading Section 10950, supra, the question is in order that bonds be taxable that they should be worth their face value. It will be noticed under Section 10950, supra, that the specific terms are used "* * all other property not above enumerated * * and its value." It also further states "* * and every other species of property not exempt by law from taxation. * *"

Also, in reading another section of the statutes which bears upon the same matter, we find in Section 10981, R. S. Missouri 1939, the following:

"The assessor shall value and assess all the property on the assessor's books according to its true value in money at the time of the assessment; and all other personal property shall be valued at the cash price of such property at the time and place of listing the same for taxation. * * "

It further says in said section, Clause 6, "* * all moneys, notes, bonds and other credits, in a separate column; * * "

Nothing is said in the above section that the bonds must be worth their face value before subject to taxation.

Statutes should not be construed to make them lead to an absurd result. In the case of State v. Irvine, 72 S. W. (2d) 96, pars. 3,4, the court said:

"* * * The courts will not so construe a statute as to make it require an impossibility or to lead to absurd results if it is susceptible of a reasonable interpretation. * * * "

The executors of the above estate claim that since the property secured by the bonds described in the request are insolvent, the bonds are not solvent and are not subject to taxation for that reason. They claim that since one clause of Section 10950, supra, states, "solvent bonds"

that under the doctrine of *ejusdem generis* that the bonds would not be subject to assessment or taxation under any other clause in Section 10950, *supra*, for the reason the bonds are not worth their full value. If such a construction was given to Section 10950, *supra*, it would result in an absurdity; for instance, bonds would be given on property that if the property would be sold it would not bring more than one-half of the bonds even at the time the bonds were issued. Also, loaners of money could make the loan read more than the value of the property, and could it be said that such bonds or notes should not be listed on account of the eighth and ninth clauses of Section 10950, *supra*? The executors of the estate also claim the eighth and ninth clauses of Section 10950, *supra*, should come under the doctrine of "*expressio unius est exclusio alterius*." Section 10950, *supra*, does not come under the doctrine of express mention of one thing impliedly excludes the other for the reason the ninth clause of Section 10950, *supra*, does not contain the term "all solvent bonds only" but it does go further and says, "all other property not above enumerated," and further says, "every other species of property not exempt by law from taxation."

The exemption statute, as governed by Article X, Section 6 of the Constitution of Missouri, is a lengthy statute but we find no exemption as to bonds or notes being exempted for the reason they are not worth their face value. That this doctrine of the express mention of a certain thing or property is the exclusion of other similar property does not apply. We mention that certain conveying vehicles, such as automobiles, is set out for taxation but no mention is made of airplanes. Could it be said that the airplane is not subject to taxation for that reason?

In the case of *State of Mo., on petition of Taylor, Adm'r of Lee, v. St. Louis Co. Court*, 47 Mo. 591, 1. c. 603, the Supreme Court of this state, in passing upon this subject, said:

"Counsel for relator claims exemption of these bonds from local taxation because the law makes no special provision for taxing such securities, as is made by the Pennsylvania act under consideration in *Maltby v. Reading & Col. R. R. Co.*, 52 Penn. St. 140, to which case we have been cited by ap-

pellant. In order to reach all the bonds of a corporation, if the policy were to assess them for taxation without reference to where they were held, a similar provision would be necessary. We have made such provision in relation to the stock of corporations, but leave bonds to be taxed like other property where they can be reached, except that if the owner resides within the State they shall be taxed in the county of his residence. (Gen. Stat. 1865, ch. 11, section 9; Wagn. Stat. 1161.)"

As to the property being exempt for the reason that the bonds are not worth their face value, the court, in construing such exemptions in *St. Louis Lodge No. 9 B. P. O. E. v. Koeln*, 171 S. W. 329, 1. c. 330, said:

"* * * The only question presented for our consideration is whether or not the property in question is exempt from these taxes because it is used exclusively for purposes purely charitable within the meaning of that expression as used in section 6 of article 10 of our state Constitution.

"In construing this same section this court recently said:

"It must be conceded to the state that, whether a tax-exempting clause be viewed from the standpoint of the state down to the people, or from the standpoint of the people up to the state, there must be unbending and inviolate rules which, as sure words of the law, are always to be reckoned with; and those rules (from the standpoint of the state) are that an abandonment of the sovereign right to exercise the vital power of taxation can never be presumed. The intention to abandon must appear in the most

clear and unequivocal terms (Railroad v. Cass County, 53 Mo. loc. cit. 27); and from the standpoint of the people they are that equality is equity in taxation.' State ex rel. v. Johnston, 214 Mo. 656, 113 S. W. 1083, 21 L. R. A. (N.S.) 171.

"The same rule is distinctly stated in the cases cited in that opinion, as well as in State ex rel. v. Casey, 210 Mo. 235, 248, 109 S. W. 1. It is a just and reasonable one, and whatever may be the doctrine of the adjudications in other jurisdictions must be taken as the well-settled law of this state."

In the case of State v. Gehner, 9 S. W. (2d) 621, l. c. 622, the Supreme Court, in holding bonds taxable and not mentioning whether they were solvent or not, said:

"The relator brings this proceeding to quash the record of the board of equalization of the city of St. Louis. Relator in its statement for taxation, June 1, 1925, listed its taxable assets at \$288,145.01. The matter came before the board of equalization of the city of St. Louis, and the amount of taxable assets of the relator was found to be \$500,000, and it was assessed accordingly.

"On a hearing before the board of equalization, the classified schedule of assets of the relator was introduced, as follows:

"The assessment of \$500,000 increased the amount returned as assessable by about \$222,000.

"Among the assets returned as non-taxable on account of location, it will be noted, are the following:

* * * * *

"These altogether would more than make the balance between the amount returned for taxation and the amount assessed. As pointed out in the State ex rel. American Automobile Insurance Co. v. Gahner et al. (Mo. Sup. No. 27492) 8 S. W. (2d) 1057, the money in bank and the municipal and other bonds claimed to be nontaxable on account of the location in other states are credits and are taxable at the domicile of the owner."

The executors of the estate in the above request rely upon the case of State ex rel. v. Lesser, 237 Mo. 310. But in that case it was not a question of bonds but it was a question of taxation of shares of stock held by a resident of this state in a foreign corporation whose property is not in this state and for that reason the shares of stock were not taxable in this state. The court in that case further said at page 319:

"* * * That tenth clause is as follows:
'Tenth, all other property not above enumerated (except merchandise) and its value; under this head shall be included all pleasure carriages of all kinds; all shares of stock or interest held in steamboats, keel boats, wharf boats and all other vessels; all toll bridges, all printing presses, type and machinery therewith connected, and all portable mills of every description, and all post coaches, carriages, wagons, and other vehicles used by any person in the transportation of mail (except railway carriages), all carriages, hacks, wagons, buggies and other vehicles of every kind and description kept or used by livery men; all carts, hacks, omnibuses and other vehicles used in the transportation of persons (except railway carriages), and all paintings and statuary, and every other species of

property not exempt by law from taxation.'

"That clause begins with the general term 'all other property not above enumerated' and ends with the even more general term 'every other species of property not exempt by law from taxation.' If by those two general terms the law maker 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."

Also, at page 321 the court said:

"Appellant refers also to section 11334, Revised Statutes 1909: 'For the support of the government of the State, the payment of the public debt, and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section.' The next section relates only to property exempt from taxation by the Constitution. Here again we have the general term 'all property real and personal,' and there is in that section no more authority for saying that it includes personal property outside of the State than that it includes real estate beyond our borders; if it includes one it includes both. It will be noticed that there is no tax levied by that section,

it is only a declaration that taxes shall be levied, the imposing of the taxes comes later, in section 11415, to wit: 'There shall be annually levied, assessed and collected on the assessed value of all the real estate and personal property subject by law to taxation in this State fifteen cents on each hundred dollars valuation for state revenue, 'etc. By the terms of that section there must be an assessment before there can be a levy. Provisions for the assessment are made in subsequent sections. By the terms of that section the property to be taxed is not all the real and personal property a man may own, but all that is 'subject by law to taxation in this State,' that is, property which is not exempt from taxation and which is designated by statute to be assessed for taxation. No property is taxable but that which is required by law to be assessed for taxation."

The above quotation was to the effect that the property must be subject by law to taxation in this state.

The reason of the holding in the above case was that since shares of stock in manufacturing corporations were excepted because the property of a corporation was to be taxed then the property of a foreign manufacturing company could not be taxed in this state unless the foreign company happened to own property here.

The Assessor of St. Louis County assessed the bonds on their market price as of June 1, 1940, in the amount of \$5100.00. In a brief filed before the State Board of Equalization at the Courthouse in St. Louis County, Missouri, where a hearing was had on July 28, 1941, in reference to this matter, the attorneys for the estate said:

"Moreover, the Appellants have shown that the Assessor has even erred with respect to the true market value of the bonds, in that he has assessed said bonds at the sum of \$5720.00

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instead of their true market value of
\$5100.00."

Section 11027, R. S. Missouri 1939, paragraph 7,
reads as follows:

"(7) To cause to be placed upon the
assessment rolls omitted property which
may be discovered to have, for any
reason, escaped assessment and taxation,
and to correct any errors that may be
found on the assessment rolls and to
cause the proper entry to be made there-
on."

The property involved in this litigation is property
that was omitted and escaped assessment and taxation. Under
paragraph 7 above the State Tax Commission may correct this
error, and it is a question of fact as to the true and actual
value of the property omitted. In this case attorneys for
the estate have admitted that the true value of the bonds is
\$5100.00.

CONCLUSION

In view of the above authorities it is the opinion
of this department that the bonds described in the above
request are subject to listing, assessing, and taxation in
this state at their true, actual cash value on June 1, 1940.
The value of the bonds is a question of fact to be decided
by the Tax Commission.

Respectfully submitted

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APPROVED:

VANE C. THURLO
(Acting) Attorney General

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