

TAXATION: INTANGIBLE  
PERSONAL PROPERTY:

Postal Savings accounts not obligations of United States; not exempt from state taxation under Section 742, Title 31, U. S. C. A. Ownership or beneficial interest of such an account taxable as intangible personal property, classified as "money on deposit," and tax to be measured by yield or income of account under Section 146.010, RSMo 1949.

July 11, 1951

Honorable Eugene L. McGee  
Judge of Probate Court  
Butler County  
Poplar Bluff, Missouri



Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which reads as follows:

"Section 146.070 R. S. of Mo 1949 provides that no estate of a deceased person in which there is intangible personal property subject to intangible personal property tax shall be closed without the payment of the tax.

"Decedent died owning the maximum amount of U. S. postal savings certificates, on which interest had not been paid for several years, dating back prior to the time this intangible personal property tax became a law. The executrix of the estate in order to close the estate and make distribution must cash these postal savings certificates and collect the accrued interest, and has taken the proper steps to obtain payment for the estate the amount of the certificates plus the accrued interest.

"We would like to know if interest on U. S. Postal Savings certificates is subject to the intangible personal property tax, and, in this particular instance, if the interest which had accrued prior to the effective date of the in-

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tangible tax law, but just now being collected, should be included in the tax to be assessed, if there is any to be assessed."

Your inquiry is whether the interest on U. S. Postal Savings Certificates is subject to the intangible personal property tax, and if the interest which had accrued prior to the effective date of the intangible tax law, but just now being collected should be included in the tax to be assessed, if any tax is to be assessed.

The first part of your inquiry, as to the taxability of interest on U. S. Postal Savings Certificates will be the subject matter of our discussion herein, since we believe the latter part of your inquiry is fully answered by the opinion of this department furnished to the Honorable G. H. Bates, Director of Revenue, Jefferson City, Missouri, on January 23, 1950. A copy of that opinion is enclosed for your consideration.

Section 146.010, RSMo 1949, defines the terms "intangible personal property", "person" "taxable situs" and "yield" or "annual yield" insofar as taxes are concerned on this type of property, said section reads as follows:

"1. 'Intangible personal property' means moneys on deposit; bonds, except those which under the constitution or laws of the United States may not be made the subject of a property tax by the state of Missouri; certificates of indebtedness, other than capital notes issued by banks or trust companies; notes; debentures; annuities; accounts receivable; conditional sales contracts, which have incorporated therein promises to pay; and real estate and chattel mortgages.

"2. The term 'person' includes any individual, firm, copartnership, joint adventure, association, corporation, company, estate, trust, business trust, syndicate, executor, administrator, receiver or trustee appointed by the state or federal court, or any other group or combination acting as a unit.

"3. The 'taxable situs' of intangible personal property for the purpose of this chapter, for residents of Missouri, shall be the residence of the owner thereof. If any law shall provide

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for the payment of the intangible property tax at its source the taxable situs shall be the location of the business owning or administering the intangible property. All intangible property of persons residing in other states used in or arising out of business transacted in this state, by, for or on behalf of such nonresident shall be taxed on the annual yield thereof, and the taxable situs shall be the location of the business. All intangible personal property of persons residing in this state but used in or arising out of business transacted outside of this state by, for or on behalf of such persons and taxed in such other state shall not be subject to the intangible property tax in this state. Intangible personal property in the hands of an executor or an administrator shall be subject to the intangible tax at the residence of the decedent at the time of death.

"4. The term 'yield' or 'annual yield' means the aggregate proceeds received as a result of ownership or beneficial interest in intangible property whether received in money, credits or property, exclusive of any return of capital, and less the amount of interest required to be credited by the owner thereof, during the preceding calendar year, to reserve liabilities of the owner maintained under the statutes of this state."

Only certain kinds of property have been specifically mentioned in paragraph 1 of above quoted section. As we understand the effect of the statute, only property specifically named, or property falling within the classifications provided therein is taxable. If the interest on a postal savings account is taxable as intangible personal property, it is because it falls within one of the classes of property mentioned by above quoted section, since such interest has not been specifically named.

In order to determine whether such property may be so classified, it is necessary that we consider the nature of the certificates, and the purpose for which they are issued as well as the law regulating same.

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The original "Postal Savings Bank Act", creating Postal Savings Depositories, was passed by an act of the 61st Congress of the United States on June 25, 1910.

The purpose of the act is found in the heading of Chapter 386, Public Laws, page 814, Vol. 36, and reads as follows:

"An Act To establish postal savings depositories for the depositing of savings at interest with the security of the government for repayment thereof, and for other purposes."

While there have been various amendments to this law from time to time, it appears that the original purpose of the act which appears to have been for the encouragement of savings accounts among citizens of our country, and particularly among the lower income groups, has never been changed. It is not our purpose to enter into a long detailed discussion of the purpose of the law, or to quote long passages from same, but we find it both necessary and proper for our purpose to notice some of the characteristics of postal savings under the federal law. The present statutes on this subject are found under Title 39, Chapter 20, U. S. C. A.

The general scheme of postal savings is the establishment of depositories under authority of a Board of trustees consisting of the Postmaster General, Secretary of the Treasury and Attorney General, which has power to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment, and repayment of the funds deposited at postal savings depository offices.

Deposits may be made at any of the depository offices in the sum of \$1.00 or multiples thereof, and each deposit of 10 cents is evidenced by a stamp to be attached to a card furnished for that purpose, and a card with ten stamps affixed will be accepted as a deposit of \$1.00 or may be redeemed in cash. Interest at the rate of two per-cent a year is paid, but not on fractions of one dollar, and no balance shall exceed \$2500.00.

Deposits may be withdrawn in whole or in part, on demand, and are redeemable in money, or upon surrender, and in lieu of the face value of the certificates, the depositor may, at his option, receive certain United States government bonds, which are exempt from both state and federal taxes of every kind.

From the various provisions of the federal statutes relating to postal savings, it appears that the relationship commonly re-

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cognized as existing between a bank and its depositor, is created between a postal savings certificate purchaser and the depository office of the postal savings, from which the certificates were purchased.

The original transaction between such purchaser and the depository office has been referred to in Section 754, Title 39, U. S. C. A., as "opening an account." While the amount payed by the purchaser for the certificates is referred to as "deposited" with the depository office. Sections 755 and 757, respectively, provided for the payment of interest to such "depositor", and that "any depositor may withdraw the whole or any part of the funds deposited to his or her credit with accrued interest," in a postal savings "account" is so very similar to an ordinary savings account deposit in a bank as to be almost indistinguishable from it, and might properly be classified as "money on deposit," within the meaning of Section 146.010, supra. However, the mere classification as such, would not of itself be sufficient authority to subject postal savings deposits, or the accrued interest thereon to the tax, since such accounts appear to be obligations of the United States government, and the taxability or non-taxability of them must depend upon provisions of the federal law, which of course, are paramount to the taxing statutes of any state.

Ordinarily, bonds, or other obligations of the federal government are exempt from the state or other taxes, under the provisions of Section 742, Title 31, U. S. C. A., which reads as follows:

"Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority."

In the case of Leka Admx., v. United States, 69 Court of Claims Reports, 89, an administratrix sued the United States Government in the Court of Claims to recover the total amount of deposits, and accrued interest on funds placed in a postal savings account by the decedent. In its opinion the court reviewed the theory of postal savings accounts under the federal statutes, and denied the claim for the reason that postal savings deposits, in effect are trust funds of the depositors, and since the money never passed into the treasury of the United States, it is not a debt or obligation of the United States. At l. c. 87, the court said:

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"Before passing to a discussion of the regulations promulgated by the board of trustees to effectuate the purposes enumerated, it may be well to pause here and note that there was created by this act a trust with named trustees, the deposits to be held as trust funds and to be held within the State or community where the deposit was made, and the withdrawals or repayments to be made at the place of deposit and from deposits within the State or community. Interest was to be paid on the deposits, and as provided in the act interest was collected from the banks on the deposits held by them. No part of the fund, it will be observed, went into the Treasury of the United States or became the property of the United States. It was held in trust separate and apart from the funds of the Government. Such being the case the Secretary of the Treasury has no fund out of which to pay the judgment of this court, as it is not payable out of any Government funds. The debt due on this deposit is not a liability of the United States payable out of its funds. It is payable out of the funds in the hands of the trustees, namely, the funds deposited under the postal savings system, and such regulations as they had promulgated as to withdrawals and conditions of payment.

"While the act contained the following provision:

'That the faith of the United States is solemnly pledged to the payment of the deposits made in postal savings depository offices, with accrued interest thereon, as herein provided,'

this clearly means that the faith of the United States is pledged to make good any deficiency in case there is a deficiency in the funds; but this does not mean that the United States can be sued by one of the depositors where there is no question about there being sufficient funds on deposit to meet the claim. The United States has nowhere in this act provided for a suit against it or consented to be sued. We might stop here with the conclusion that this court has not judicial power to give judgment.

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The contract involved is not with the United States. It is a contract providing that the depositor is to be paid out of the funds deposited under the postal saving system, and the act itself and the regulations promulgated in pursuance thereof are written into and became a part of the contract. Under the regulations the money received was deposited to the credit of the board of trustees. \* \* \* The checks and drafts for payment were drawn against this account of the board of trustees. "

(Underscoring ours.)

In view of the holding in above cited case it is our thought that postal savings accounts or accrued interest thereon are not obligations of the United States within the meaning of Section 742 U. S. C. A., supra, and are not exempt from taxation under state, municipal or local authority; that for reasons given above such accounts are intangible personal property to be classified as "money on deposit" under the provisions of paragraph 1, Section 146.010, supra, for tax purposes.

In this connection we call attention to the theory of the intangible personal property tax law which is that the tax is to be levied upon the ownership, or beneficial interest of such property, and that such tax is to be measured by the annual yield, or income producing ability of the property.

It appears that the postal savings account referred to in the opinion request, and the accrued interest thereon, were the property of the deceased at the time of his death, as evidenced by postal savings certificates of said account, issued in his name. Such account, and accrued interest being (intangible) personal property of the estate shall be distributed along with other estate property to those who may be entitled to receive same under the will of deceased when the administration of his estate has been finally closed.

While the interest on the savings account has been allowed to accumulate for years, and only recently has been collected (presumably by the executrix) this will not be of any consequence insofar as the payment of the tax is concerned.

It is our further thought that the tax is due from the estate of deceased, because of his ownership of the account, and that since such property was "money on deposit" within the meaning of Section

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146.010, supra, the tax must be measured by the yield, or the amount of interest which had accrued upon the account each year.

CONCLUSION

It is the opinion of this department that money on deposit in a postal savings account and accrued interest thereon, is not an obligation of the United States within the meaning of Section 742, Title 31, U. S. C. A., and is not exempt from taxation under state, municipal, or local authority. That under provisions of Missouri statutes quoted above, postal savings accounts are intangible personal property, and for taxation purposes may be classified as "money on deposit." That since the tax is upon the ownership or beneficial interest of intangible personal property, the estate of one who owned a postal savings account at the time of the owner's death, is liable for the payment of the tax which is to be measured by the annual yield or income from such account.

Respectfully submitted,

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APPROVED:

  
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