MISSOURI PROPERTY TAXES AND THE MERCHANTS' AND MANUFACTURERS' LICENSE*

BY RALPH R. NEUHOFF

Gladstone said with reference to the first English income tax that he was taking the first step toward making a nation of perjurers. In this country the income tax has not made a nation of perjurers, but the local property taxes have come close to doing it. This is due to the unfair incidence of the tax under existing laws and also in part to ignorance of the exemptions to which taxpayers are entitled.

EXEMPTIONS

Possibly the most important thing about the Missouri tax situation is that the stock of ordinary manufacturing and business corporations, whether domestic or foreign, is exempt from the property tax.[1] This exemption is firmly grounded in the policy of the law of Missouri, and the cases decided by the Supreme Court have referred to it time and time again.[2] The principle is that since the stock of a corporation represents in the aggregate the property of the corporation, it would be double taxation to tax the property to the corporation and the stock to the stockholders.[3] The early legislators must have been firmly impressed with this doctrine. Probably this is because it arose when the relation of the stockholders to corporations was in general much closer than it is now. We are accustomed to think of our holdings of stock in corporations as an asset separate and apart from the corporation. The relation of a stockholder to a large corporation, such as the American Telephone & Telegraph Company, is so impersonal that it is hard to think of the holder

* Condensed from an address delivered by invitation on December 13, 1928, before the St. Louis Chapter of the Missouri Society of Public Accountants. Footnotes have been added. No attempt has been made to annotate exhaustively.

[1] State ex rel. American Automobile Insurance Co. v. Gehner, 8 S. W. (2d) 1057; State ex rel. Koeln v. Lesser, 237 Mo. 310, 141 S. W. 888; State ex rel. Missouri State Life Insurance Co. v. Gehner, 8 S. W. (2d) 1068. But see State ex rel. Globe -Democrat Publishing Co. v. Gehner, 294 S. W. 1017.

[2] State ex rel. Orr v. Buder, 308 Mo. 273, 271 S. W. 508; Valle v. Ziegler, 84 Mo. 214; State ex rel. Campbell v. Brinkop, 238 Mo. 298, 143 S. W. 444.

[3] State ex rel. Campbell v. Brinkop, 238 Mo. 298, 143 S. W. 444.

of one share of stock as having any particular interest in the assets of the company as such. Nevertheless the Missouri law has always been very fond of this distinction. There was a time long ago when it taxed the stock of manufacturing and business corporations,[4] but at that time it did not tax the property. Of course, it makes a tremendous difference to the State of Missouri which is taxed, that is, the stock or the property, because of the fact that so many residents of Missouri own stock in corporations whose property is elsewhere. In the opinion of the writer, the exemption of corporate stock will doubtless be continued in Missouri for some time to come.

This exemption does not apply to banks and insurance companies, but with respect to them the State takes the other option and taxes the stock and not the assets.[5] There are special provisions for getting at the value of the stock; and to make sure that none escape, the corporation is required to pay the tax in the first instance and get reimbursement from the stockholder, with the result, of course, that nonresident stockholders are compelled to pay the tax as well as resident stockholders. It is this tax that used to cause so much trouble in making out the income tax, where at one time the Government ruled that where the bank paid the tax for the stockholder that was income to the stockholder, and even now on the Missouri income tax one may consider the amount of the tax paid by the bank on the bank stock for the stockholder as tax paid, and a deduction, and on the other hand the amount represents additional income in the nature of a dividend which is exempt under the Missouri income tax if the bank pays 100 per cent. Missouri income tax, which the Missouri banks generally do.

Turning now from the subject of corporate stock being exempt, we will take up some assets which are ordinarily taxable, but which are located outside the state under circumstances which render them nontaxable under our law. Of course, when we speak of being located outside of the state we have in mind something which can have a physical location apart from the

[4] See St. Louis Mutual Life Insurance Co. v. Charles, 47 Mo. 462; Ogden v. City of St. Joseph, 90 Mo. 522, 3 S. W. 25.

[5] State ex rel. Missouri State Life Insurance Co. v. Gehner, 8 S. W. (2d) 1068, State ex rel. U. S. Bank v. Gehner, 5 S. W. (2d) 40. But St. Louis Joint Stock Land Bank held not taxable in State ex rel. Compton v. Buder, 308 Mo. 253, 271 S. W. 770.

owner. The courts of Missouri now hold that a bank deposit is merely a debt[6] and, therefore, must be considered as located at the domicile of the owner and not where the bank is located. But a bond may have a location outside of the state and, of course, tangible personal property, such as furniture, could have; and notes representing a debt could have.

The taxpayer's oath contains a statement that the taxpayer has not sent anything out of the state to avoid taxation. Reasoning from this wording of the oath, the courts of Missouri originally held[7] that if one had sent property out of the state in good faith for any *other* reason, it would not be taxable. Of course, it was very natural to send bonds out of the state for safe keeping or for the collection of interest, and so it was held that under such circumstances if this was done in good faith, which was pretty hard to prove one way or the other, the bonds would not be taxable.

This was too much of a good thing and the Legislature promptly amended the law,[8] but instead of amending the oath, they provided in what is now Section 12755, R. S. Mo. 1919, as follows:

> "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 12773; 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."

It should be noted that this statute applies to notes, bonds or evidences of debt and does not apply to tangible personal prop-

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[6] State ex rel. American Automobile Insurance Co. v. Gehner, 8 S. W. (2d) 1057; State ex rel. American Central Insurance Company v. Gehner, 9 S. W. (2d) 621, disapproving State ex rel. Campbell v. Brinkop, 238 Mo. 298, 143 S. W. 444; State ex rel. Citizen's Ins. Co. v. Gehner, 8 S. W. (2d) 1066.

[7] State ex rel. Dunnica v. County Court, 69 Mo. 454; State ex rel. American Automobile Insurance Co. v. Gehner, 8 S. W. (2d) 1057; Valle v. Ziegler, 84 Mo. 214.

[8] State ex rel. American Automobile Insurance Co. v. Gehner, 8 S. W. (2d) 1057.

erty which, of course, still can be nontaxable if it is not sent out of the state for the purpose of avoiding taxation.

Although this statute refers to property held outside of the state, it is nevertheless true that property owned by a resident which never was in the state is not taxable under our laws.

The case of *Leavell v. Blades*[9] is an interesting one. Leavell was a citizen and resident of Missouri and went to Alaska as a gold digger and in 1906 returned to his home in Missouri. At the time of listing his property he told the assessor that while in Alaska he had deposited for assay purposes in a bank there $10,000.00 in gold dust dug in the Alaska mines, and further that while in Alaska he had loaned a citizen of that territory gold dust of the value of $5000.00 and taken a note evidencing the loan and security in the form of a mortgage upon a mining claim there, and had left the note and mortgage in the bank in Alaska. Neither the gold dust nor the note nor the mortgage had ever been in Missouri. The property was, of course, of such a kind that if it had been located in Missouri it would be taxable here. The question was, whether it was taxable here inasmuch as it had never been in the state of Missouri and was not now located here. The court held that it was not taxable.

It is obvious that bonds of the United States, being an instrumentality of the Federal Government, cannot be taxed by the states. Formerly, when the Government bonds yielded more, there was real interest in this exemption from the standpoint of the ordinary investor, but with the yield falling off this is not so pronounced. Of course, around June 1, some investors display a remarkable preference for Government bonds, and if they buy them in good faith and actually own them, there is no reason why they should not be exempt from the tax on June 1, notwithstanding that the investor in deciding to buy the Government bonds probably had in mind that they would not be taxable and may think that at an opportune time after June 1 they will be disposed of. This is assuming that the investor takes the chance of making a profit or loss on the market price of the bonds in case they should fluctuate while held by him.

The suggestion might be made that a bank for a small consideration agree to sell a taxpayer certain Government bonds

[9] 141 S. W. 893.

with the understanding that after June 1 it will buy them back for the same price. This appears to be nothing but a subterfuge. It might make it a little harder to prove that the taxpayer was avoiding his taxes, but it would not appear to be a legal method of doing so, and certainly should be avoided.

The fourth general class of exemptions would be those on account of being a charitable, philanthropic, or educational institution, which are of limited interest.

INCLUSIONS

Ordinary corporate and municipal bonds are taxable under our Missouri property tax.

Some question might arise with reference to what is known as building and loan stock. Of course, this is not stock, but represents deposits made by the participants on a certificate which ultimately is paid out when the series "matures" as they call it. Section 12776, R. S. Mo. 1919, requires the payment of the tax on any such shares on which no loan has been obtained from such association, which tax is paid by the association for account of the owners of the shares.

It is probably unnecessary to state that with respect to the ordinary taxpayer his debts are not deductible from his assets in order to ascertain the net taxable value,[10] but the gross amount is taken. Of course, a situation sometimes arises where the taxpayer merely owns an equity. For instance, a corporation or an individual might pledge certain personal property to secure a certain bond issue. Then the equity in such personal property subject to such bond issue, might be sold to a third person. Such third person would not owe the debt and own the property, but would simply own the equity of the net amount after subtracting the debts from the total value of the property.[11] Of course, there would be someone else who owned the remainder of the value of the personal property, being the amount of the lien or pledge on it.

This situation does not arise with respect to real estate be-

[10] State ex rel. Van Raalte v. Board of Equalization, 256 Mo. 455, 165 S. W. 1047; State ex rel. Collector v. Title Guaranty Trust Co., 261 Mo. 448, 169 S. W. 28.

[11] State ex rel. Collector of City of St. Louis v. Title Guaranty Trust Co., 261 Mo. 448, 169 S. W. 28.

cause the real estate is taxed as a unit, and of course the debts secured by a mortgage on the real estate would be taxable to the owner if he was a resident of the state of Missouri, which would result in double taxation, but nevertheless legal taxation, under our laws.

ADMINISTRATIVE MATTERS

The date as of which taxes are assessed in Missouri is the first day of June in each year. The basis of the assessment is service on the taxpayer.

The law requires the assessor or his deputy or deputies between the first days of June and January to proceed to take a list of all the taxable property in his county, town or district, and assess the value thereof. He shall call at the office, place of doing business, or residence of each person required to list property and shall require such person to make a correct statement of all taxable property owned by such person, or under the care, charge or management of such person, except merchandise which may be required to pay a license tax, and according to the amendment approved March 21, 1927,[12] the taxpayer is not required to include merchandise, bills and accounts receivable and other credits of a merchant or a manufacturer arising out of the sale of goods, wares and merchandise which have been returned for taxation under Sections 13071 and 13102, R. S. Mo. 1919, as amended (Merchants' and Manufacturers' license). Specific provision is made in the statute for a case where the assessor does not find the party in when he makes his call. If any person required to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave a blank which is required to be returned in twenty days. In St. Louis the twenty day limit is ignored and return is made any time before the end of the year. By an amendment,[13] if any such person shall have deceased prior to the time when the assessor calls for such list, the assessor shall deliver said written or printed notice to the executor or administrator of such deceased person, and such executor or administrator shall make out and deliver to the assessor such sworn statement of all the property of such decedent. If the person required to make the

[12] Laws of 1927, p. 472.
[13] Laws of 1921, p. 675.

list neglects or refuses to do so, then the assessor shall make the assessment, and in such cases is entitled to double it as a penalty.

There is an interesting case with reference to what constitutes service. It is *State ex rel. Wenneker v. Cummings.*[14] It appears from this case that the assessor went to the place of residence of Mr. Cummings and left the written notice under the door sill after having rung the bell and received no answer. Then the assessor went next door and served a notice, and after he came back Mr. Cummings was outside and had the notice in his hand. Mr. Cummings inquired of the officer if he left that notice, and was told that he did. After much unnecessary profanity the defendant very emphatically swore that he would make no list. This was held to be a clear case of service. The language of the case goes further and sanctions the leaving of the notice in the absence of the taxpayer, which indicates that the Statute means what it says.[15]

An *individual* should make a return at the place of his domicile and include property located in that county as well as in any other county.[16] A *corporation,* on the other hand, returns the property in the county in which the property is located.[17] A *partnership* is deemed to be domiciled at its place of business, not at the place of residence of the members of the partnership.[18] A *decedent's estate* is taxable not at the domicile of the personal representative, but at the last domicile of the deceased.[19] A *guardian* is taxable with respect to the property of the ward where the guardian is domiciled, not where the guardianship proceedings happened to be pending in the Probate Court.[20]

It is an interesting fact that most trustees of trust estates are not served for purposes of the property tax. If they were they would be in a bad situation, because ordinarily they are required to invest in "legal securities," which means bonds and not corporate stock; and on the other hand the bonds would be

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[14] 151 Mo. 49, 52 S. W. 29.
[15] State ex rel. Hayes v. Seehorn, 39 S. W. 809.
[16] State ex rel. Kelly v. Shepherd, 218 Mo. 656, 117 S. W. 1169. But see State ex rel. Davis v. Rogers, 79 Mo. 283, holding private bank of individual is taxable where business is conducted.
[17] R. S. Mo. 1919 Sec. 12774.
[18] School district of Plattsburg v. Bowman, 178 Mo. 654, 77 S. W. 880.
[19] Stephens v. City of Boonville, 34 Mo. 323.
[20] State ex rel. Ziegenhein v. McCausland, 154 Mo. 185, 55 S. W. 218. But compare State ex rel. Hamilton v. Brown, 172 Mo. 374, 72 S. W. 640.

taxable unless they were Government bonds, which yield very little; so that if they made a true return approximately one-half of the total income of the trust estate would go for the property tax.

An interesting situation arises with respect to service on the husband where the wife owns property. It is customary not to serve his wife unless she is interested in the real estate. Of course, if the wife owns property it is not owned by the husband, and he may not be "in charge" of it within the meaning of the statutes. Therefore, it has happened that men put property in the name of their wives in order to avoid the tax on it. It is obvious that this is successful only so long as it is not known, because if the wife were served the avoidance would be at an end.

It has been held that the assessor is not bound by the valuation of the personal property shown on the return.[21] The same ruling was made with respect to real estate in the case of *State ex rel. Dobbins v. Reed*,[22] which case also points out that it is not necessary to give personal notice to the taxpayer on raising the value of the real estate. The exhibition of the real estate book in the assessor's office is deemed to be sufficient notice of the increase. However, it has been held otherwise with respect to a specific increase of the personal property assessment, not a part of a general scheme. Notice is required in such case although not specifically required by the statutes.[23] On the other hand a general increase of assessment of a certain per cent as ordered by the State Board of Equalization did not require a separate notice to each taxpayer of the increase.[24]

A nonresident's property located here is taxable.[25]

It might be interesting to note that on account of the great avoidance of taxation by hiding and failing to declare taxable personal property, the Secured Debts Act was passed which provided for registering bonds and other evidences of debt and paying a small tax which would be available then to grant exemption to the debts during the life of the bonds or notes, but this

[21] State ex rel. Pehle. v. Stamm, 165 Mo. 73, 65 S. W. 242.
[22] 159 Mo. 77, 60 S. W. 70.
[23] State ex rel. Ziegenhein v. Spencer, 114 Mo. 574, 21 S. W. 837.
[24] Columbia Terminals v. Koeln, 3 S. W. (2d) 1021.
[25] City of St. Louis v. Wiggins Ferry Co., 40 Mo. 580.

was held unconstitutional in the case of *State ex rel. Tompkins v. Shipman*[26] because an improper classification of property, whereas the constitution required the taxation to be uniform. Under the Missouri Constitution the State tax has to be uniform on all classes of property. Property may be exempt or not, but if it is taxed it must be taxed at the same rate per hundred dollars of valuation. While special methods of taxing certain corporations are permitted, they are in theory intended to levy the tax at the same rate as is paid by other property.

SPECIAL INSTANCES

Occasionally a person who is served fails to make a return and the assessor, using his best judgment, guesses at the valuation and then doubles his guess, and still the result may be much less than the value of what the man really owns. Failing to make a return is a rather hazardous way of avoiding the tax and is not legal because it is a breach of the duty to make a return, but it has been practiced by many taxpayers. There was a case[27] where the taxpayer who had been failing to make any return and had been assessed, say, at $60,000 by the assessor was assessed at $500,000 and then that was doubled because he failed to make the return, making an assessment of $1,000,000 personal property. He contested the matter and succeeded in having the assessment nullified, but the incident shows that such things can happen.

It has happened that wealthy taxpayers have formed investment corporations to own taxable securities and, let us say, be incorporated under the laws of Delaware, having a statutory office there and, according to Delaware law, paying no property tax. The bonds might actually be located somewhere outside of Delaware. Doubtless such a corporation would not be doing business in the state where the bonds were, nor would it be admitted to do business there. The chances are very great that the corporation would never be served, and the result would be that the assets of the corporation would not be taxed at all. The owner of the stock of the holding corporation being a resident of Missouri, that stock would be exempt because it would be stock in a business corporation and exempt under our laws, with the net result that the assets would not be taxed at all.

[26] 290 Mo. 65, 234 S. W. 60.
[27] State ex rel. v. Scullin, 266 Mo. 319, 181 S. W. 40.

MERCHANTS' AND MANUFACTURERS' LICENSE

The return for the merchants' or manufacturers' license tax is not made on the ordinary property tax blank, but is made on a separate blank to the License Collector at St. Louis and is due on the third Tuesday in June of each year; but if business is begun before that date license must first be obtained. There are both a City tax and a State tax with respect to the property portion of this tax, but they are assessed on one return.

The property tax carries the same rate for State purposes as the ordinary local property tax, but there is a State law which permits cities of a certain size to levy a less rate of property tax for local purposes. The City of St. Louis comes within that classification and has taken advantage of it, so that the City rate is lower than the ordinary property tax rate, which explains why the merchants and manufacturers prefer to have their property taxed under this rate rather than the ordinary property tax rate.

In addition to that there is a sales tax, which is exclusively a City tax, of one dollar per 1000 dollars on sales, which is assessed and paid at the same time.

It is only the *goods, wares and merchandise* of the merchant or manufacturer which is entitled to the lower property tax rate, and investments of a merchant or a manufacturer and his equipment should be returned on the ordinary property tax return and carry the ordinary property tax rate. The tax is not levied on the amount of merchandise that is on hand on June first, but on the highest amount of all goods, wares and merchandise which may have been on hand at any time between the first Monday in March and the first Monday in June each year.[28] Practically the only exemption is that of imported material in the original packages awaiting manufacture. In the case of *American Manufacturing Company v. City of St. Louis,*[29] a tax on this material was admitted to be void; and in an earlier case of the same name,[30] it was held that such property in the original packages awaiting manufacture could not be taxed unless held an unreasonable length of time.

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[28] State ex rel. Carleton Dry Goods Co. v. Alt, 224 Mo. 493, 123 S. W. 882.
[29] 270 Mo. 40, 192 S. W. 339; aff. 250 U. S. 459.
[30] 238 Mo. 267, 142 S. W. 297.

In connection with the City's sales tax it will be necessary to take up manufacturers and merchants separately.

The first principle which apparently applies is that manufacture completed in the City of St. Louis is taxable no matter where the articles are sold. This was decided in the case of *State ex rel. International Shoe Company v. Chapman.*[31] It follows from this that goods manufactured outside the City of St. Louis are not taxable here for the manufacturers' license even if brought here.[32] It remains to be seen whether they are taxable under the merchants' license.

The important principle with regard to the Merchants' sales tax is that interstate commerce cannot be taxed. Therefore, sales of goods in interstate commerce by a St. Louis merchant from stock in St. Louis are not taxable.[33] On account of the wording of the ordinance, it is held to apply only to sales from stock of goods in St. Louis.[34]

Civic organizations were very much interested in a former ruling of the Attorney-General that accounts receivable arising from the sale of goods by merchants and manufacturers would be taxable for the property tax. The merchants and manufacturers considered that if one of them had paid a tax on an amount of goods which was later sold but not paid for by June 1, he should not be required to pay a tax on the account receivable as a distinct asset. While the Attorney-General and the Supreme Court of Missouri ruled against them,[35] the law was changed by an act approved March 31, 1927.[36] The act amended the enumeration of the kinds of property which the taxpayer is required to report by inserting "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 13071 and 13102 Revised Statutes of 1919."

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[31] 311 Mo. 1, 276 S. W. 32.
[32] But compare Simmons Hardware Co. v. City of St. Louis, 192 S. W. 394.
[33] State ex rel. International Shoe Company v. Chapman, 300 S. W. 1076.
[34] American Manufacturing Co. v. City of St. Louis, 238 Mo. 267, 142 S. W. 297.
[35] State ex rel. Globe-Democrat Publishing Co. v. Gehner, 294 S. W. 1017.
[36] Laws of 1927, p. 472.