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POSTAL SAVINGS DEPOSITS—SUBJECT TO STATE TAXATION.

SYLLABUS:

1. *The federal statutes do not exempt postal savings deposits from taxation by the state.*
2. *By reason of the provisions of Section 5328-1, General Code, postal savings deposits are subject to taxation as deposits, and should be entered on the classified lists and duplicate of taxable property.*

COLUMBUS, OHIO, March 9, 1933.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Your recent request for opinion reads:

“We request your informal opinion concerning the taxation of postal savings deposits. This department has ruled that such deposits are taxable to Ohio residents as of November 25, 1932, at the value then on hand at the rate of two mills. This is pursuant to opinions of the Attorney General of the United States and the Director of Postal Savings.”

Your inquiry presents two questions of law; viz: Do the federal statutes prevent the taxation of postal savings deposits by the state? Do the laws of Ohio levy a tax of such deposits?

Section 756, Title 39 U. S. C. A., provides that any person may make “postal savings deposits” in any amount not to exceed \$2,500.00. Section 757, U. S. C. A. limits the rate of interest which may be paid thereon to two per cent per annum. Section 758, U. S. C. A. authorizes the withdrawal at any time subject to regulations to be made by the Postmaster General. Section 760, U. S. C. A. provides that any depositor may surrender any part of his deposits at any time and accept in lieu thereof United States coupon or registered bonds of designated denominations, which bonds are payable twenty years after the date thereof, and may, at the pleasure of the United States bear interest after one year from the date thereof. Such Section 760, U. S. C. A. contains the following language:

“The bonds herein authorized shall be exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, county or municipal authority.”

Your inquiry is not concerned with the authority to tax the bonds issued in lieu of postal savings deposits and I therefore make no comment thereon.

I am unable to find any provision in the chapter of the United States Code with reference to postal savings deposits which either specifically exempts such deposits from state taxation or which grants specific authority to the state to tax the same.

A question might be raised as to whether such deposits are not specifically exempted from state taxation by reason of the provisions of Section 742, Title 31, U. S. C. A. Such section reads:

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

Are postal savings deposits "other obligations of the United States" within the purview of such section? It is self-evident that the duty to repay the deposits to the depositor is an obligation of the United States; but, is that sort of obligation within the legislative intent in the enactment of the section just quoted? There is a general rule of statutory construction usually referred to as the "ejusdem generis rule" which is applicable to the interpretation of such section. Such rule is: Where general words such as "and all others", "other———", and "any other" follow an enumeration of persons or things by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons and things of the same general kind or class as those specifically named. If this rule is applicable to such statute it would limit the effect of that statute to exempting from taxation only those obligations of the United States which are of the nature of stocks, bonds and treasury notes. An examination of the other provisions of the United States statutes discloses that in the statute authorizing each issue of bonds Congress has specifically exempted the particular issue from taxation. (Sections 744, 745, 746, 747, 748, 749, 750, 751, 753, and 755 Chapter 12, Title 31, U. S. C. A.) While I find no court decision with reference to the exclusion of postal savings deposits from the effect of this provision, in the case of *Hibernia Savings & etc. Society vs. City and County of San Francisco*, 200 U. S. 310, 50 L. Ed. 495, the Supreme Court of the United States had before it the question as to whether checks or warrants issued by the United States Treasurer were exempt from taxation by the states. At page 315, the court said:

"While the checks are the obligations of the United States within the letter of Section 3701 (now Section 742, quoted above), they are not within its spirit, and are proper subjects for taxation."

The court in this case lays down the rule that when the federal obligations are payable on demand Section 742, supra does not exempt them from taxation. Postal savings deposits are payable on demand.

I might further call attention to the provisions of Section 425 Title 31, U. S. C. A. which reads:

"Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency and gold, silver, or other coin shall be subject to taxation as money on hand or on deposit under the laws of any State or Territory: PROVIDED, That any such taxation shall be exercised in the same manner and at the same rate that any such State or Territory shall tax money or currency circulating as money within its jurisdiction."

I am therefore of the opinion that the federal statutes do not exempt postal savings deposits from taxation.

In an opinion of the Attorney General of Missouri, rendered under date of April 30, 1932, on somewhat similar reasoning such Attorney General held that postal savings deposits were subject to taxation under the laws of the state of Missouri. I am informed that the Attorney General of the United States has ruled that state taxation of postal savings deposits is not prohibited by federal laws.

If I am correct in my conclusion that the taxation by the state of postal savings deposits is not prevented by federal laws, it becomes necessary to determine

the second question raised by your inquiry: Whether such deposits are made taxable by the laws of the State of Ohio. An article of property is never taxable unless made so by statute.

Section 5381-1, General Code, levies a tax on certain deposits, and in so far as is material, reads:

"All * * *deposits* * * of persons residing in this state shall be subject to taxation, excepting as provided in this section or as otherwise provided or exempted by this title * *

Such property, subject to taxation, shall be entered on the classified tax list and duplicate of taxable property as prescribed in this title." (Italics, the writer's.)

The term "deposits" is defined by the legislature, for the purposes of taxation, in Section 5324, General Code, as follows:

"The term 'deposits' as so used, includes every deposit which the person owning, holding in trust, or having a beneficial interest therein is entitled to withdraw in money, whether on demand or not, and whether evidenced by commercial or checking account, certificate of deposit, savings account or certificates of running stock or other withdrawable stock, or otherwise, excepting (exceptions not applicable) * *

From the nature of postal savings deposits, they are withdrawable in money and are evidenced by pass-book or certificate; by reason thereof, they are taxable deposits within the express provisions of the Ohio statute.

A further question might arise as to whether state taxation is prevented by the implications contained in the federal constitution against the taxation by the state of instrumentalities of the federal government. The rule has been frequently enunciated by the United States Supreme Court that:

"The exemption of an instrumentality of one government from taxation by the other must be given such a practical construction as will not unduly impair the taxing power of the one or the appropriate exercise of its functions by the other."

Metcalf vs. Mitchell, 269 U. S. 514, 523; *Susquehanna Power vs. State Tax Commission*, 283 U. S. 291; *Fox Films Corp. vs. Doyal*, 286 U. S. 123; *Educational Films Corp. vs. Ward*, 282 U. S. 379.

It is somewhat questionable whether the deposit in a postal savings account is a governmental function until such time as it is converted into bonds, after which time they are expressly exempted from taxation. It appears to me that if a construction were to be placed on such implied provision of the Constitution that would exempt postal savings deposits from state taxation it would have some tendency to induce citizens to deposit in such accounts rather than in national banks and other banks, which accounts are taxable, thus having some tendency to unreasonably restrict the state's power to tax, without particular benefit to the federal government. It does not appear from the language of the act, that Congress in establishing postal savings accounts, intended to create such type of institution. The fact that Congress specifically exempted government bonds purchased by conversion of such deposits indicates to a degree, a contrary intent on the part of Congress.

You do not ask, and I express no opinion on the question of the manner of the collection of the taxes levied on such deposits.

Specifically answering your inquiry it is my opinion that:

1. The federal statutes do not exempt postal savings deposits from taxation by the state.

2. By reason of the provisions of Section 5328-1, General Code, postal savings deposits are subject to taxation as deposits, and should be entered on the classified list and duplicate of taxable property.

Respectfully,

JOHN W. BRICKER,
Attorney General.

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DISAPPROVAL, LEASE TO MIAMI AND ERIE CANAL LANDS IN THE
CITY OF PIQUA, MIAMI COUNTY, OHIO.

COLUMBUS, OHIO, March 9, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You recently submitted to me for my examination and for my approval or disapproval a certain canal land lease in triplicate, executed by you in your official capacity as superintendent of public works and as director of said department to the city of Piqua. By this lease instrument, there is leased and demised to the city of Piqua for the term of ninety-nine years, renewable forever, a certain tract of 37.645 acres of abandoned Miami and Erie Canal lands to the south of and contiguous to the city of Piqua, for "general municipal purposes".

Under House Bill No. 162, enacted April 11, 1925, known as the Stevens Act, that part of the Miami and Erie Canal which extends from the Maumee River at Defiance, Ohio, to a point five hundred feet north of the Middletown Dam near the north corporation line of the city of Middletown, Ohio, was abandoned for canal purposes. Section 5 of said act provided that any city, village or other political subdivision of the state desiring to lease any portion of such abandoned canal lands, including feeder lands, basins, wide waters and state lots theretofore used in connection with canal property lying within or adjacent to the boundaries of any such political subdivision, had a right to file an application for the lease of such abandoned canal lands with the superintendent of public works; and by section 9 of this act the superintendent of public works was authorized to execute a lease of such lands to such political subdivision on its application for a term of not less than fifteen years, or for any multiple of fifteen years up to and including ninety years, or for a term of ninety-nine years, renewable forever. Under this act the superintendent of public works was authorized to execute a lease of such abandoned canal lands to a city or other political subdivision without any stated limitation as to the purpose for which the lands were leased, or for which they were to be used by the city or other political subdivision taking the lease.

Amended Substitute Senate Bill No. 194, enacted April 29, 1931, which is known as the DeArmond Act, in terms provided for the abandonment of the Miami and Erie Canal from a point where said canal joins with the Maumee