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FILE NO. S-610

**BANKS:**

**Personal Property Taxation**

Honorable Philip C. Quindry  
State's Attorney  
Edwards County  
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Albion, Illinois 62806

Dear Mr. Quindry:

I have your letter of recent date wherein you state:

"I have been contacted by our Supervisor of Assessments of Edwards County, regarding the taxation of local banks for their personal property, such as furniture, surplus and undistributed profits.

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However, there seems to be a difference of opinion between myself and the Supervisor of Assessments concerning this matter. I would appreciate your opinion as to whether or not furniture, surplus and undistributed profits of National and State banks are subject to Illinois Personal Property Tax."

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Section 16 of "AN ACT to revise the law in relation to the assessment of property \* \* \* ", supra, provides in part:

"The classes of property named in this section shall be assessed and taxed, except so much thereof as may be, in this Act, exempted:

Second: All personal property in this State \* \* \* ".

Ill. Rev. Stat. 1972 Supp.,  
ch. 120, par. 499.

The aforementioned statutory provision is sufficiently broad to cover the taxation of tangible, as well as intangible personal property. In construing the forerunner to this statute, our Supreme Court stated in Wheelock, Lovejoy & Co. v. Gill, 366 Ill. 378 at 381:

"The first provision of section 1 relates to the taxation of real and personal property and may be regarded as broad enough to cover all property of every character, tangible or intangible, in this State."

Section 72 of "AN ACT to revise the law in relation to the assessment of property \* \* \* ", provides for the taxation of the personal property of banks as follows:

"The personal property of banks \* \* \* shall be listed and assessed in the taxing district where their business is carried on, except such

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property as shall be liable to assessment elsewhere in the hands of agents."

Ill. Rev. Stat. 1971,  
ch. 120, par. 553.

National banks, their property and capital stock, are taxable under State laws only when Congress consents, and then only in conformity with the restrictions attached to such consent. (People v. First Nat. Bank, 351 Ill. 435.) Until just recently, Congress did not consent to the taxation of personal property belonging to national banks.

Section 5219 of the Revised Statutes (12 U.S.C., sec. 548) prescribed four methods by which a State could properly tax national banks. This statute in part provided:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such association on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

'1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except hereinafter provided in subdivision (c) of this clause.'

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Many cases have held that the effect of section 5219 of the Revised Statutes, supra, was to exempt personal property belonging to a national bank from direct assessment and taxation by the State. First National Bank & Tr. Co. of Oklahoma City v. McDonald, 289 F. Supp., 493.

Public Law 91-156 amended section 5219, supra. The effect of this amendment was to immediately grant expanded taxing authority to the States. (2 U.S. Cong. & Admin. News '69, P. 1597.) Among other provisions, the following subsection was added to section 5219, supra:

"(a) Section 5219 of the Revised Statutes (12 U.S.C. 548) is amended by adding at the end thereof the following:  
5. (a) In addition to the other methods of taxation authorized by the foregoing provisions of this section and subject to the limitations and restrictions specifically set forth in such provisions, a State or political subdivision thereof may impose any tax which is imposed generally on a nondiscriminatory basis throughout the jurisdiction of such State or political subdivision (other than a tax on intangible personal property) on a national bank having its principal office within such State in the same manner and to the same extent as such tax is imposed on a bank organized and existing under the laws of such State. \* \* \* "

P.L. 91-156

The effect of this subsection is to remove the

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prohibition against States freely taxing national banks located within their boundaries to the same extent and in the same manner that they now have the right to tax State banks. The only exception to this, other than those specified in the existing statute, is the continued prohibition against the imposition of intangible personal property taxes. 2 U.S. Cong. & Admin. News '69, P. 1597-8.

The aforementioned amendatory language added to section 5219 was temporary in duration since Public Law 91-156 further provides that section 5219 is to be permanently amended as of January 1, 1972, to read as follows:

"For the purpose of any tax law enacted under authority of the United States or any State, a national bank shall be treated as a bank organized and existing under the laws of the State or other jurisdiction within which its principal office is located."

P.L. 91-156.

The permanent language removes the prohibition against the imposition of intangible personal property taxes (2 U.S. Cong. & Admin. News '69, P. 1598.) Public Law 92-213 deferred until January 1, 1973, the effective date of the permanent amendment to section 5219. The enactment of Public Law 92-213 did not result in the withdrawal of any authority

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granted to the States under the temporary provisions of Public Law 91-156. 2 U.S. Cong. & Admin. News '71, P. 2322.

As of today, section 5219 contains only the above stated language permanently added by Public Law 91-156 on January 1, 1973. Thus, congressional consent has been given to the States to tax the tangible and intangible personal property of national banks, the principal office of which is located within the jurisdiction of the State.

You have specifically inquired as to whether or not furniture, surplus and undistributed profits of national and State banks are subject to the Illinois personal property tax. As stated above, provision is made by the Revenue Act for the assessment and taxation of personal property of banks (Ill. Rev. Stat. 1971, ch. 120, par. 553.) Also, the broad authorization to assess and tax personal property covers the taxation of tangible as well as intangible personal property.

Tangible personal property is that which may be felt or touched, property capable of being possessed or realized. (73 C.J.S. Property, sec. 5.) Obviously, an item of furniture is tangible personal property. However, surplus and undistributed profits are not items of intangible personal property of State and national banks; they are liabilities to or a measure

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of the interest of the stockholders of the bank as shown on the balance sheet.

While the bank may own certain intangible personal property which is shown on the assets side of the balance sheet and which is taxable as such property, the surplus and undistributed profits are not necessarily reflected in any particular assets but represent merely a net measure of the value of the assets over liabilities exclusive of such surplus and profits.

In Chicago Title & Tr. Co. v. Cent. Tr. Co., 312 Ill. 396, 411, the court described surplus and undistributed profits as follows:

"In all well regulated banks, whether State, national or private, in which their books are properly kept, the assets and liabilities as carried on their books exactly balance. The liabilities to stockholders are generally, and we think universally, placed at the head of the tabulations representing the liabilities of the bank, although in case of dissolution and winding up of the affairs of any of the banks aforesaid, for whatever cause, the stockholder is the last to receive consideration in the distribution of the proceeds realized from the asset side of the account. Generally three terms are used to express this liability to stockholders: First, capital stock; second, surplus; and third, undivided

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profits. The item designated as 'surplus' represents permanent surplus or a liability that is carried permanently on the books and is rarely ever decreased or increased except by necessity, in case of a loss to the bank or in case of an increase by reason of a new declaration of a permanent fund to be carried under that designation. The undivided profits are the funds usually drawn on to pay the declared dividends of the bank. The term 'capital stock' requires no explanation. \* \* \* "

Therefore, it is my opinion that furniture owned by State and national banks is subject to the Illinois personal property tax, while surplus and undistributed profits are not subject to personal property taxation.

Very truly yours,

A T T O R N E Y   G E N E R A L