



**THE ATTORNEY GENERAL
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Hon. Raymond E. Magee
County Attorney
Galveston County
Galveston, Texas

Letter Opinion No. MS-93

Re: Assessment of personal property
of an unincorporated bank under
the terms of Article 7165,
V.C.S.

Dear Mr. Magee:

You have requested an opinion on the proper method of arriving at the value of the personal property of an unincorporated banks for ad valorem taxation purposes.

Paragraph 4 of Article 7165, V.C.S., which prescribes the method of rendition by an unincorporated bank, reads as follows:

"4. All other banks, bankers, brokers, or dealers in exchange, or stock jobbers shall render their list in the following manner:

"(1) The amount of money on hand or in transit or in the hands of other banks, bankers, brokers or others subject to draft, whether the same be in or out of the State.

"(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

"(3) From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

"(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

"(5) All other property belonging or appertaining to said bank or business, including both personal

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property and real estate, shall be listed as other personal property and real estate."

We summarize the fact situation involved in your request as follows: A local unincorporated bank rendered its 1953 personal property by deducting its money on deposit, listed under subdivision (3), not only from its cash and its time and demand loans, listed under subdivisions (1) and (2) respectively, but also from its stocks and bonds, listed under subdivision (4).

The question for determination is whether deposits are deductible from the amount of bonds and stocks which the bank is required to list under subdivision (4).

In Griffin v. Heard, 78 Tex. 607, 14 S.W. 892 (1890), the court said in construing Article 4684 of the Revised Statutes of 1879 (now Article 7165, V.C.S.):

"It must be borne in mind that Articles 4669, 4670, 4671, 4672, and 4673 of the Revised Statutes, define the property in the state which is made subject to taxation.

". . .

"Article 4671 [now Article 7147, V.C.S.], among other things provides that 'personal property shall, for the purposes of taxation, be construed to include all goods, chattels, and effects, and all moneys, credits, bonds, and other evidences of debt, owned by citizens of the state, whether the same be in or out of the state; *** all moneys at interest, either within or without the state, due the person to be taxed, over and above what he pays interest for, and all other debts, due such persons, over and above their indebtedness,' etc. Article 4672 [now Article 7149, V.C.S.] declares that 'the term, "money or moneys," wherever used in this title, shall, besides money or moneys, include every deposit which any person owning the same, or holding in trust, and residing in this state, is entitled to withdraw in money on demand;' and that 'the term "credits," wherever used in this title, shall be held to mean and include every claim and demand for money, or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become

due.' The effect of these provisions is simply to subject to taxation, in addition to tangible property, all moneys actually belonging to the taxpayer, and any excess that may exist of his credits over his indebtedness. The object of Article 4684 /now Article 7165, V.C.S./ is not to define the property of banks and bankers subject to taxation, but merely to secure a faithful rendition of their assets, to the end that they may not escape the equal and uniform taxation required by the constitution. The statement therein provided for is in fact not the sole statement required of bankers, brokers, and stock-jobbers . . . Article 4684 required a more specific statement, so that the law would not be evaded. It is apparent, therefore, that the object of the statement required by that article (now amended by Act of April 14, 1883) was simply to ascertain their taxable money and credits, to the end that they should be taxed just as other persons are taxed. . . . Amended Article 4684 expressly provides that from the aggregate amount of money, etc., and of credits, 'shall be deducted the amount of money on deposit.' We think this means no more nor less than that all the money due depositors shall be deducted. In the banking business proper the sum due depositors represents the bank's indebtedness, and, in order to make the tax upon the credits of a banker equal to and uniform with the tax upon the credits of other persons, it is necessary that all these debts should be deducted. . . . We conclude that in estimating the appellees' credits for taxation it was proper to deduct the whole amount of their deposits." (Emphasis added.)

This case holds in effect that Article 7165 provides a more specific method than the general statutes for the rendition of the personal property of unincorporated banks, but that other statutes also must be taken into consideration in determining the amount of their assessment. It holds, further, that an unincorporated bank is entitled to deduct its deposits (which represent an indebtedness) from its credits. In Primm v. Fort, 57 S.W. 86 (Tex.Civ.App. 1900, error ref.) it is pointed out that under Article 7147 (then Article 5063, R.C.S. 1895) the deduction of indebtedness is allowed from all credits.

Following the opinions in these cases, the question

reduces itself to whether stocks and bonds constitute debts due the bank, or, stated otherwise, credits of the bank.

It has been held that shares of stock are not credits. Primm v. Fort, supra; Rosenberg v. Weekes, 67 Tex. 578, 4 S.W. 899 (1877); 3 Cooley on Taxation (4th ed. 1924) § 987 and cases cited thereunder.

The definition of "credits" given in Article 7149, V.C.S. (quoted in Griffin v. Heard as Article 4672) would seem to include bonds, and there is ample authority from other jurisdictions for holding that bonds are credits of the owner and represent debts of the obligor. In 2 Cooley § 572 it is stated that "bonds are taxable in the hands of their owners as credits," citing Hall v. Miller, 102 Tex. 289, 115 S.W. 1168 (1909). Also see Cooley § 575. Blacks Law Dictionary (4th ed. 1951) defines a debt as "a sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, . . . where the amount is fixed and specific and does not depend upon any subsequent valuation to settle it." Black defines a bond as "a certificate or evidence of a debt."

In Highland Park Independent School Dist. v. Republic Ins. Co., 162 S.W.2d 1056 (Tex.Civ.App. 1942) the court held on second motion for rehearing, as an addendum to a previous opinion, that bonds "constitute personal property of a concrete form and not mere credits from which debts may be deducted," citing in support of its holding Texas Land & Cattle Co. v. City of Fort Worth, 73 S.W.2d 860 (Tex.Civ.App. 1934, error ref.); Guarantee Life Ins. Co. v. City of Austin, 165 S.W. 53 (Tex.Civ.App. 1914), aff'd 108 Tex. 209, 190 S.W. 189 (1916); and Kansas Mut. Life Ass'n v. Hill, 51 Kan. 636, 33 Pac. 300 (1893). The Supreme Court reversed the case on other grounds in Republic Ins. Co. v. Highland Park Independent School Dist., 141 Tex. 224, 171 S.W.2d 342 (1943), without discussing this question. In view of its subsequent history, we believe the Court of Civil Appeals opinion is without effect as a precedent in determining what constitutes credits from which debts may be deducted for taxation purposes.

The question involved in Texas Land & Cattle Co. v. City of Fort Worth and in Guarantee Life Ins. Co. v. City of Austin was the taxable situs of promissory notes. Following a well-recognized exception to the general rule that the situs of personal property is the domicile of the owner, these cases hold that because of their concrete form notes and bonds may acquire a taxable situs apart from the domicile of the owner; but they do not hold that notes and bonds are not credits.

Kansas Mut. Life Ass'n v. Hill, which held that the insurance company could not deduct its indebtedness from its bank deposits and mortgage loans, was decided under a statute which allowed a deduction of indebtedness to be made only from credits not secured by liens on real estate nor due from a bank on demand. Article 7147, V.C.S., does not restrict the types of credits from which debts may be deducted, as did the statute construed in that case.

In view of the foregoing discussion, it is our opinion that bonds should be classified as credits from which debts may be deducted for the purpose of determining the taxable value of the personal property of their owners.

We can envision certain fact situations that might cast doubt on the constitutionality of assessments of property of an unincorporated bank. This opinion does not take into account this question inasmuch as your request was specifically limited to statutory construction and in view of our continued adherence to the policy that, where possible, questions of constitutionality should be determined by the courts.

Yours very truly,

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