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February 19, 1987

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ATTORNEY GENERAL OPINION NO. 87- 32

The Honorable Audrey Langworthy  
State Senator, Seventh District  
Capitol, Room 143-N  
Topeka, Kansas 66612

Re: Taxation -- Banks, Banking Businesses, Trust  
Companies and Savings and Loan Associations --  
Liability of Banks and Banking Institutions, and  
Their Receivers, for Personal Property Taxes

Synopsis: Pursuant to K.S.A. 79-1103 et seq., there is no  
exemption from personal property taxation upon the  
tangible personal property of a bank. In its  
capacity as receiver of a failed bank, the FDIC is  
liable for whatever taxes are due and owing by the  
failed bank. Cited herein: K.S.A. 9-1901 et  
seq.; 60-1301 et seq.; 79-101; 79-301;  
79-304; 79-1103; 79-1105a; 79-1107.

\* \* \*

Dear Senator Langworthy:

As Senator for the Seventh District, you request our opinion  
concerning tax exemption. Specifically, you ask whether the  
personal property used in the business of banking is exempt  
from the assessment of personal property taxes pursuant to  
K.S.A. 79-1103 et seq. You also ask to what extent the  
Federal Deposit Insurance Corporation (FDIC), in its capacity  
as receiver for a failed bank, may assert this exemption.

As to your initial inquiry, K.S.A. 79-101 states:

"All property in this state, real and personal, not expressly exempt therefrom, shall be subject to taxation in the manner described by this act."  
(Emphasis added.)

K.S.A. 79-301 states:

"All tangible personal property subject to taxation shall be listed and assessed as of the first day of January each year in the name of the owner thereof. Such listing and assessment shall be made as hereinafter provided." (Emphasis added.)

K.S.A. 79-304 states in part:

"The property of banks, bankers, brokers, merchants, and of insurance or other companies (except of mutual fire insurance companies) shall be listed and taxed in the taxing district where their business is usually done, and manufactories and mines in the taxing district where the manufactories or mines are located." (Emphasis added.)

K.S.A. 79-1103 et seq. deals with the taxation of banks and businesses engaged in the business of banking. Pursuant to K.S.A. 79-1103, those who engage in the business of banking, as defined therein, are taxed on a share basis. The statute provides that personal property, other than motor vehicles, shall not be otherwise listed or taxed. However, the statute expressly excludes banks from application of its provisions. Similarly, K.S.A. 79-1105a provides for taxation of nonresidents engaged in banking in Kansas on a share basis, but banks are specifically excluded therefrom.

K.S.A. 79-1107, on the other hand, deals specifically with the taxation of banks:

"Every national banking association and state bank located or doing business within the state shall annually pay to the state for the privilege of doing business within the state a tax according to or measured by its net income for the next

preceding calendar year or fiscal year ending in the next preceding year to be computed as provided in this act.

. . . .

"The tax levied shall be in lieu of ad valorem taxes which might otherwise be imposed by the state or political subdivisions thereof upon shares of capital stock or the intangible assets of national banking associations and state banks . . . ." (Emphasis added).

While the statute expressly states that the tax is in lieu of ad valorem taxes on the intangible assets, there is no exemption regarding the tangible personal property of a bank. Statutes granting tax exemptions are strictly construed; taxation is the rule while exemptions are the exception. Topeka Presbyterian Manor v. Board of County Commissioners, 195 Kan. 90, 93 (1965); Manhattan Masonic Temple Ass'n v. Rhodes, 132 Kan. 90, 93 (1965). It is our opinion, therefore, that without a specific exemption, the tangible personal property used in the business of banking by banks would be taxed pursuant to the directive of K.S.A. 79-101.

As to your second inquiry, the requirement that a receiver assumes all liabilities and claims of its predecessor is well settled. W-V Enterprises, Inc. v. Federal Savings & Loan Ins. Corp., 234 Kan. 354, Syl. ¶14 (1983). "The receiver . . . becomes to all intents and purposes the bank -- at least he stands in the place of the bank; . . . the receiver, after his appointment, represents the bank, its stockholders and creditors." Landy v. Federal Deposit Insurance Corporation, 486 F.2d 146, 148 (D.C. Cir. 1935). Kansas Attorney General Opinion No. 86-67, in citing K.S.A. 9-1901 et seq., also discusses the liability of a receiver of a failed state bank for taxes due and owing by the failed bank. (See also K.S.A. 60-1301 et seq. on general receivership law).

In conclusion, pursuant to K.S.A. 79-1103 et seq., there is no exemption from personal property taxation upon the tangible personal property of a bank. In its capacity as

receiver of a failed bank, the FDIC is liable for whatever taxes are due and owing by the failed bank.

Very truly yours,



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