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
depersonal, 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. 1973). 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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