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SPRINGFIELD

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FILE NO. S-260

TAXATION:
Personal Property
Tax Exemption

Honorable Robert J. Lehnhausen
Director, Department of Local
Government Affairs
325 West Adams Street
Springfield, Illinois 62704

Dear Sir:

I have your recent letter wherein you state:

"The Department of Local Government Affairs is vested with certain statutory powers and duties relating to the assessment of property for property tax purposes, among which are the following:

"1. 'Assist and advise the local governments of the State in matters pertaining to --- the assessment and equalization of property ---'

"2. 'Direct and supervise --- the assessment for taxation of all real and personal property in this State ---'

"3. 'Confer with, advise and assist local assessment officers relative to the assessment of property for taxation'. (Chapter

127, Paragraph 63b14.13 and Chapter 120, Paragraph 611, I.R.S.)

"Pursuant to such statutory provisions, inquiries have been made by local assessment officers concerning the effect of the amendment to the Illinois Constitution, approved by referendum on November 3, 1970, prohibiting, as to individuals, the taxation of personal property by valuation.

"We would appreciate receiving your opinion as to the following:

- "1. Is an individual proprietor to be exempt from taxation on his business inventory and other personal property used in such business?
- "2. Is the individual farmer exempt from taxation on farm equipment and personal property owned in his capacity as an individual farmer?
- "3. Is the personal property of partnerships exempt, or will such personal property be taxable under the Revenue Act of 1939 because a partnership is considered to be an entity (even though composed of individuals) which requires treatment different from that accorded natural persons under the new Constitutional amendment?
- "4. Is the personal property of a decedent's estate exempt from personal property tax if the heirs or legatees are individuals?
- "5. Is the personal property of a decedent's estate exempt from personal property tax if the legatee is a corporation?
- "6. Is the personal property held by an individual trustee exempt from taxation if

the beneficiaries or beneficial owners are individuals? Is the answer different if the property is held by a corporate trustee?

"7. Is the personal property owned by tenants in common or joint tenants exempt from taxation?

"8. Is the personal property owned by a joint venture or other co-ownership exempt from taxation?

"Although the next assessment of personal property will be April 1, 1971, local assessing officials must soon begin to order the printing of forms for such assessment, and Supervisors of Assessment must be prepared to advise township assessors as required by Section 2 of the "Revenue Act of 1939", (Chapter 120, Paragraph 483, I.R.S.). We would, therefore, appreciate receiving your opinion at your earliest convenience."

As you have indicated in your letter, the amendment to the Illinois Constitution, approved by referendum on November 3, 1970, prohibits the taxation of personal property by valuation as to individuals. Your attention is called to Paragraph 499 of Chapter 120, 1969 Illinois Revised Statutes which states as follows:

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

"First: All real and personal property in this state.

"Second: All moneys, credits, bonds or stocks and other investments, the shares of stock of incorporated companies and associations, and all other personal property, including property in transitu to or from this state, used, held, owned or controlled by persons residing in this state, and all intangible personal property of foreign corporations, except those excluded by section 18 of this Act, doing business in this state which is located in this state and used in their business transacted within the state, provided that the provisions of this section relating to the taxation of intangible personal property shall not apply to those foreign corporations which are required by law to pay a premium tax for the privilege of doing business in this State.

"Third: The shares of capital stock of banks and banking companies doing business in this state.

"Fourth: The capital stock of companies and associations incorporated under the laws of this state."

It can be observed from the language of the foregoing Paragraph 499 that the personal property tax is a tax upon the personal property itself. Paragraph 534 of Chapter 120 does, of course, set forth certain rules pertaining to the listing of personal property but these do not change the nature of the personal property tax which is a tax upon the personal property.

It therefore becomes necessary for us to determine the effect of the constitutional amendment which prohibits the taxation of personal property by valuation as to individuals. It would be unreasonable to believe that the language of the constitutional amendment could expressly include each and every conceivable situation. Necessary implications and intendments from the language used in a statute may be resorted to in order to ascertain the legislative intent. See U.S. v. Jones, 204 Fed. 2d 745 (certiorari denied 346 U. S. 854). In that case the court said at page 754:

"Necessary implication refers to a logical necessity; it means that no other interpretation is permitted by the words of the Acts construed; and so has been defined as an implication which results from so strong a probability of intention that an intention contrary to that imputed cannot be supported. 42 C.J.S., page 405 and cases there cited. The term is used where the intention with regard to the subject matter may not be manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances and the general language. Burford v. Huesby, 35 Cal.App. 2d 643, 96 P.2d 380; Goldfein v. Continental Ins. Co., 125 Neb. 112, 249 N.W. 78; 42 C.J.S., page 406. Consequently that which is implied in a statute is as much a part of it as that which is expressed, for a

statutory grant of a power carries with it, by implication, everything necessary to carry out the power and make it effectual and complete.* * *

Furthermore, at page 100 of Volume 34 of Illinois Law and Practice is found the following statement:

"In construing a statute to give effect to the legislative intent and purpose, the court should, if possible, give it a reasonable, sensible, practical, and common-sense construction even though such construction qualifies the universality of its language."

As indicated above, the personal property tax is a tax upon the personal property itself. The only logical conclusion then as to the meaning of the constitutional amendment (Article IX-A) is that if the effect of the tax would be directly upon an individual (as distinguished, for example, from a corporation) then such personal property tax is abolished.

Article IX-A of the Illinois Constitution of 1870 became effective January 1, 1971 and is as follows:

"Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

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Provision for the adoption of Article IX-A was made by Senate Joint Resolution No. 30 of the 76th General Assembly which reads as follows:

"RESOLVED, BY THE SENATE OF THE SEVENTY-SIXTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX-A to the Constitution, the added Article to read as follows:

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals.

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971."

Also pertinent is Senate Joint Resolution No. 67

which provides:

"RESOLVED, BY THE SENATE OF THE SEVENTY-SIXTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that, in adopting Senate Joint Resolution No. 30, which submits to the electors of this State a constitutional amendment prohibiting the taxation of personal property by valuation as to individuals,

it was the intention of this General Assembly to abolish the ad valorem taxation of personal property owned by a natural person or by two or more natural persons, and that, by the use of the phrase 'as to individuals', this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common."

Turning now to the questions which you have asked I shall discuss them in order. Your first question asks whether an individual proprietor is exempt from taxation on his business inventory and other personal property used in such business. Since the effect of such a tax would be upon an individual, I am of the opinion that the individual proprietor would be exempt. Similarly, the individual farmer is exempt in your second question.

Thirdly, you have inquired as to whether personal property of a partnership is exempt. A partnership is an association of two or more persons to carry on a business for profit. The effect of the taxation of partnership property would be directly upon the individual partners and consequently I am of the opinion that such property is also exempt.

In your fourth and fifth questions you inquired about the taxability of personal property in a decedent's estate. The effect of taxation of personal property in an estate would be directly upon the heirs or legatees. Consequently, if the heirs or legatees are individuals such personal property is exempt, but if the legatee is a corporation then such personal property would be subject to tax.

In your sixth question you inquired whether personal property held by an individual trustee is exempt from taxation if the beneficiaries or beneficial owners are individuals. Since the effect of the tax would be directly upon an individual beneficiary, such personal property would be exempt. The fact that the trustee is a corporation or an individual would make no difference.

Seventh, you inquired whether personal property owned by tenants in common or joint tenants as individuals is exempt. For the reasons stated above, such personal property would also be exempt. Personal property owned

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by individuals in a joint venture or other co-ownership would also be exempt since the effect of the tax would be upon individuals.

Very truly yours,

A T T O R N E Y G E N E R A L