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SPRINGFIELD

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FILE NO. S-1326

REVENUE:
Authority of Department of
Local Government Affairs
to Assess Capital Stock of
Rural Electric Cooperatives

John Castle
Director
Department of Local Government Affairs
303 East Monroe Street
Springfield, Illinois 62706

Dear Mr. Castle:

This responds to your request for an opinion on whether the Department of Local Government Affairs has the authority to assess the capital stock of rural electric cooperatives organized under the General Not For Profit Corporation Act. Ill. Rev. Stat. 1975, ch. 32, par. 163a et seq.

Section 18 of "AN ACT to revise the law in relation to assessment of property, etc." [Revenue Act of 1939]

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(Ill. Rev. Stat. 1975, ch. 120, par. 499) provides that the capital stock of companies and associations incorporated under the laws of this State shall be assessed and taxed, except as otherwise exempted. In Illinois Central R.R. v. Carr (1922), 302 Ill. 172, 179, the Illinois Supreme Court described the nature of the capital stock tax as follows:

"* * * It was long ago decided by this court what is included in the term 'capital stock,' and it was held that it embraces all the property belonging to the corporation, including all its rights, contracts, privileges, good will and everything of value that appertains or belongs to the corporation, of any character or description, whether tangible or intangible, corporeal or incorporeal; that the term does not mean the shares of stock but designates the property of the corporation subject to taxation. * * *"

The fact that the cooperatives do not have or issue shares of stock does not mean they cannot be taxed on the value of their capital stock. Capital stock refers not to shares, but to the aggregate property of a corporation. Rural electric cooperatives are thus subject to the capital stock tax unless otherwise exempted.

Sections 19 through 19.24 of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, pars. 500 to 500.24)

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provide for exemptions from taxation. There is no general exemption for non-profit corporations nor any specific exemption for electrical cooperatives.

Section 130 of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 611) sets forth the duties of the Department of Local Government Affairs. The section provides in pertinent part:

"§ 130. The Department shall:

* * *

(6) Assess, and value, in the manner provided by law, the capital stock, including the franchise of all companies or associations incorporated under the laws of this State, except companies and associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the mining and sale of coal or for printing or for the publishing of newspapers or for the improving and breeding of stock or for the purpose of banking, or as mutual building, loan and homestead associations, including any of such property as may have been omitted from assessment in any year or years, or which, from defective description, has not paid any taxes for any year or years;

* * *

In opinion No. S-1086, issued May 13, 1976, I advised that the Department had the authority to assess the

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capital stock of local mutual, district, county and township insurance companies. The analysis in that opinion applies with equal force to the assessment of the capital stock of rural electric cooperatives. I, therefore, am of the opinion that the capital stock of rural electric cooperatives is subject to tax and the Department has the duty to assess such property for tax purposes.

Very truly yours,

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