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STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

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FILE NO. S-572

TAXATION:  
Personal Property

Honorable William H. Knuppel  
State's Attorney  
Mason County  
P. O. Box 11  
124 West Market  
Savana, Illinois

Dear Mr. Knuppel:

I have your letter of recent date wherein you state:

"Since the decision of the Supreme Court of the United States in Lehnhausen vs. Lake Shore Auto Parts Co., I have examined your recent opinions with regard to the effect of that decision on the assessment of personal property taxes against property owned by individuals. I do not find the question specifically answered with regard to the taxation of shares of stock of banks. You will note Section 558 of Chapter 120 of the Illinois Revised Statutes requires a tax to be paid on these shares and it has been specifically held that failure to pay such a tax creates a lien against the share. However, you will note that the duty is on the Bank itself to pay this personal property tax. Specifically, I would like to know whether, in your opinion, Banks which have paid the personal property taxes on their shares for the year 1971 under protest

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are now entitled to a refund of these taxes paid in line with Lehnhausen vs. Lake Shore Auto Parts Co."

Section 76 of "An Act to revise the law in relation to the assessment of property \* \* \* ", provides in pertinent part:

"The stockholders of every kind of incorporated bank located within this State, whether such bank has been organized under the banking law of this State, or of the United States, shall be assessed and taxed upon the value of their shares of stock therein, in the taxing district where such bank or banking association is located and not elsewhere, whether such stockholders reside in such place or not.  
\* \* \* "

Ill. Rev. Stat. 1971,  
ch. 120, par. 557.

In regard to collecting the above taxes, section 77 of "An Act to revise the law in relation to the assessment of property \* \* \* ", provides in pertinent part:

"[I]t shall be the duty of every such bank, or the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes levied upon their shares of stock, respectively, until it shall be made to appear to such bank or its officers that such taxes have been paid; \* \* \* "

Ill. Rev. Stat. 1971,  
ch. 120, par. 558.

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Our Supreme Court in construing the above statutory provisions in People v. First Nat. Bank, 33 Ill. 2d, 457 at 459, stated:

"It has long been held under the substantially identical predecessors section of the present Revenue Act, that the holder of shares of a bank, not the bank itself, shall be assessed and taxed upon its shares."

Liability for the taxes levied upon shares of bank stock rests upon the stockholders, rather than the bank. People v. Oak Park Tr. & Sav. Bank, 351 Ill. 334.

In commenting upon the legislative intent in the enactment of the above statutory provisions, the Supreme Court in the Oak Park case stated:

"The legislature, \* \* \*, recognized that the shares of the capital stock of a bank are not the property of the bank, but of its shareholders. It not only required that the shareholders be assessed and taxed upon the value of their shares, but it also added provisions by which such assessment and taxation might be made effective."

The provisions referred to in the above case, which make the assessment of the tax effective, are those provisions of section 558, supra, which places the duty upon the bank to retain the dividend or dividends belonging to the shareholders,

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which are necessary to pay the tax levied upon the shares.

Any bank or bank officer that pays the dividend to the individual shareholder becomes liable for the tax, if the tax is not paid.

As you are aware, the Supreme Court of the United States in Lehnhausen v. Lake Shore Auto Parts Co., Inc.,

\_\_\_\_ U.S. \_\_\_\_\_, 1973 (case #71-685), held that article IX-A of the Illinois Constitution of 1870, abolishing the ad valorem tax on personal property owned by individuals, is valid. In my Opinion No. S-260, January 22, 1971, I stated that the meaning of article IX-A was to abolish the personal property tax if the effect of the tax would be directly upon an individual as distinguished from a corporation. It is my opinion, that the personal property tax upon shares of bank stock owned by an individual is a tax the effect of which would be directly upon an individual.

You have asked whether banks which have paid the personal property tax on their shares under protest, are now entitled to a refund of these taxes. It is my understanding that banks have followed the practice of paying the personal

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property tax from undistributed dividends. If the owner of the shares is an individual as opposed to a corporation, that individual, rather than the bank, is entitled to a refund of taxes paid, assuming, of course, that payment of the tax was made from undistributed dividends. If the stock is owned by a corporate entity, obviously no refund can be made.

Finally, you have alluded only to taxes paid under protest the necessity of which is dealt with in section 195.01 of "An Act to revise the law in relation to the assessment of property \* \* \*." Ill. Rev. Stat., 1972 Supp., ch. 120, par. 676.01.

Very truly yours,

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