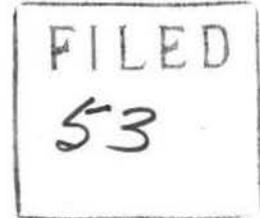


TAXATION (INTANGIBLE):
CORPORATIONS:

An account receivable held by a parent corporation evidencing an obligation of a subsidiary corporation, is intangible personal property as defined by Section 146.010, RSMo 1969. The proceeds received by the parent corporation constitute "yield" as that term is used in Section 146.010. Therefore, such parent corporation holding the legal or equitable title or beneficial interest in intangible personal property is subject to the property tax imposed by Chapter 146, RSMo.

OPINION NO. 53

February 2, 1972



Mr. James E. Schaffner
Director of Revenue
Department of Revenue
4th Floor Jefferson Building
Jefferson City, Missouri 65101

Dear Mr. Schaffner:

This official opinion is issued in response to your recent request concerning the applicability of the intangible personal property tax laws to certain inter-corporate transactions. In your request, you stated the following fact situation and question:

"A parent corporation advances money to a subsidiary corporation (separate corporate entity). The records of the parent corporation show an account receivable due from the subsidiary and the records of both corporations show an interest payment from the subsidiary to the parent on the funds advanced.

"QUESTION: Is this account receivable intangible personal property coming within the meaning of the definition contained in Section 146.010, para. 1, RSMo., 1969, and is the interest arising from this advance within the definition of yield contained in Section 146.010, para. 4, RSMo., 1969 and as such, subject to general Intangible Tax?"

The statutory provisions referred to in your question define intangible personal property to include notes, accounts receivable and real estate mortgages. Section 146.010.1, RSMo 1969. Yield

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is defined as the ". . . aggregate proceeds received as the result of ownership or beneficial interest in intangible property whether received in money, credits or property, . . ." Section 146.010.4, RSMo 1969.

By giving a literal interpretation to the language of the statute, it is clear that the terms intangible personal property and yield encompass an account receivable held by a parent corporation, indicating indebtedness on the part of a subsidiary. However, to render a complete answer to your question and therefore decide whether such an account receivable is subject to the intangible personal property tax, it is necessary to consider another subparagraph of Section 146.010.

Subparagraph 2 of 146.010, RSMo 1969, defines the term person as follows:

"The term 'person' includes any individual, firm, copartnership, joint adventure, association, corporation, company, estate, trust, business trust, syndicate, executor, administrator, receiver or trustee appointed by the state or federal court, or any other group or combination acting as a unit."
(Emphasis added).

An examination of this subparagraph is essential, because if the legislature intended that a parent and subsidiary to constitute "any other group or combination acting as a unit", they would not be subject to the intangible personal property tax because Section 146.030, RSMo 1969 imposes the tax on "persons".

In defining "person" the legislature attempted to enumerate every conceivable individual or group entity that might have the capacity to own or hold intangible personal property. The phrase "or any other group or combination acting as a unit" was included undoubtedly to bring any new form of property holding or ownership within the scope of the intangible personal property tax.

The use of the word "corporation" by the statutory provision also indicates that the legislature intended subsidiaries and parents to be regarded as distinct units. Indeed, the fact that they are so organized, as separate corporations, indicates that they are not unitary in nature or function.

Further support for the proposition that the legislature did not intend to equate parent and subsidiary corporations with combinations acting as a unit can be found in an examination of Section 143.100, RSMo 1969. In contrast to 146.010, RSMo 1969, Section 143.100, RSMo 1969 draws a distinction between parent and subsidiary corporations for income tax purposes. Subsection 6 of

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that statutory provision, in effect, permits the parent and subsidiary to act in a unitary manner in reporting dividends paid by the subsidiary to the parent. The absence of a similar provision in the intangible personal property tax chapter (Chapter 146) would indicate that the legislative intent was to regard a parent corporation and a subsidiary corporation as separate entities. Numerous decisions have emphasized the separate nature of parent and subsidiary corporations. Illustrative of this principle is the recent decision in Turpin v. Chicago, Burlington & Quincy Railroad Company, 403 S.W.2d 233 (Mo. banc 1966). In that case the plaintiff was a driver for Burlington Truck Lines, a wholly owned subsidiary of the defendant. The plaintiff alleged that this factor, among others, indicated that the subsidiary was but the alter ego of the parent. The court rejected this argument and found that the parent and subsidiary were indeed individual entities despite total ownership by the parent. The court observed that: ". . . mere ownership of all the stock of one corporation by another and the identity of officers of one with officers of another are not alone sufficient to create identity of corporate interests between the two . . ." (At 240 - quoting from Fawcett v. Missouri Pacific Railroad Company, 242 F.Supp. 675, 678, aff'd 347 F.2d 233 (5th Cir. 1965)). Eisenbarth v. Equity Mutual Insurance Company, 189 S.W.2d 168 (Mo.App. 1945) noted: "Interlocking directorates, close association of several corporations, and domination of them by a single officer are not sufficient to require disregard of separate entities." Accord, Blackwell Printing Company v. Blackwell-Wielandy Company, 440 S.W.2d 433 (Mo. 1969); Martin v. Development Company of America, 240 F.42 (9th Cir. 1917).

Similarly, the courts have held that a corporation is a separate entity from its shareholders, and is subject to taxation separate and apart from those shareholders. See, for example, United States v. General Bancshares Corp., 388 F.2d 184 (8th Cir. 1968); accord, Missouri Pacific Railroad Company v. Slayton, 407 F.2d 1078 (8th Cir. 1969), 18 C.J.S., Corporations, Section 4.

Therefore, parents of subsidiary corporations are not "any other group or combination acting as a unit", as that term is used in subparagraph 2 of Section 146.010, RSMo 1969. Interpretation of the relevant legislative enactments and judicial decisions indicates that they are to be considered separate entities for the purpose of application of the intangible personal property tax laws.

CONCLUSION

It is the conclusion of this office that an account receivable held by a parent corporation evidencing an obligation of a subsidiary corporation, is intangible personal property as defined by Section 146.010, RSMo 1969. The proceeds received by the parent

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corporation constitute "yield" as that term is used in Section 146.010. Therefore, such parent corporation holding the legal or equitable title or beneficial interest in intangible personal property is subject to the property tax imposed by Chapter 146, RSMo.

The foregoing opinion which I hereby approve was prepared by my assistant, Peter H. Ruger.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH
Attorney General