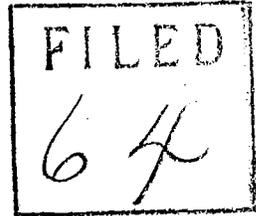


TAXATION AND: In r.: Investment certificates subject to intangible
REVENUE: personal property tax under H.C.S.H.B. No.
868.

November 8, 1946



Mr. M. E. Morris
Director, Department of Revenue
State of Missouri
Jefferson City, Missouri

Dear Mr. Morris:

Receipt is acknowledged of your letter with the enclosed correspondence from Mr. R. W. Peterson, Associate Counsel for Investors Syndicate of America, Incorporated, and the sample form of an investment certificate issued by that company. In your letter you inquire if the holders of investment certificates of Investors Syndicate of America would be required to report annually under the Missouri Intangible Personal Property Tax Law.

In answering your question we must first determine whether or not the investment certificate is a type of intangible personal property taxable under the law. Under H.C.S.H.B. No. 868, passed by the 63rd General Assembly and approved on April 19, 1946, the term "intangible personal property" is defined in sub-section (B) of Section 1 as follows:

"Intangible personal property means moneys on deposit; bonds (except those which under the constitution or laws of the United States may not be made the subject of a property tax by the State of Missouri); certificates of indebtedness (other than capital notes issued by banks or trust companies); notes, debentures, annuities, accounts receivable; conditional sales contracts (which have incorporated therein promises to pay) and real estate and chattel mortgages."

Under the terms of the sample certificate enclosed the purchaser may pay a certain number of annual installments and thereafter the company is obligated to pay him a certain amount. Under this particular certificate the purchaser

could pay \$550.00 per year for fifteen years and at the expiration of that period he would receive \$10,000.00. The certificate also has certain cash surrender values which entitle the holder to receive a specific amount of money depending upon the time that he surrenders the certificate. Another feature of the instrument is that the holder may elect to receive certain payments under options "A" or "B" as set forth in Article 13 of the instrument.

We observe that the certificate in question is styled "Investment Certificate". In the case of City Bond and Finance Co. vs. Welch (D. C. Cal.), 9 Fed. Supp. 500, it is held that certificates issued by the City Bond and Finance Co. as evidence of interest acquired by purchasers in securities purchased on the installment plan, and denominated "Investment Savings Plan" were subject to the stamp tax imposed by the Federal Revenue Act on certificates of indebtedness. At l. c. 501, the court said:

"* * * On the face of this certificate the transaction was denominated 'Investment Savings Plan.' It set forth that the City Bond & Finance Company had agreed to 'sell and deliver' named securities at the stated price per share, set forth amount paid and installments to be paid.
* * * *.

"Plaintiff contends that the certificates did not require stamps as they were not certificates of corporate stock nor certificates of indebtedness, as described in the Revenue Act of 1926 (section 800 (26 USCA Sec. 901 and note)).

"I will not review the authorities but state my conclusions. It has been held that acts of the kind here concerned are to be given broad application. There are decisions holding uniformly that the documents will be taken at its face, and that no close scrutiny will be made of the purpose which has prompted its use. Certificates of participating interests in securities held by a corporation have been held to be within the provisions of the act. To my mind the certificates issued by plaintiff may be termed certificates of indebtedness or certificates

of interest in certain securities of plaintiff corporation.* * * *"

After careful examination of the certificate at hand we believe it contains the characteristics to constitute it a "certificate of indebtedness" and certificates of indebtedness under H.C.S.H.B. No. 868 being classed as intangible personal property would therefore bring the investment certificate within the taxable classification.

Under H.C.S.H.B. No. 868, supra, the basis for valuing intangible personal property for purposes of taxation is the yield derived therefrom. Therefore, the intangible personal property must have a yield before it is taxable. In sub-section (C) of Section 1 of the Act the term "yield" is defined as follows:

"Yield means the aggregate proceeds received as a result of ownership or beneficial interest in intangible property whether received in money, credits or property, exclusive of any return of capital."

By applying the above definition to the terms of the instrument, we believe that upon maturity or surrender of the certificate the cash surrender value or maturity amount received by the holder in excess of the amount paid in would constitute a yield exclusive of any return of capital and the certificate would be subject to a tax at the rate of 4% of such yield.

We observe that the yield of intangible personal property may be in a form other than money, for, under sub-section (C), supra, the aggregate proceeds received in "credits" would also constitute a yield. Under the terms of the certificate, after the expiration of one year, the holder may surrender the certificate and receive the computed cash surrender value. There is a definite obligation on the company to pay the cash surrender value when the certificate is properly surrendered.

In the case of Commissioner of Internal Revenue v. Stearns, 65 Fed.(2d) 371, the question arose whether or not an administrator, in filing an income tax return for an estate, was entitled to deduct the sums that were credited to the residuary legatees. At l. c. 373, the court said the following:

"* * *It is reasonable to allow deductions to a fiduciary of what he is under an absolute obligation to pay, whether he had done so or not, and whether he has credited the payments to the beneficiary or not; they are by hypothesis the beneficiary's by the terms of the will or deed, and he

can enforce their payment. * * *Such distributions, and distributions at the discretion of the fiduciary, must be actually made, or irrevocably fixed, before they become the beneficiary's as of right. They should appear in the fiduciary's return, if they are still his; in the beneficiary's only in case he has become presently entitled to them, or received them.

"(4-6) This serves to determine what is meant by the word, 'credited,' the alternative to 'paid,' though we can find no authority on the point. The income must be so definitively allocated to the legatee as to be beyond recall; 'credit' for practical purposes is the equivalent of 'payment.' * * *"

Again, in the case of Talley v. Brown, 125 N. W. 248, 146 Iowa 360, under a statute making real and personal property and credits subject to taxation the court held that the claims for loss under fire insurance policies were taxable. At N. W. l.c. 250, the court said:

"* * *To authorize the assessment of the policies as credits, it was not essential that the assessor know whether the claims were for money or might turn out to be for property, for in either event they would be assessable as credits, though these matters would have an important bearing in estimating the value of such claims. We are of the opinion that the claims for loss under the policies were subject to taxation."

The term "credits" is also defined in Volume 10, Words and Phrases, Perm. Ed., page 437, as follows:

"* * *!Credits,' as used in Act No. 170 of 1898, Sec. 91, par. 4 necessarily implies the idea of a 'debt' or obligation to pay the amount of the 'credit,' and 'debt' is an unconditional obligation to pay a sum certain at a future time. What is a 'debt' on one side is a

'credit' on the other, so that 'credits' can have no broader meaning than 'debts'; 'credits' being in effect, the mere legal right with which one is clothed to demand the delivery of money or other property in the future. * * * *'
Kansas City Life Ins. Co. v. Hammett,
149 So. 525, 526, 177 La. 930."

In the instant case, by the terms of the instrument, the certificate holder at the end of each year prior to the maturity date is entitled to receive a certain cash surrender value upon the surrender of the certificate and each year the cash surrender value is greater. It is therefore our notion that at the time the surrender value of the certificate would exceed the amount paid in, the excess would constitute a yield in the form of a credit and as such the certificate would be subject to a tax of 4% of such yield. For example, under Article 9 of the sample certificate, at the end of the eighth year the cash surrender value would only equal the amount paid in and there would be no yield, however, at the end of the ninth year the cash surrender value would exceed the amount paid in by \$130.00 which would constitute a yield in the form of a credit exclusive of any return of capital and would be a basis for taxing the certificate at the rate of 4% of such yield. At the end of the tenth year the cash surrender value would exceed the amount paid in by \$380.00 and the taxable yield would be \$380.00 less \$130.00, the amount paid on the previous year. The same procedure would be carried out until the maturity date of the certificate. Thereafter should the certificate holder elect to receive interest on the maturity amount as provided in either option "A" or option "B" in Article 12, the taxable yield would be the interest received.

Section 2 of H.C.S.H.B. No. 868 provides for the payment of a tax on intangible personal property for the year 1946 and reads as follows:

"Except as otherwise provided by law, intangible personal property having a taxable situs in the State of Missouri on the first day of July, 1946, shall be subject to a property tax for the year 1946. Said tax on said intangible personal property shall

be based on the yield of said property during the calendar year 1945, and the rate of said tax shall be four per cent (4%) of such yield. The person who on July 1, 1946, owned the legal title to or equitable title or beneficial interest in intangible personal property subject to this property tax thereon, shall be liable for said tax."

Under the above section a person who had legal title or equitable title or beneficial interest in an investment certificate on July 1, 1946, would have to pay a tax on the certificate based upon its yield in the calendar year of 1945.

Section 4 of the Act provides for the payment of the tax in succeeding years and, in part, reads:

"* * *Said tax on said intangible personal property for the year 1947 and each succeeding year shall be based on the yield of said property during the preceding calendar year,
* * *"

CONCLUSION

It is, therefore, the opinion of this department that an investment certificate of Investors Syndicate of America, Incorporated, is an intangible personal property in the form of a certificate of indebtedness and as such falls within the taxable classification under H.C.S.H.B. No. 868. Persons holding the legal title or equitable title or beneficial interest in these certificates would be required to file with the Department of Revenue a tax return on such property any year whenever, on the preceding calendar year, a yield was received in the manner herein described.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RFT:mw