

TAXATION:
AND REVENUE:

In re: Five questions on taxing intangible personal
property under H. C. S. H. B. No. 868.

February 4, 1947



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

Dear Mr. Morris:

This will acknowledge your letter requesting an official opinion on the questions submitted in an enclosed letter from Prentice-Hall, Inc. The letter from Prentice-Hall, in part, reads:

"Numerous questions are arising concerning interpretation of the new Missouri intangibles tax. We should appreciate your advice concerning a few of these at this time. Please tell us:

"1.-How is yield to be determined on accounts receivable? (Is it based on gross proceeds, or on interest or net earnings exclusively, and if so how is the net figure determined?)

"2.-In the case of equitable or beneficial interests--

"(a) if fiduciary having the intangibles resides in Missouri and beneficiary resides outside Missouri, is the fiduciary required to report and pay? How about the beneficiary?

"b) if fiduciary resides and intangibles are kept outside Missouri, and beneficiary resides in Missouri, who, if anyone, is taxable?

"(c) if intangibles are kept in Missouri but fiduciary and beneficiary reside outside Missouri, does tax apply?

"(d) suppose two of joint fiduciaries reside

in Missouri and two of them outside, which fiduciary or fiduciaries report taxable property?

"(e) Can you illustrate the computation of tax on 'proportionate' amount of yield on underlying intangibles held by fiduciaries as noted in Item 4 of 'Explanation for Taxpayers?'"

In this opinion the questions submitted in the quoted letter will be answered in the order they appear.

I.

The first question relates to the determination of the yield on accounts receivable.

The 63rd General Assembly by the passage of H.C.S.H.B. No. 868 adopted a completely new scheme for the taxation of intangible personal property. Consequently we must look to the provisions of that act to answer the questions herein submitted.

In answer to the first question, we direct your attention to subsection (C), Section 1, of H.C.S.H.B. No. 868 which provides:

"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."

Section 1 of S. B. No. 466 which was also enacted by the 63rd General Assembly provides:

"The terms 'yield' or 'annual yield' as used in any law heretofore enacted imposing a tax upon intangible personal property pursuant to Article 10, Section 4, of the Constitution of Missouri, shall mean 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, and less the amount of interest required to be credited by the owner thereof, during the preceding calendar year, to reserve liabilities of the owner maintained under the statutes of this state."

We observe that in the above quoted sections the words "aggregate proceeds" are used in defining the term "yield". In Volume 2, Words and Phrases, Perm. Ed., the word "aggregate" is defined at page 801 as follows:

"'Aggregate' is defined as a sum, mass or assemblage of particulars; a total or gross amount.* * *Chapin v. Wilcox, 46 P. 457, 458, 114 Cal. 498."

In view of the above definition we believe that the yield on accounts receivable is based on the gross proceeds of such accounts.

II.

In answer to part (a) of the second question relating to payment of a tax on intangible personal property held by a fiduciary in this state where the beneficiary resides outside the state, we invite your attention to the relevant provisions of H.C.S.H.B. No. 868.

Subsection (D), Section 1 of said act, in part, provides:

"* * *All intangible property of persons residing in other states used in or arising out of business transacted in this state by, for or on behalf of such non-resident persons shall be taxed on the annual yield thereof, and the taxable situs shall be the location of the business.* * *"

Section 6 of this act, in part, provides:

"Intangible personal property shall be deemed to have a taxable situs in this state for the purpose of being subject to a property tax for the year 1947 and each succeeding year, where, at any time during the calendar year preceding the year for which the property is subject to said tax, the legal title thereto is owned by a person domiciled in this state,* * *"

In reading the above quoted portions of the act we believe that where the intangible property was used in or arose out of business transacted in this state and the legal owner of such property was domiciled in this state, it is subjected to the tax based on its yield and the tax would be paid by the fiduciary who is the legal owner. The beneficiary residing outside the state would not have to file a return or pay any tax.

III.

In answer to part (b) of the second question relating to payment

of a tax on intangible property located outside the state where the beneficiary resides within the state but the fiduciary and intangibles are outside the state, reference is again made to subsection (D), Section 1 of the act which, in part, provides:

"* * *All intangible property of persons residing in other states used in or arising out of business transacted in this state by, for or on behalf of such non-resident persons shall be taxed on the annual yield thereof, and the taxable situs shall be the location of the business.* * *"

Section 6 of the act further provides:

"* * *In all cases where the legal title is not held in this state the person holding the equitable title or beneficial interest shall be liable for the tax.* * *"

Under the above quoted portions of the act we believe that where the intangible property has acquired a business situs in Missouri, the beneficiary holding the equitable title or beneficial interest would be liable for the tax where the fiduciary holding the legal title resides outside the state.

There is one exception to the taxing of intangible property which is located outside the state. Subsection (D), Section 1 of the act, in part, provides:

"* * *All intangible personal property of persons residing in this state but used in or arising out of business transacted outside of this state by, for or on behalf of such persons and taxed in such other state or states shall not be subject to the intangible property tax in this state.* * *"

Therefore, we conclude that intangible personal property located outside the state would be taxable and the beneficiary residing in the state would be liable for the tax unless the property was used in or arose out of business transacted outside the state and was taxed in such other state or states.

IV.

In answer to part (c) of the second question relating to taxing intangible personal property located in Missouri where the

fiduciary and beneficiary reside outside the state, reference is again made to Subsection (D), Section 1 of the act, which, in part, provides:

"* * *All intangible property of persons residing in other states used in or arising out of business transacted in this state by, for or on behalf of such non-resident persons shall be taxed on the annual yield thereof, and the taxable situs shall be the location of the business.* * *"

If the property had a business situs in Missouri it would be taxable on the basis of its yield.

V.

Part (d) of the second question asks who should make the return on taxable intangible personal property which is held jointly by fiduciaries residing within and outside the state.

This department has held in an opinion submitted to Mr. M. E. Morris, Director of Revenue, that where intangible property is held under a joint ownership by persons residing within the state, the return of such property should be made by the joint owners. However, where the intangible property is held by joint fiduciaries residing within and outside the state we believe that the joint fiduciaries residing within the state would be the proper persons to make the return and would be primarily liable for payment of the tax. It is our opinion that such a procedure is indicated in Section 6 of the act, which, in part, provides:

"* * *In all cases where both the persons holding or owning the legal title and the equitable title or beneficial interest in the same property are domiciled in this state, only the holder of the legal title shall be liable for such tax.* * *"

Under the above quoted provision the holder of the legal title to intangible property is primarily liable for the tax, as between him and the person holding the equitable title or beneficial interest, where both reside within the state. We believe that as among joint fiduciaries residing within and outside the state, the fiduciaries residing within the state having under their control intangible personal property used in or arising out of business transacted within the state would be primarily liable for filing the return of such property.

VI.

In part (e) of the second question it is asked that a computation of a tax on the proportionate amount of yield on underlying intangibles held by fiduciaries be illustrated. This question is asked with particular reference to Item 4 under "Explanation for taxpayers" appearing on the back of Form 40-I, which is the intangible property tax return form. Item 4, in part, reads:

"* * * 'Yield' in the case of fixed or stipulated payments made as a result of a beneficial or equitable ownership shall be determined to be the proportionate amount of yield produced on the underlying intangible property held by the fiduciary.* * *"

The above quoted portion of Item 4 was apparently drawn with the provision of Section 5 of H.C.S.H.B. No. 868 in mind.

Section 5 provides:

"The tax for the year 1947 and each succeeding year shall be apportioned among those persons who during the preceding calendar year held or acquired the legal title to or equitable title or beneficial interest in intangible personal property subject to the property tax provided by Section 4 of this Act, according to the part of the entire yield of such property which they respectively received during the preceding calendar year, and each such person shall be liable for his resultant portion of said tax." (Emphasis ours).

Under the above section a person is only required to pay the tax on the yield actually received from intangible personal property held during the preceding calendar year in any capacity as set forth in the section.

For example, assume that a resident of Missouri owns intangible personal property for nine months of the calendar year 1946, during which yield amounting to \$100.00 is received. Further assume that such intangible personal property is transferred during the calendar year 1946 to another resident of Missouri, who subsequently during the calendar year 1946 receives yield upon the same intangible personal property amounting to \$50.00. In these circumstances the first taxpayer mentioned would, for the taxable year 1947, owe intangible personal property tax amounting to 4 per cent of the yield received by him during the calendar year 1946, that is to say, 4 per cent of \$100.00, or \$4.00 in tax. The other taxpayer would, for the taxable year 1947, be subject to tax upon the proportionate part of the

yield received by him during the calendar year 1946, that is to say, 4 per cent of \$50.00, or \$2.00 in tax.

CONCLUSION

Therefore, it is the opinion of this department that: (1) The yield on accounts receivable is based upon the gross proceeds of such accounts. (2) Where the fiduciary holding intangible property resides in Missouri and the beneficiary resides outside of Missouri, the fiduciary would be liable for the tax on the intangible property he holds, provided it has a business situs in the state by being used in or arises out of business transacted within the state. (3) Where the fiduciary and intangible personal property are outside the state the beneficiary residing within the state would be liable for payment of the tax as provided in H.C.S.H.B. No. 868 except when such intangible property was used in or arose out of business transacted outside of the state by, for or on behalf of the beneficiary residing within the state, and is taxed by such other state or states in which it was located. (4) Where the intangible property is located in Missouri but the fiduciary and beneficiary reside outside of Missouri, the property would be taxable if it had a business situs in this state. (5) Where the property is held by joint fiduciaries residing within and outside the state, the joint fiduciaries residing within the state would be primarily liable for filing of the return and payment of the tax.

Respectfully submitted,

APPROVED:

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