

RECONSTRUCTION FINANCE CORPORATION: Said Corporation and its subsidiaries are instrumentalities of U.S. government and State of Mo. has no power to impose taxes thereon

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April 26, 1935.



Hon. Dwight H. Brown,
Secretary of State,
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your letter of April 25, 1935 requesting an opinion as to the following state of facts:

"The Reconstruction Finance Corporation is desirous of domesticating a Maryland corporation created by it and the stock in which is the property of the Federal Government through R.F.C., and representation has been made to this office that the Attorney General of the United States has asked that the corporation be domesticated but that the State of Missouri collect none of the fees ordinarily levied, pointing out Federal ownership of the corporation.

The question is simply whether or not I shall collect the ordinary fees."

While the facts as stated in your letter do not so disclose, we assume that the Maryland corporation is a subsidiary corporation of the Reconstruction Finance Corporation and incorporated with the same general purposes.

The Reconstruction Finance Corporation was created as a part of the Emergency Relief and Construction Act of 1932.

Section 602, Title 15, U.S.C.A. provides:

"The corporation shall have capital stock of \$500,000,000, subscribed by the United States of America, payment for which shall be subject to call in whole or in part by the board of directors of the corporation."

While the purposes of the corporation are many and varied, generally it may be said that the corporation was formed for the convenient and expeditious transaction of government business and as a part of the Emergency Relief and Construction Act. In other words, the corporation is employed as an agency for the exercise of the constitutional powers of the United States, and it would seem clear that no tax or burden of any kind or description may be imposed upon said corporation by the State of Missouri.

In the case of *King County, Wash. v. United States Shipping Board Emergency Fleet Corporation*, 282 Fed. 950, the Court held that shipyard property of the United States Shipping Board Emergency Fleet Corporation was exempt from taxation by the State of Washington even though the legal title was in the corporation, a private corporation since the government caused the corporation to be formed, held all of its stock, furnished all of its capital, and owned the entire beneficial interest in its property. The Court said (l.c. 953-954):

"Clearly, in the matter of expending this public money, under the direction of Congress and the President, in the purchase of property for governmental purposes, and in taking and holding the legal title thereto, the corporation was acting as a naked trustee, and the entire beneficial interest was in the government. And what does it matter that the Fleet Corporation may, in a measure, have had the status of an ordinary corporation? Let us assume that it was purely a private concern, and originally had none of the attributes of a public agency, and then let us suppose that by Congress and the President, with its consent, public funds were placed in its custody, to be expended by it in the acquisition of shipyards for government uses, and it was authorized to take and hold the legal title thereto; would it be contended that such property continued to be

subject to state taxation merely because the legal title was held by a private corporation having no real interest? The taxable character of property is to be referred to the status of the real, rather than of the nominal, owner. Private property is not exempt from taxation because the government holds the legal title thereto, and by parity of reasoning neither is public property taxable because the naked legal title is in a private person. *Carroll v. Safford*, 3 How. 444, 11 L. Ed. 671; *Witherspoon v. Duncan*, 4 Wall. 210, 18 L. Ed. 339.

"In principle the case is not unlike those cases where, for convenience, a state has created corporate bodies to hold property for and manage public educational and charitable institutions, and other governmental projects, and attempts have been made to tax property so held."

In the case of *Clallam County v. United States*, 68 L. Ed. 328, Mr. Justice Holmes held that a state cannot tax the property of a corporation organized by the Federal Government to produce material for war purposes, the property of which is conveyed to it by, or bought with money of, the United States, and used solely for the purposes of its creation.

This case is particularly in point here for the reason that the *Spruce Production Corporation* (the corporation involved) was a corporation created by the United States as an instrumentality for carrying on the World War, while the *Reconstruction Finance Corporation* was created by the United States as an instrumentality in its conflict with domestic conditions affecting the peace and welfare of our people. Mr. Justice Holmes said (l.c. 331-332):

"The incorporation and formal erection of a new personality was only for the convenience of the United States, to carry out its ends. It is unnecessary to consider whether the fact that the United States owned all the stock

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and furnished all the property to the corporation, taken by itself, would be enough to bring the case within the policy of the rule that exempts property of the United States. *Van Brocklin v. Tennessee* (*Van Brocklin v. Anderson*) 117 U.S. 151, 29 L. Ed. 845, 6 Sup. Ct. Rep. 670. It may be that if the United States saw fit to avail itself of machinery furnished by the state, it would not escape the tax on that ground alone. But when we add the facts that we have recited, we think it too plain for further argument that the tax could not be imposed."

CONCLUSION

In view of the foregoing, it is the opinion of this department that the Reconstruction Finance Corporation and its subsidiaries are instrumentalities of the United States Government, and that the State of Missouri is without power to impose any tax or burden whatsoever on said corporations. It follows, therefore, that the fees ordinarily levied on corporations by your department should not be so levied in the instant case.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General.

JWH:AH