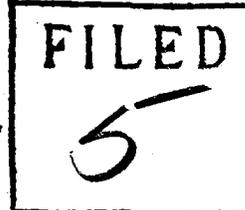


TAXATION:

Intangible personal property. Interest accruing before January 1, 1945, and paid in 1947 and 1948 cannot be included in annual yield for latter years for intangible personal property tax assessments.

January 23, 1950.

Mr. G. H. Bates,
Director of Revenue,
Jefferson City, Missouri.



Dear Sir:

This department has before it your request for an opinion reading as follows:

"Recently several instances have arisen where individual taxpayers have collected interest which has accrued over a period of years. Our Department has been inclined to hold that the intangible tax, as provided for in Laws of Missouri, 1945, pages 1914 to 1919, inclusive, imposes the tax on the interest collected in any particular year, regardless of when said interest accrued.

"Several taxpayers, however, take the position that we cannot assess intangible tax on interest which accrued prior to 1945, but which was not paid until after the effective date of the Intangible Tax Act.

"Our question, therefore, is whether or not we can collect intangible tax on interest which accrued before January 1, 1945, even though paid in 1947 or 1948."

The intangible property tax act (Laws of Mo. 1945, p.1914) became effective on July 1, 1946, and as a new tax measure has not yet been before the courts of this state for interpretation. Prior to 1946 intangible personal property was classified, assessed and taxed in the same manner as other personal property. The Constitution of Missouri adopted in 1945 provided for classification of property for purposes of taxation in the following terms (Section 4 (a) Article X):

"* * * All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property.* * *"

Section 4 (b) of this Article provides in part:

"* * * Property in class 3 and its subclasses shall be taxed only to the extent authorized and at the rate fixed by law for each class and subclass, and the tax shall be based on the annual yield and shall not exceed eight per cent thereof."

Under authority of these constitutional provisions the General Assembly enacted the intangible personal property act, (Laws of Missouri, 1945, page 1914, * * in which sections 2 and 3 provided for the assessment of a tax for 1946 based on the yield for 1945 and sections 4 and 7 provided for the assessment of the tax after that year. For the purposes of this opinion the pertinent parts of that act include:

"Section 2: 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."

"Section 4: Except as otherwise provided by law, intangible personal property having a taxable situs in the State of Missouri at any time during the calendar year 1946 subsequent to the effective date of this act, or at any time during any calendar year subsequent to the calendar year 1946, shall be subject to a property tax for the calendar year following the year in which said property had such taxable situs in this state. 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, and the rate of tax shall be four per cent (4%) of such yield; provided, however, that any person whose total tax under the provisions of this section amounts to one dollar (\$1.00) or less shall not be required to file a return."

For the purposes of this act the term "yield" was defined in Laws of Missouri, 1945, page 1760, as follows:

"Section 1. The term '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."

The question then to be determined is whether or not "yield" which has accrued prior to January 1, 1945, and which has been paid to the owner of the intangible property subsequent to the effective date of this taxing statute should be included as "yield" for the year in which the accruals are paid in arriving at the amount of the tax due; or whether the interest or "yield" which accrued prior to January 1, 1945, but was paid to the taxpayer subsequent to that date should not be included as a part of the "yield" as a basis for computing the tax.

In the absence of a clear expression by the legislature we must give the construction to the statute which best interprets the intention of the lawmakers as determined from the context of the statutes. In this connection, the St. Louis Court of Appeals said in *State v. Schwartzmann Service*, 40 S.W. (2d) 479:

"It is a cardinal rule, universally accepted, that, in the exposition of a statute, the intention of the lawmaker will prevail over the literal sense of the terms; its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from its context; from the occasion and necessity of the law; * * * and the intention is to be taken or presumed according to what is consonant with reason and good discretion. The object of all rational interpretation is to reach the true intent of the law-making authority, as expressed in the language it has employed to convey the thought. All other rules are subordinate to that great one. The chief canon of construction is that which requires us to find the legislative intent and purpose."

As pointed out supra, prior to 1946 the intangible personal property was taxed as other personal property. In 1946 this intangible personal property tax act provided a new method for assess-

ing intangible property and collecting the tax thereon. We do not believe the legislature intended to levy a tax based on the yield which had accrued to the owner of intangibles prior to 1945, but which has been paid subsequent to that date. In view of the fact that this type of property had been taxed under a different plan prior to 1946 the only logical conclusion to reach as the intention of the legislature is that the manner of assessment should be adopted and applied to yield accruing during and after 1945, rather than to base the assessment upon a "yield" which had accrued prior to the effective date of the new method of assessment and paid subsequently thereto.

It must be borne in mind that there is under consideration here an ad valorem tax - not an excise levy - with the "yield" of the property adopted as a measuring stick for determining the value to be used as a basis for assessment. That prior to the enactment of the present law the intangible was subjected to taxation based upon its actual value, rather than a value based upon its income-producing ability or "yield" as is now done. The logic for the adoption of such a plan is the fact that a definite relationship normally exists between yield and the value of the intangible subject to the tax. The legislature sought to levy this ad valorem tax based upon the actual value of the intangible and in doing so used a relationship which normally exists between actual value and "yield" or income-producing ability. The actual value of the intangible has not been changed by the fact that interest has accrued prior to 1945, but was paid subsequently to that time. Therefore, it seems that interest accruing prior to the enactment of the present method of assessment should not be included in fixing the present value, as such interest does not in fact bear any relationship to the actual value of the intangible. The inclusion of interest accrued during the period prior to the adoption of the present method of assessment in determining the present value of the intangible would in practical operation give the act a retrospective effect which it is not believed the legislature intended to do. The phrase "subsequent to the effective date of this act" was used repeatedly in adopting the manner in which this new method of assessment should be made. It is believed the legislature meant to apply this mode of assessing the value of the intangible to interest accruing after January 1, 1945. It might be noted that this method of assessment for taxation contemplates that income or something of value must actually have been received by the taxpayer. The language of the statute does not preclude inclusion of interest accruing after January 1, 1945, and paid in a later year as the basis of intangible tax for the year in which the interest was actually received. This is not inconsistent with the principle stated supra, that the yield accruing prior to the effective date of the act and paid thereafter should not be the basis for an assessment.

In order to effectuate the purposes of the Constitution and particularly to carry out the contemplated tax scheme several new tax measures were adopted by the General Assembly of 1945. It was the purpose of these acts to supplement and amend the method for

the assessment and collection of taxes but not to affect the liability of any taxpayer which had become fixed or determined at the time of the adoption of the new mode of assessment and collection. In this connection the court in dealing with the newly enacted bank tax act (Laws of Mo. 1945, page 1921) said in the case of 1st National Bank of St. Joseph v. Buchanan County, 356 Mo. 1204; 205 S.W. (2d) 726:

"* * * All taxes assessed, levied, due or owing prior to the adoption of this Constitution shall continue to be as valid as if this Constitution had not been adopted.' Schedule, Sec. 5, preserves the validity of any taxes assessed prior to the adoption of the Constitution * * *." The court further said, '*** It is our duty to harmonize all these enactments of the General Assembly with one another and with the Constitution and to effectuate all of them into the contemplated new tax pattern if possible.'"

The declared purpose in passing the intangible tax act (Section 16) is "to provide a property tax on intangible personal property." This act was passed as a part of a general scheme of taxation contemplated by the 1945 Constitution and insofar as possible the transition from the old method of assessment to the new pattern should be so harmonized as to provide uniformity and equality in the assessment and collection of taxes.

Section 3 of Article X, Constitution of Missouri, 1945, provides:

"Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class or subjects within the territorial limits of the authority levying the tax.* * *"

Uniformity in taxation is required by our constitution and it is not to be presumed the General Assembly created a plan of tax assessment which would result in lack of uniformity, but it may be presumed the plan of tax assessment adopted was intended to result in uniformity.

In the case of City of Cape Girardeau v. Fred A. Groves Motor Co., 142 S.W. (2d) 1040, 346 Mo. 762, the court in discussing the question of uniform taxation stated at l.c. 1042:

"* * * 'The tax is uniform when it operates with the same force and effect in every place where the subject of it is found.' Head Money Cases, 112 U.S. 580, 594, 5 S.Ct. 247, 252, 28 L.Ed. 798, 802, speaking of Art. 1, Sec. 8, U.S.Const., reading '* * * all Duties, Imposts and Excises shall be uniform throughout the United States.'"

See State ex rel. v. Chicago, B. & Q.R. Co., Banc, 195 Mo. 228, 238, 93 S.W. 784, 786, 113 Am. St. Rep. 661. The word 'uniform' and the phrase 'same class of subjects' are not of identical legal effect in the clause 'They shall be uniform upon the same class of subjects' in Sec. 3, Art. 10, Mo. Const. 'Uniform' has reference to the measure, gauge or rate of the tax. 'Same class of subjects' has reference to the classification of the subjects of taxation for the purposes of the tax. Uniformity does not mean that the same rate must be levied upon all subjects, but when the subjects are once classified the rate must be uniform upon all subjects of the same class.* * *"

The intangible property owned prior to 1945 was assessed and taxed according to its actual value in the same manner as tangible personal property. If the owner of intangibles was required to pay a tax based on the actual value of intangibles owned in 1944 and prior years regardless of the fact that interest accrued thereon and was not paid until subsequently to January 1, 1945, and was then assessed again after 1945 when the interest was paid or yield realized from the ownership of the intangibles, as a practical matter that owner would pay a substantially greater tax than the taxpayer who had realized income or yield from intangibles in the years in which it accrued prior to 1944. Including the yield accrued prior to 1945 and paid subsequently thereto as a basis for assessment would in practical effect amount to double taxation when the same intangible had been assessed on its actual value under the old plan of assessment in effect. To allow the yield accrued prior to January 1, 1945, to be included as a basis for assessment when realized after January 1, 1945, would result in a taxpayer who received a yield which had accrued prior to 1945 paying as a practical matter a higher tax than another taxpayer who possesses identical intangible personal property, but who realized the interest as it accrued prior to 1945. It is our opinion the General Assembly did not intend and did not create in this law a plan which would result in such lack of uniformity as is prohibited by constitutional provision. Interest which accrues after the effective date of the intangible personal property act should, of course, be included in the yield for the year in which it is paid, as the act then operates uniformly in arriving at the valuation for tax purposes.

CONCLUSION.

It is the opinion of this Department that interest which has accrued before January 1, 1945, and which has been paid in

1947 and 1948 cannot be included in the "annual yield" upon which the intangible personal property tax assessment is based for the years of 1947 and 1948.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney-General



JEM/LD