

TAXATION AND REVENUE:

Five questions relative to procedure to be had under H.C.S.H.B. 868 of the 63rd General Assembly, relating to taxation of intangible personal property.

FILED

August 25, 1946

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Honorable Frank Collier
Prosecuting Attorney
Wright County
Mountain Grove, Missouri

Dear sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

"As prosecuting attorney of Wright County, I request an opinion relative to the personal intangible property assessment, liability for taxes, and manner of collection in case of failure to make return.

"John Doe makes a loan of real estate and takes a deed of trust to secure the loan, which is recorded in the proper county. Thereafter he sells the loan to Richard Roe, and no longer is interested in the loan, except that he collects the interest, or payments, from the maker and forwards them to Richard Roe.

"The questions in which I am interested are as follows:

"Who is required to make return to the assessor? In event the actual owner of the note, Richard Roe, fails to make return, what is the liability of John Doe? In event of a check of the records, and it be ascertained that John Doe had sold the loan to Richard Roe, and was not the actual owner and receiving the income therefrom at the date the assessment was due, would he not be

entitled to make showing of the fact and thereby escape liability or penalties? Would the fact that he was collecting the income from the note require him to make return to the assessor? Suppose neither the original owner, or the actual owner of the note make return, what procedure would be followed, and what penalties would attach, and to whom?"

Pursuant to the constitutional mandate found in Article X of the Constitution of Missouri of 1945, the 63rd General Assembly has adopted a completely new scheme for the taxation of intangible personal property in Missouri. The procedure is found in H.C.S.H.B. 868 of the current Legislature, and we must look to that statutory enactment to find the answers to your inquiries.

You have not indicated in your letter of inquiry whether you are referring to the taxes due for the calendar year 1946 or for subsequent years, and in view of the fact that different rules are applicable, we necessarily have answered your questions in the alternative. In each instance the answer with respect to the current tax appears first under the separate paragraphing which we have assigned to your five questions. We have also considered your questions on the basis that all parties owning the intangible personal property were residents of the State of Missouri and have disregarded any questions which might arise by reason of nonresidence. We understand from your letter that the transaction referred to therein is the ordinary lending of money, taking as evidence of the debt a promissory note secured by a lien in the form of a deed of trust upon real property. That such intangible personal property is subject to the provisions of the new tax law appears in the following provision of the Act: "Section 1. (B) Intangible personal property means * * * notes * * *." In the opinion your questions have been considered in separate paragraphs in the order they appear in your letter of inquiry.

I.

Your first question relates to determination of the proper person to make the return to the Director of Revenue as provided by the Act mentioned.

For the calendar year 1946, the liability for such return is governed by the following provisions appearing in Section 2 of the Act:

"Section 2. * * * 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 3 of the Act provides as follows:

"Section 3. The returns for the year 1946 shall be filed with the director of revenue on forms supplied by the director of revenue, on or before September 1, 1946, and the tax shall become payable at the time the return is made and become delinquent on November 1, 1946; provided, however, that any person whose total tax, under the provisions of Section 2 of this Act, amounts to one dollar (\$1.00) or less shall not be required to file a return."

For the calendar year 1947 and succeeding years, the liability for filing the return is governed by the provisions of Section 5 of the Act:

"Section 5. 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."

Section 7 of the Act further provides:

"Section 7. Except for the calendar year 1946, every person who, pursuant to any provision of this Act, is liable for a property tax on intangible personal property, shall on or before March 15 of the year for which the property is subject to said tax, file with the Department of Revenue on a suitable form prepared and distributed by it, a property tax return on intangibles, showing the kind of intangible owned, the amount of yield therefrom and the

amount of tax for which he is liable for the year involved. The tax shall be payable at the time the return is made and shall become delinquent on June 1st of the year in which it is due."

II.

Your second question relates to the liability of the original owner of the intangible personal property who has transferred his interest therein to a transferee who fails to make return thereof for purposes of taxation.

For the calendar year 1946, the liability for making the return is predicated upon ownership July 1, 1946, as set out in Section 2 of the Act, quoted supra. Consequently, if the transfer was made prior to that date, there would be no liability to make return on the original owner of the intangible personal property.

It is a fundamental law of taxation that property may only be assessed to the owner thereof. We quote from State ex rel. v. Railway Co., 82 Mo. 683:

"This court held in Abbott v. Lindenbower, 42 Mo. 167, that 'An assessment in the name of a person who neither was, * * * the owner of the property, would be an utterly void assessment.'"

For the calendar year 1947 and subsequent years, each person owning the intangible personal property for any part of the year is required to file a return as provided by Section 5 of the Act, quoted supra. Here, again, the rule quoted from State ex rel. v. Railway Co., cited supra, would be applicable, and no liability could be placed upon the transferrer for taxes due and owing by his transferee.

III.

Your third question relates to the determination of factual matters relative to the transfer of intangible personal property during the year.

As mentioned in the case of State ex rel. v. Railway Co., cited supra, any assessment would be void if not based upon ownership. We think that the taxpayer would certainly have the

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right to make necessary proof of nonownership in the event that an assessment was made against him.

IV,

Your fourth question relates to the liability of a person to make return where he serves merely as a conduit for the transmittal of collections made in the form of yield on intangible personal property.

We have quoted from Sections 2 and 5 of the Act, dealing with the calendar years 1946 and 1947, and subsequent years, both of which clearly show that only the person holding the legal title to or equitable title or beneficial interest in intangible personal property is required to make return. Applying these rules to the situation presented by your question, it is readily apparent that if in fact the original owner is merely serving as a collecting agent for the owner of the legal title to the intangible personal property, such collecting agent is under no liability to file a return.

V.

Your fifth question relates to the procedure to be followed in the event of a failure to return the intangible personal property for taxation.

The procedure in this regard is covered by the following provisions of the act:

"Section 8. In case any taxpayer shall fail to make a return as provided by this act or shall make an insufficient return, the Director of Revenue shall, at any time within three years after the return of such taxpayer is required by law to be filed, make the assessment or additional assessment of such intangible property and shall notify the taxpayer of such action and the reason therefor. Such taxpayer shall, upon written application be given a hearing by the Director of Revenue on such assessment or additional assessment and shall have the right to appeal to the State Tax Commission as provided by law.

"Section 11. Every person who is liable for any tax pursuant to the provisions of this act and who fails to pay the same when it is due shall be required to pay as part of such tax interest thereon at the rate of one per cent (1%) per month from such time but not to exceed ten per cent (10%) per annum, and the method of collecting the tax and penalty shall be the same as provided by law in the case of delinquent income taxes."

"Section 13. Every person who fails or refuses to make the return required by this act; or who makes any false or fraudulent return or false statement in any return, with intent to evade the payment of the tax or any part thereof, imposed by this Act; or who aids or abets another in any attempt to evade the payment of the tax, or any part thereof, imposed by this act; and every officer or employee of any company or association who shall make or participate in the making of any false return, or any false statement in any return required by this Act, with the intent to evade the payment of any tax hereunder, shall, upon conviction, be deemed guilty of a misdemeanor."

CONCLUSION

In the premises, we are of the opinion:

(1) That the person required to make return of intangible personal property for the calendar year 1946 is the person who on July 1, 1946, owned the legal title to or equitable title or beneficial interest therein, and that for the calendar year 1947 and subsequent years such person is anyone who, during any part of the calendar year, owned the legal title to or equitable title or beneficial interest in such intangible personal property;

(2) That the failure of a transferee to make return of intangible personal property for taxation purposes will not have the effect of imposing liability therefor upon his transferor for the period that such transferee owned the legal title to or equitable title or beneficial interest in such intangible personal property;

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(3) That no valid assessment may be made against the transferrer of intangible personal property unless such transferrer owned the legal title to or equitable title or beneficial interest in such intangible personal property for some period of the calendar year such as to subject such transferrer to liability for the tax or a portion thereof;

(4) That merely acting as a collecting agent for the actual owner of intangible personal property and receiving yield therefrom, which is transmitted to such actual owner, would not subject such collecting agent to liability for making return;

(5) That failure to file return of intangible personal property would authorize the Director of Revenue to make an assessment thereof as provided by Section 8 of H.C.S.U.B. 868, and would subject the taxpayer to the civil penalties provided by Section 11 of said Act, being interest on such tax at the rate of one per cent per month from the due date thereof, but not exceeding ten per cent per annum, until paid, and to the criminal penalties provided in Section 13, making the evasion of the provisions of the Act a misdemeanor.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. WAYLOR
Attorney General

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