

TAXATION AND REVENUE: Liability for filing return of intangible personal property by resident beneficiary of trust estate.

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Honorable Claude E. Curtis  
Prosecuting Attorney  
Laclede County  
Lebanon, Missouri

Dear Sir:

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

"Your legal opinion is desired concerning the operation of the new intangible property tax law.

"My facts are: A person in Laclede County, Missouri, receives her sole income from a trust estate situated in the state of New York. She has always reported this income for state and federal income tax purposes and in 1945 she paid income taxes on the total yield of said trust estate.

"It is contended that if such person must return said yield under the new law, then she is being doubly taxed. Is this true, and if so, is it illegal under the next tax act?

"Will you please advise whether such person must report her said income and pay intangible property taxes thereon?"

You have not indicated in your letter the exact nature of the intangible personal property comprising the trust estate of which the Missouri resident is the beneficiary. We, therefore, deem it of importance to quote the definition of intangible personal property found in H.C.S.A.B. 868 of the 63rd General Assembly, which provides the scheme for the taxation of such property. Paragraph (B) of Section 1 of said act reads as follows:

"(B) 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."

Upon determination that all or part of the corpus of the trust estate consists of property of the nature defined in the above quoted portion of the act, we then must look to further provisions thereof to determine whether or not the resident of Missouri is required to make return of such property. Paragraph (D) of Section 1 of the act reads in part as follows:

"(D) The taxable situs of intangible personal property for the purpose of this act shall, for residents of Missouri, be the residence of the owner thereof. \* \* \* "

Also your attention is directed to a portion of Section 6 of the act, reading in part as follows:

"\* \* \* 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.\* \* \*"

There is one exemption provided by the act which might be applicable in the present instance. This exemption is found as a part of paragraph (D), reading as follows:

"\* \* \* 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.\* \* \*"

We note that some contention is being made that to subject the intangible personal property to taxation in Missouri would

amount to double taxation by reason of the fact that the income from such intangible personal property has been subject to Federal and state income taxes. This contention is not tenable, however, as the tax provided by H.C.S.H.B. 868 is not an income tax but merely adopts as a basis for valuing intangible personal property the yield derived therefrom. It is in no sense an income tax, but is an ad valorem tax based upon the value of intangible personal property arrived at in the manner mentioned.

CONCLUSION

In the premises, we are of the opinion that a resident of Missouri, owning the beneficial interest in a trust estate consisting of intangible personal property as defined in paragraph (B) of Section 1 of H.C.S.H.B. 868 of the 63rd General Assembly, must return such intangible personal property for taxation, unless such intangible personal property is used in or arises out of business transacted outside of this state by, for or on behalf of such person and is taxed in such other state or states.

Respectfully submitted,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

WFB:LR