

INTANGIBLE TAX ) Compensation paid to the estate of a deceased  
TAXATION ) partner for the use of tangible partnership  
 ) assets is not yield from an intangible and  
 ) therefore not subject to the assessment  
 ) of an intangible personal property tax.

February 20, 1951

2-21-51

Mr. T. R. Allen  
Supervisor, Income Tax  
Department of Revenue  
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office. Your request read as follows:

"The question confronting this department at this time is as follows and I quote herein for your information from a letter received from taxpayers' attorney under date of January 4, 1951:

"Frank Futterman died on October 13, 1947. At the time of his death he was a partner in the clothing business with his brother, Mark Futterman, operating a clothing store on North Broadway in St. Louis, Missouri. After the death of Frank Futterman, Mark Futterman continued to operate the business without making a settlement of the partnership affairs. As the result of this action, a suit was filed in the Circuit Court of St. Louis County for an accounting. A settlement was made in which Mark Futterman paid \$74,146.50, representing the value of the interest of Frank Futterman in the partnership, and paid an additional \$8,881.10 to compensate the Estate of Frank Futterman for the use of the partnership assets during the period from the date of death of Frank Futterman to the date of the settlement.

"The \$8,881.10 was income to the Estate and an income tax return was filed. However, it

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was not interest on an account receivable or any other form of intangible property, but was compensation to the estate of a deceased partner for the use of the tangible partnership assets without the consent of the Estate. Under the circumstances, we have advised Mrs. Futterman that she is not required to file an intangible personal property tax return.

"If your Department disagrees with our conclusion, we will be glad to examine any authorities that you may wish to call to our attention."

"The foregoing quoted portion of letter referred to sets out the circumstances wherein there was an interest yield of \$8,881.10 interest, which accrued on a partnership settlement, which resulted from a delay and court action as described herein.

"Will you kindly advise this department whether or not such transactions may be classified as intangible instruments and subject to the intangible tax."

Revised Statutes of Missouri, Section 146.010 defines intangible personal property which is subject to the tax in question, and the term "yield", which is made the basis upon which the tax is assessed, in the following words:

"(1) '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.

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"(4) The term 'yield' or 'annual 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, 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. (L 1945 p. 1760 Sec. 1, L. 1945 p. 1914 Sec. 1, A. 1949 S.B. 1029)"

In order to be subject to the intangible tax the estate of the deceased must have realized a "yield" from intangible personal property as defined above. Whether the estate of the deceased acquired any intangible personal property by the death of a partner and whether there was a yield realized from an intangible asset is largely a matter of fact.

It appears as an accepted fact that the surviving partner paid \$74,146.50 to the estate of the deceased partner which represented the value of the interest in the partnership of the deceased, at the time of his death in October, 1947. Further, the surviving partner paid an additional sum of \$8,881.10 to the estate of the deceased partner to compensate the estate of the deceased for the use of partnership assets during the period from the date of death to the date of settlement of the partnership affairs. The question then is whether or not this \$8,881.10 was yield from an intangible asset belonging to the estate, and subject to the tax. There was no question but what the sum of \$8,881.10 represented income to the estate. However, if it represented rent or compensation to the estate of the deceased partner for the use of tangible assets which had belonged to the partnership prior to its dissolution by the death of a partner, then the estate received no yield from an intangible asset and in fact owned no intangible. The taxpayer states the sum of \$8,881.10 was paid as compensation to the estate of the deceased partner for the use of tangible partnership assets. If this is true then there would be no

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intangible personal property tax due from the estate because they have received no yield from an intangible.

If as a matter of fact the surviving partner purchased the interest of the deceased partner at the time of dissolution of the partnership by reason of the death of the partner and paid interest on \$74,146.50 (which represented the value of the interest of the decedent in the partnership) then this interest would represent yield to the estate from an intangible subject to the tax. However, from the statement of the taxpayer, it appears the sum of \$8,881.10 did not represent interest due on the \$74,146.50 share of the decedent but represented compensation to the estate for the continued use of the partnership's property.

Admittedly, the estate of the deceased partner has a claim against the partnership to the extent of the interest of the deceased partner but such a claim pending settlement is not defined by the statute quoted above as an intangible asset subject to the tax.

#### CONCLUSION

Compensation paid to the estate of a deceased partner for the use of tangible partnership assets is not yield from an intangible and therefore not subject to assessment of an intangible personal property tax.

Respectfully submitted,

APPROVED:

JOHN E. MILLS  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General