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TAXATION:

Land O'Lakes Creameries Inc., a Minnesota corporation, is liable for taxation on its income under the Missouri Income Tax Law.

February 5, 1957

Honorable T. R. Allen,
Supervisor,
Division of Tax Collection,
Department of Revenue,
Jefferson City, Missouri.



Dear Sir:

This is in answer to your letter of recent date in which you inquire as to whether or not Land O'Lakes Creameries Inc., a Minnesota Cooperative Association, is exempt from the payment of corporate income tax in the State of Missouri under our Income Tax Law.

Section 143.120 RSMo 1949, provides as follows:

"There shall not be taxed under this chapter any income received by any:

- (1) Labor, agricultural or horticultural organizations;
- (2) Mutual savings bank not having a capital stock represented by shares;
- (3) Fraternal-beneficiary society, order or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order, or association or their dependents;
- (4) Domestic building and loan association and co-operative banks without capital stock organized and operated for mutual purposes and without profit;
- (5) Cemetery company owned and operated exclusively for the benefit of its members, unless said cemetery is operated for profit;
- (6) Corporation or association organized and operated exclusively for religious, charitable, scien-

tific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(7) Business league, chamber of commerce or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

(8) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(9) Club organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

(10) Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or co-operative telephone company, or like organization, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(11) Farmers' fruit growers' or like association, organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

(12) Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(13) Federal land banks and national farm loan associations, as provided in section 26 of an act of congress approved July 17, 1916, entitled 'An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes';

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(14) Joint stock land banks as to income derived from bonds or debentures or other joint stock land banks or any federal land bank belonging to such joint stock land bank;

(15) Express companies which now pay an annual tax on their gross receipts in this state and insurance companies which pay an annual tax on their gross premium receipts in this state."

It is our understanding that it is the contention of Land O'Lakes Creameries that such corporation is exempt from the Missouri Income Tax Law because of the provisions of subsection 11 of Section 143.120, supra. It is our view that Land O'Lakes Creameries does not come within the purview of such subsection, and that Land O'Lakes Creameries is, therefore, not exempt from the Income Tax Law of Missouri.

It is to be noted that subsection 11 of Section 143.120 is limited to an association organized and operated as a sales agent for the purpose only of marketing the products of members and turning back to such members the proceeds of the sales of such members, less the necessary selling expenses. Any organization engaged in any other activities than that activity specifically provided for in subsection 11 does not come within the purview of such subsection.

It is provided in the Articles of Incorporation of Land O'Lakes Creameries Inc., in Article II, as follows:

"The purposes for which the association is formed are:

"To engage in any activity in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies;

"* * * It shall have power to handle also such products of nonmembers, but the total of such products handled by it must always be less than the amount delivered by or handled for members."

It appears from the Articles of Incorporation of Land O'Lakes Creameries, therefore, that such organization has the power not only to market the products of its members, but also to manufacture, sell, and supply its members with machinery, equipment and supplies. It further has the power to handle products of nonmembers.

In a letter which you have attached, and which was written to you under date of April 25, 1956, the law firm representing Land O'Lakes Creameries stated that the association does, as a matter of fact, furnish machinery, supplies and equipment.

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Since the activities of Land O'Lakes Creameries are not limited to marketing the products of its members, it is obvious that such association is not within the exemption provisions of the Missouri Income Tax Law found in Sec. 143.120. Since the association is not within the exemption statute, it clearly appears that such association is subject to the Income Tax Law of this state.

CONCLUSION

It is the opinion of this office that Land O'Lakes Creameries Inc., a Minnesota Cooperative Association, is subject to the Income Tax Law of Missouri, and cannot qualify as being exempt therefrom.

The foregoing opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Very truly yours,

John M. Dalton
Attorney General

CEB/ld