

December 7, 1962

OPINION REQUEST NO. 360 answered by letter

The Honorable M. E. Morris
Director of Revenue
P.O. Box 629
Jefferson City, Missouri



Dear Mr. Morris:

This is in answer to your letter dated September 26, 1962, requesting an opinion from this office. Your letter reads as follows:

"This Department desires an opinion with regard to Section 143.180 as it affects the applicable dividend credit percentage as referred to herein, and for the purpose of our request we quote the pertinent portion of Section 143.180:

"For the purpose of this chapter, the tax on income included in the return of any stockholder of any corporation, joint stock company and/or joint stock association, received or earned during the taxable period, shall be credited with the amount obtained by multiplying the rate of the Missouri state tax on corporate income by the amount or portion of such dividends, or net earnings of any corporation, joint stock company and/or joint stock association, upon which such corporation, joint stock company and/or joint stock association, paid income tax to the state of Missouri for its last preceding taxable period."

The Honorable M. E. Morris

"While it is noted that the stockholders income shall be 'received or earned during the taxable period,' it is also noted that the corporation's dividend credit shall be calculated on the basis of 'its last preceding taxable period.'

"For the purpose of clarifying this request, a stockholder received dividends during the calendar year 1961 from a corporation whose income tax returns are filed on a fiscal year ending January 31st. It has long been our view that, in this instance, the last preceding taxable year of the corporation was for the fiscal year ending January 31, 1960, since it was the last corporate year preceding the beginning of the individual stockholders taxable period of January 1, 1961. Likewise similar view was taken on all 1960 corporate fiscal year endings including the 1960 calendar year.

"Your opinions are requested on the following situations:

"A: As in above example should the dividend credit percentage applicable to receipt of dividends during the calendar year 1961 be calculated on the last preceding corporation income tax return ending fiscal or calendar prior to January 1, 1961 which is the first day of the stockholder's period?

"B: A corporation is newly incorporated in 1960 so that its first Missouri Corporation Income Tax Return is filed for the fiscal year ending January 31, 1961. This corporation paid dividends to its stockholders during the year 1960 and also in January 1961. The corporation, therefore, had 'no last preceding taxable year'. Since stockholders would therefore file Missouri Individual Income Tax Returns for both 1960 and January 1961 for dividends received in these respective periods, please advise the basis to be used for determination of the dividend credit percentage applicable in accordance with your opinion on situation A above.

The Honorable M. E. Morris

"C. Would the answers to situations A and B above be the same if, instead of a corporation fiscal year ending January 31, 1961, the corporation had any subsequent 1961 fiscal year ending?"

Your request hinges on an interpretation of what the Legislature meant by the phrase "for its last preceding taxable period." The statute itself does not elaborate on this nor are there any Missouri case decisions on this point. Webster's International Dictionary defines "preceding" as "to go before in order of time; to be earlier than, to occur first with relation to anything." "Preceding" is defined by Black's Law Dictionary as "next before". It would therefore appear from the plain wording of the statute "that the last preceding taxable period" referred to in Section 143.180, RSMo 1959, can only refer to the taxable period next before that of the taxpayer. The taxpayer's taxable period is the subject matter of this chapter and the word "preceding" as used in this section, can only relate to that.

It is from this premise that the three situations as outlined in your letter are answered. It is the opinion of this office that they should be resolved as follows:

A. In answer to the situation as outlined here, the dividend credit should be allowed on the last preceding corporation income tax return ending in the fiscal or calendar year prior to January 1, 1961, as this is the first day of the taxpayer's period.

B. In the situation outlined here it is the opinion of this office that this taxpayer would not be allowed any dividend credit on his 1960 return as there was no "preceding taxable year", nor could this taxpayer claim any dividend credit on his 1961 return as again there were no dividends from this corporation "in the preceding taxable year", since the end of the corporation's fiscal period occurred during the taxpayer's period. The first dividend credit could be claimed by this taxpayer on his 1962 return.

C. In this situation our answer would be the same regardless of when the corporation had its fiscal year ending. The only criteria is that the fiscal year ending of the corporation be the one immediately preceding the commencement

The Honorable M. E. Morris

of the taxpayer's period.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert D. Kingsland.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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