

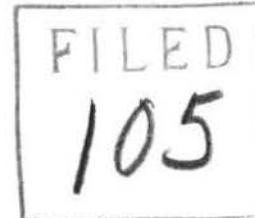
TAXATION:
INTANGIBLE TAX:
SAVINGS AND LOAN ASSOCIATIONS:

Dividends received from both in-state and out-of-state savings and loan associations are not subject to Chapter 146, RSMo, the Missouri Intangible Tax Law.

OPINION NO. 105
(546, 1966)

March 16, 1967

Honorable Thomas A. David
Director of Revenue
Jefferson Building
Jefferson City, Missouri



Dear Mr. David:

This is in answer to your request for an opinion concerning the question whether dividends from out-of-state savings and loan associations come within the purview of the Missouri Intangible Tax Law. If such dividends are subject to the Missouri Intangible Tax Law, you then ask whether out-of-state savings and loan associations are nevertheless exempt because of Section 148.520, RSMo Supp. 1965.

In order to answer the above questions, it is first necessary to determine whether dividends paid from any savings and loan association are subject to Chapter 146, RSMo, the Missouri Intangible Tax Law.

The Intangible Personal Property Tax is a tax based on the yield from the holding of intangible personal property. Section 146.020, RSMo 1959, which imposes the tax reads in part as follows:

"1. Except as otherwise provided by law, intangible personal property having a taxable situs in the state of Missouri at any time during the calendar year shall be subject to a property tax for the calendar year following the year in which the property had such taxable situs in this state.

"2. The tax on intangible personal property shall be based on the yield of the property during the preceding calendar year, and the rate of tax shall be four per cent of such yield.

* * * *"

Honorable Thomas A. David

Section 146.030, RSMo 1959, determines who is liable for the tax and reads as follows:

"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 146.020, 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 146.010, RSMo Supp. 1965, defines "intangible personal property" and "yield" as follows:

"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; accounts receivable, conditional sales contracts, which have incorporated therein promises to pay; and real estate and chattel mortgages.

"4. The terms 'yield' or 'annual yield' mean 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, and less proceeds set aside or accumulated by the owner thereof under contracts or agreements for pension or retirement or employee benefits."

Honorable Thomas A. David

Thus, only those intangibles defined by Section 146.010, supra, are taxed as intangibles by Section 146.020, supra. In order to tax dividends received from savings and loan associations there must be a holding of legal or equitable title or a beneficial interest in "intangible personal property", as defined.

A close reading of Section 146.010, supra, shows no specific inclusion of "accounts" in savings and loan associations as "intangible personal property". Specifically included are moneys on deposit, bonds, certificates of indebtedness, notes, debentures, accounts receivable, and mortgages. Therefore, in order for a tax to be due on the receipt of dividends from an "account" in a savings and loan association an "account" must be said to be one of those enumerated "intangibles".

Tax laws, of course, must be strictly construed, and if the right to tax is not plainly conferred by statute, it is not to be extended by implication. In re Gerling's Estate, Mo., 303 S.W.2d 915. Also, where it is doubtful whether property proposed to be taxed falls within the description used by the law, it is proper to resort to other statutes, relating to the subject, to ascertain the intention of the legislature. Hannibal & St. J. R. Co. v. Shacklett, 30 Mo. 550.

Chapter 369, RSMo, the "Savings and Loan Law", provides for the creation, regulation and operation of savings and loan associations.

Enclosed is Attorney General Opinion No. 82, dated March 16, 1959, to the Honorable Paul R. Sims, interpreting certain sections of the Savings and Loan Law and holding that:

" * * * Section 369.325, RSMo Supp. 1957, ostensibly authorizing school districts and other political subdivisions of Missouri to invest their funds in accounts of savings and loan associations subject to Chapter 369, RSMo 1949, as amended, is, to that extent, invalid as contravening Article 6, Section 23, Missouri's Constitution of 1945."

In reaching that holding Opinion No. 82 on pages 4 and 5 discusses the nature of an "account" in a savings and loan association. The opinion quotes Section 369.310, 369.140 and 369.250, RSMo, for the proposition that, page 5:

Honorable Thomas A. David

" * * * investing in 'accounts' of a savings and loan association is tantamount to investing in the stock of a corporation, * * *."

Section 369.310, supra, quoted in the opinion reads as follows:

"No association shall accept deposits of money, nor shall any association agree to pay either interest, or a guaranteed rate or amount of dividends, upon any accounts issued by it; provided, however, that this prohibition shall not be applicable to the payment of interest upon money borrowed under the power to borrow provided elsewhere in this chapter."

It is the opinion of this office that an "account" in a savings and loan association is not "intangible personal property" as defined by Section 146.010, supra, and therefore, dividends received from the holding of an "account" in both in-state and out-of-state savings and loan associations are not subject to the Missouri Intangible Personal Property Tax.

CONCLUSION

It is the opinion of this office that dividends received from both in-state and out-of-state savings and loan associations are not subject to Chapter 146, RSMo, the Missouri Intangible Tax Law.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Very truly yours,



NORMAN H. ANDERSON
Attorney General

Enclosure: Opinion No. 82