

TAXATION (INTANGIBLE): 1974 is the final calendar year during which liability can be incurred for the intangible tax of Chapter 146, RSMo 1969, but this liability is based upon the yield of intangible personal property during 1973 rather than 1974; and the yield of intangible personal property during 1974 will not be the basis for the computation for any future intangible tax. The final date for filing intangible tax returns will be April 15, 1974.

OPINION NO. 308

December 7, 1973

Mr. James R. Spradling, Director
Missouri Department of Revenue
Jefferson State Office Building
Jefferson City, Missouri 65101



Dear Mr. Spradling:

This official opinion is issued in response to your request for a ruling on the following question:

"In view of House Bill 357, Laws 1972, p. [495], which repeals Sections 146.010, 146.020, 146.030, 146.050, 146.080 and 146.120 of the Intangible Personal Property Tax, the repeal to take effect January 1, 1975, is 1973 or 1974 the final calendar year during which liability for the intangible tax can be incurred with the final filing date being April 15, 1974, or April 15, 1975 respectively?"

The answer to your question will depend upon the interpretation of Sections 146.020 and 146.050, RSMo 1969. Section 146.020 states, in pertinent part:

"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 percent of such yield."

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Section 146.050 states:

"1. Except for the calendar year 1946, every person who, pursuant to any provision of this chapter, is liable for a property tax on intangible personal property, shall on or before April fifteenth of the year for which the property is subject to said tax, file with the department of revenue on a suitable form prepared and distributed by it, a property tax return on intangibles, showing the kind of intangible owned, the amount of yield therefrom and the amount of tax for which he is liable for the year involved.

"2. The tax shall be payable at the time the return is made and shall become delinquent on June first of the year in which it is due."

We would point out that subsection 1 of Section 146.020 imposes a tax on intangible personal property "for" the calendar year following the year in which the property had a taxable situs in Missouri. Subsection 2 states that this tax shall be based on the yield of the property during the preceding calendar year.

The language of subsection 1 of Section 146.050 creates a certain ambiguity in that, while it requires that a return be filed on or before April 15 of the year "for which the property is subject to said tax," it specifies that the taxpayer's return should show ". . . the kind of intangible owned, the amount of yield therefrom and the amount of tax for which he is liable for the year involved." It is not entirely clear from the last quoted passage whether the phrase "for the year involved" means that the return shall show the kind of intangible owned and the amount of yield in the same year for which the tax is owed, or for the pre-
ceding year. However, we believe that the latter is the only plausible explanation. If the return is filed no later than April 15 of the same year in which the taxpayer becomes liable for the tax, he cannot possibly describe in that return all the intangible property "having a taxable situs in the state of Missouri at any time" during that year; he will not know whether he may acquire or dispose of intangible personal property during the remainder of the year. Nor can he possibly predict the amount of yield from his intangible personal property for the remainder of the year, for similar reasons. The legislature must have intended in Section 146.050 that the taxpayer's return should show "the amount of tax for which he is liable" for the year in question (the same year in which the return is filed", but show the "kind of intangible owned" and the "amount of yield therefrom" for the preceding year, since this latter information is the basis for the tax in the taxable year.

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We would also point out the following language in Section 146.040, subsection 1, RSMo 1969, which was repealed by House Bill No. 357, Laws 1972, page 495:

"Intangible personal property shall be deemed to have a taxable situs in this state for the purpose of being subject to a property tax for the year 1947 and each succeeding year, where, at any time during the calendar year preceding the year for which the property is subject to said tax, the legal title thereto is owned by a person domiciled in this state, . . ."

This language, taken together with that of Section 146.020, very clearly indicates that the tax for which liability is incurred during any given calendar year is in fact the tax for that year, but that the basis on which that tax is to be computed is to be derived from the preceding year.

In the immediate context of your question, it is obvious that the repeal of Section 146.020 as of January 1, 1975, will not prevent the imposition of intangible personal property taxes for the year 1974. But the taxes for that year 1974 will be based upon the 1973 yields on intangible personal property which had a taxable situs in Missouri during 1973. The filing date for 1974 tax will be April 15, 1974.

Our conclusions are supported by the decision of the Supreme Court of Missouri in the case of In re Armistead, 245 S.W.2d 145 (Mo. 1952). That case held that the intangible tax act could not be applied for the calendar year 1947 so as to assess the tax on the basis of the yield of intangible personal property for the entire calendar year 1946, because the act did not become operative until July 1, 1946. The court held that such application of the act would make it "retrospective in its operation" and therefore in violation of Article I, Section 13 of the Constitution of Missouri of 1945. In so holding, however, the court cited and quoted from its opinion in First Nat. Bank of St. Joseph v. Buchanan County, 205 S.W.2d 726 (Mo. 1947), a case in which involved similar provisions in the Bank Tax Act of 1946 (now Sections 148.010-148.110, RSMo 1969):

". . . That act, like the intangible personal property tax act, became operative July 1, 1946. It levied an annual tax for calendar 1947, 'measured by the taxpayer's net income for' calendar 1946. We said: 'For the tax year 1947 and thereafter the tax is to be measured by the taxpayer's income "for the preceding calendar year," or year 1946. . . .'

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Even though a tax to be assessed and collected in one year on the income of the preceding year "is a tax for the year of its collection, and not for the year in which the income was received" (61 C.J. Sec. 2331, p. 1581), the tax imposed by the Bank Tax Act, however it is viewed, is retrospective in its operation and could not be effective in the circumstances of this case and in any event prior to July 1, 1946.
(Emphasis added) In re Armistead, supra at 152.

It should be clear from the above-quoted passage that the intangible property tax is a tax for the year of its collection, not for the year by which the yield of the taxpayer's intangible property is measured. Thus, the last year for which the intangible property tax may be imposed will be 1974; but the last year in which the yield on intangible personal property will be the measuring rod for the assessment of future intangible tax will be 1973.

CONCLUSION

Therefore, it is the opinion of this office that 1974 is the final calendar year during which liability can be incurred for the intangible tax of Chapter 146, RSMo 1969, but this liability is based upon the yield of intangible personal property during 1973 rather than 1974; and the yield of intangible personal property during 1974 will not be the basis for the computation for any future intangible tax. The final date for filing intangible tax returns will be April 15, 1974.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Yours very truly,



JOHN C. DANFORTH
Attorney General