TAXATION: Trustees must pay the annual corporation franchise tax to this state when such receivers or trustees are operating the business of the corporation which is undergoing a reorganization under the provisions of the Bankruptcy Act.

April 1, 1938

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State Tax Commission
of Missouri
Jefferson City, Missouri

Attention: Mr. Clarence Evans.

Gentlemen:

This will acknowledge receipt of your request for an opinion reading as follows:

> "A question has arisen whether or not a corporation being operated by a receiver or trustee is liable for corporation franchise tax.
>
> Former receiverships have been subjected to the tax but since the 77B Bankrupt Act, some corporations question the right of the State to impose this tax.
>
> Will you kindly furnish this Department, at your early convenience, an opinion on this point?
>
> Thanking you in advance for your usual prompt attention, we are,"

The Missouri Statute levies a tax upon the right of a corporation to transact business in this state. That is to say, the tax is levied on the franchise. State ex rel. Marquette vs. State Tax Commission, 282 Mo. 213. It is to be further observed that in the case of State vs. Pierce Petroleum Corporation, 318 Missouri 1020, the court in effect and substance said that the tax was imposed upon the privilege of transacting business in this state as a corporation. To the same effect was the ruling in the case of Ozark Pipe Line Company vs. Monier, 266 U. S. 567, 69 L. Ed. 439.

Apparently from these considerations the tax is levied upon the privilege of transacting business in this state as a corporation and would not extend to a corporate business operated by receivers or trustees appointed by a Federal

Court, when the corporate business is undergoing reorganization under the provisions of 77B of the Bankrupt Act. We say, apparently, because prior to the enactment by Congress of Section 124A of 28 U. S. C. A., the trustee would have not been subjected to the payment of a tax upon the corporate franchise. This view was substantiated in the cases of In re International Match Corporation, 79 Fed. (2nd) 203; In re Century Silk Mills, 12 Fed. (2nd) 292; In re Continental Candy Co., 291 Fed. 773.

But Section 124A, supra, has affected a material change in the law and reads as follows:

> "Any receiver, liquidator, referee, trustee, or other officers or agents appointed by any United States court who is authorized by said court to conduct any business, or who does conduct any business, shall, from and after June 18, 1934, be subject to all State and local taxes applicable to such business the same as if such business were conducted by an individual or corporation:"

In the case of In re Preble Corp. 15 Fed. Supp. 775 in the Federal District Court, had occasion to consider the above section of the statute, and said:

> "Since the passage of the Amendment to Section 64, above referred to, Congress, by Act of June 18, 1934 (28 U. S. C. A. Section 124A), has made it still more clear that business conducted by Federal trustees is subject to all local taxes."

From what has been said, it might be argued that our Franchise Tax Act does not impose a tax on any trustee and, hence, trustees appointed by a Federal Court would not be subject to the payment of a franchise tax under the provisions of our law. This, of course, would be upon the principle that taxation by implication is not favored and, unless the statute expressly included a trustee, such trustee would not be subject to any franchise tax. On the other hand when we consider that Section 124A, supra, does not require that the state statute be applicable to a trustee, then this argument would seem to fall with the premise. This is because that Section 124A, supra, imposes a duty

upon the trustee to pay all state taxes applicable to such business as is being operated by the trustee.

It is fundamental in the construction of statutes, that the courts will take judicial notice of legislative journals and proceeding in Congress, insofar as they may aid in determining intent. Connole vs. Norfolk and Western Railway Company, 216 Fed. 823, Atla. C. L. R. Co. vs. Riverside Mills, 219 U. S. 196.

That it was the intention of Congress to require all trustees to pay a tax applicable to the business that such trustees were operating is made evident by referring to House Report #1138, 73rd Congress on June 6, 1934, which accompanied the bill that subsequently became the Section 124A. It should be pointed out, however, that this report refers specifically to receivers, but is equally true to a trustee operating a business. The report reads as follows:

> "The purpose of this bill is to subject business conducted under receivership in Federal Courts to state and local taxation. The same as if such businesses were being conducted by private individuals or corporations.
>
> "The United States District Court for the Western District of Missouri, in the case of Howe vs. Atlantic, Pacific and Gulf Oil Company recently held that the receiver operating a gasoline and oil distributing business, under appointment by the Federal Court, was not liable for a sales tax and motor fuel levied by the State of Missouri. As a consequence of this decision, your committee is advised, the State of Missouri and other states having similar statutes are loosing thousands of dollars of revenue per month.
>
> "No good reason is perceived why a receiver should be permitted to operate under such an advantage as against competitors not in receivership, and the state and local governments be deprived of this revenue."

It is obvious, from the above report, that it was the intention of Congress to subject receivers appointed by a Federal Court to all taxes which had theretofore been applicable to the business while it was in the hands of the corporation. This is manifested by the phrase in Section 124A, supra, reading: "All * * * taxes applicable to such business, the same as if such business were conducted by * * * corporation." It is clear that this phrase indicates that, if a corporation was subjected to a franchise tax then the trustee would also be subjected to such taxes, the same as if the business were still being operated by the corporation.

While it is true, in determining the intent of Congress, from a review of the House Report, supra, did not mention trustees, it is believed that the inclusion of trustees in Section 124A, supra, makes the liability upon them the same as receivers.

CONCLUSION

It is, therefore, the opinion of this department that trustees are liable for the payment of a Corporation Franchise Tax when operating the business of a corporation which is undergoing reorganization under the provisions of 77B of the Bankrupt Act.

Yours very truly,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

RCS:LB