

TAXATION: Intangible property tax on property held in trust distributed in county or city of domicile of trustee. Divided when two trustees reside in different counties.

November 28, 1949

11/30/49



Mr. T. R. Allen, Supervisor
Income Tax Unit
Department of Revenue
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I am in receipt of the following letter from Mr. J. H. Cunningham, Jr., Attorney for the City of Ladue, St. Louis County, Missouri, which I quote herewith:

"The City of Ladue, an incorporated city of the fourth class, has not been receiving all of the intangible tax revenue to which it feels it is entitled. This has resulted in part from the practices followed by taxpayers who reside in Ladue but list on their intangible tax returns an address in the City of St. Louis which is their business address.

"In investigating this matter the following situations have presented themselves, to-wit: There are a number of cases where a trust exists under the terms of a written instrument (either a will or a revocable or irrevocable living trust indenture) with legal title to intangibles vested in two Trustees, one an individual residing in Ladue, and the other a bank or trust company located in the City of St. Louis. In other cases the sole Trustee is a St. Louis bank or trust company. The beneficiaries of the trust in each of the cases referred to are residents of the City of Ladue, but the trust assets are kept in the bank in St. Louis.

"We are engaged in friendly discussions with the City of St. Louis relative to which city is entitled to receive the intangible tax monies on such trusts (1) where the beneficiary resides in Ladue and one of two

co-trustees resides in Ladue but the other co-trustee resides in the City of St. Louis; and (2) where the beneficiary resides in the City of Ladue and the sole Trustee is a St. Louis bank or trust company. Accordingly we respectfully request that you obtain an opinion from the Attorney General covering these two questions.'

"The question herein involved is in respect to the distribution of intangible taxes to the political subdivisions of this State and involves intangible instruments handled by banks or trust companies. I believe the questions involved are set out in the last paragraph of the above quoted letter.

"Will you kindly let me have an opinion with respect to the proper political subdivision to which such collections should be distributed."

The intangible personal property tax law is found in Laws of 1945, at page 1914. Provisions of the law relevant in answering the questions propounded are as follows:

"The taxable situs of intangible personal property for the purpose of this act shall, for residents of Missouri, be the residence of the owner thereof. If any law shall provide for the payment of the intangible property tax at its source the taxable situs shall be the location of the business owning or administering the intangible property. * * *" Section 1(D).

"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, or by a domestic corporation, or where said intangible property acquires a business situs

in this State when the legal title thereto is owned by a person not domiciled in this state, or by a foreign corporation. In all cases where both the persons holding or owning the legal title and the equitable title or beneficial interest in the same property are domiciled in this state, only the holder of the legal title shall be liable for such tax. * * *" Section 6.

"The Director of Revenue shall annually, on or before the 15th day of September, return the amount or intangible taxes collected, less two per cent (2%) thereof, which shall be retained by the State for collection, to the county treasury of the county in which the particular taxpayers are domiciled or in which the intangible personal property which was the subject of the tax had its business situs. * * *" Section 14.

We shall first direct our attention to the distribution of the tax in the second situation presented in your request, to-wit, where the beneficiary resides in the City of Ladue and the sole trustee is a St. Louis bank or trust company. Under section 6 of the act, quoted above, the trustee is the person liable for the tax in such situation, inasmuch as both the holders of the legal and equitable titles are domiciled in this state. Section 14 requires that the tax collected be distributed "to the county treasury of the county in which the particular taxpayers are domiciled." Inasmuch as the trustee is the taxpayer in such situation, that provision would appear to govern the handling by the state of the tax in such situation. Does the provision of section 1(D), fixing the situs of the property for the purpose of such tax at the domicile of the "owner" thereof affect this conclusion?

We find no cases in Missouri dealing with the question of who is, for the purposes of taxation, the "owner" of tangible or intangible personal property held in trust. "Where the situs of trust property and the domicile of the trustee and cestui are in the same state, it is purely a question of legislative discretion whether taxes levied on the property are assessed to one or the other." 2 Bogert on Trusts, Sec. 263, p. 845. The legislature has in this act made the trustee the person liable for the tax. The trustee, in the absence of provision to the contrary, would, according to the majority view in such matters, have been the person responsible for the return and tax. "Generally, in the absence of statutory provision to the

contrary, and sometimes with statutory sanction or command, it is held, as against contentions that the personal property held in trust is taxable in another place in the state, that such property is taxable only at the place or residence or domicile of the trustees in the state." Annotation, 129 A.L.R. 273. Such being the rule, we feel that, in view of the absence of any indication that the word "owner" is used other than in the sense usually applied in determining the situs of intangibles held in trust, the proceeds of such tax should be transmitted to the treasury of the county in which the domicile of the trustee is situated, without regard to the residence of the beneficiaries.

As for the first question, in view of the foregoing, the residence of the beneficiaries is immaterial. Distribution of the proceeds of the tax is made in accordance with the domicile of the trustees. This department, in an opinion dated October 29, 1946, and addressed to Mr. M. E. Morris, Director of Revenue, held that "joint owners of intangible personal property subject to the tax imposed under the provisions of H.C.S.H.B. No. 868 (Laws of 1945, p. 1914) of the 63rd General Assembly should make return of such intangible personal property for purposes of taxation."

In an annotation found in 129 A.L.R. 290, the following is stated: "In a majority of cases considering the question, sometimes as the result of statutory persuasion, the rule calls for a proportional taxation of the personal property of a trust or an estate at the residence of each trustee, executor or administrator (in jurisdictions where the personal property of a trust estate is taxed at residence of the fiduciary), depending on the number of such fiduciaries, without regard to the place where the property is situated."

As set out above, under section 14 of the act in question, the proceeds of the tax go to the treasury of the county "in which the particular taxpayers are domiciled." Such being the situation, we feel that in the instance presented, the proceeds of the tax should be equally divided, one-half to go to the treasury of the City of St. Louis, and one-half to the treasury of St. Louis County, in which the City of Ladue is located.

CONCLUSION.

Therefore, this department is of the opinion that where the beneficiary of a trust resides in the City of Ladue, in St. Louis County, and the sole trustee of the trust estate is a bank or trust

Honorable T. R. Allen

-5-

company located in the City of St. Louis, the proceeds of the tax upon the intangible personal property of such trust should be transmitted by the Director of Revenue to the treasury of the City of St. Louis, as the domicil of the taxpayer, and that where the beneficiary of a trust resides in the City of Ladue, and one of two co-trustees resides in the City of Ladue and the other co-trustee resides in the City of St. Louis, the proceeds of such tax should be equally divided and one-half transmitted to the treasury of the County of St. Louis and one-half to the treasury of the City of St. Louis.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General



RRW/feh