TAXATION AND REVENUE: Liability for taxation of royalties received from lease of patent.

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41

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Mr. Haskell Holman, Supervisor
Intangible Personal Property Tax Unit
Division of Collection
Department of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

> "It is requested that you please furnish this Department with an opinion as to whether royalties received from a lease of a patent should be included in the intangible property tax, as set forth in House Bill #868, of the present Missouri General Assembly."

H.C.S.H.B. 868, of the 63rd General Assembly, provides the complete scheme for the assessment, levying and collection of property tax on intangible personal property. Included therein is Subsection (B) of Section 1, wherein "intangible personal property" is defined. Such definition appears in the following language:

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

It, therefore, becomes of prime importance to determine whether or not "royalties" are included within the statutory

definition of "intangible personal property."

The following definitions of the term "royalties" are found in Words and Phrases, Vol. 37, Permanent Edition, page 809:

> "A royalty is a tax or duty paid to the owner of a patent for the privilege of manufacturing or using the patented article. Rubenthal v. Kennedy, 39 N.W. 694, 695, 76 Iowa, 707.
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> "'Royalty,' applied to patent, is tax or duty, paid to owner of patent for privilege of manufacturing or using patented article, but may be applied to nonpatentable improvements. Volk v. Volk Mfg. Co., 126 A. 847, 849, 101 Conn. 594."

With these definitions in mind, we have re-examined the statutory definition of "intangible personal property" set out supra. The contract providing for the royalties arising from the use of a patent is, of course, not included within either "moneys on deposit," "bonds," "certificates of indebtedness," "notes," "annuities," "conditional sales contracts," or "real estate and chattel mortgages." We then necessarily must determine whether or not such contract is included within the definition of the other forms of intangible personal property set out in the statute.

The following definition of "debenture" is found in Words and Phrases, Vol. 11, Permanent Edition, page 187, citing a Missouri case:

> "'Debentures may be defined as instruments under seal, creating a charge according to their wording upon the assets specified therein of the corporation, and, to that extent, conferring upon the grantees a priority over other subsequent creditors or existing creditors not possessed of such a charge. Under this term, however, are often included two other varieties of instruments which do not answer this definition strictly. There are consequently

> three varieties of debentures. I. Instruments which do not confer a charge, and which are nothing more nor less than ordinary bonds and ought to be so styled. II. Debentures in the true and proper sense. III. Instruments which contain more than a mere charge, which are mortgages in fact, and which, from possession in addition thereto, the characteristics of debentures may be for convenience, and often are, called mortgage debentures. Lorimer v. McGreevy, 84 S.W. (2d) 667, 669, 229 Mo. App. 970."

The following definition of "accounts receivable" is found in Words and Phrases, Vol. 1, Permanent Edition, page 547, citing a Missouri case:

> "'Accounts receivable,' which are amounts owing to a creditor on open account, being in the nature of 'credits' and 'personal property,' within Rev. St. 1919, Section 12967, are taxable, under section 12766, as amended by Laws 1923, p. 375, Mo. St. Ann. Sections 9277, 9756, pp. 8015, 7872, providing that certain enumerated property shall be listed for taxation, and that every other species of property not exempt shall be returned for taxation; rule of ejusdem generis being inapplicable. State ex rel. Globe-Democrat Pub. Co. v. Gehner, Mo., 294 S.W. 1017, 1018."

It is our opinion that neither of the quoted definitions are broad enough to include a contract under which royalty payments are made for the use of a patent; and that such contract, therefore, is not within the statutory definition of intangible personal property. Since the General Assembly has not included in the enumeration of intangible personal property, we think the following rule declared by the Supreme Court of Missouri in Valle v. Ziegler, 84 Mo. 214, l. c. 219, to be applicable:

> " * * * In order that property may be taxed, it must, by law, be subjected to taxation. It is not sufficient that the legislature might have subjected it to taxation. The State v. The St. L., K. C. & N. Ry. Co., 77

> No. 202. The general assembly has declared what property of the citizen shall be embraced in his tax list, and this property is not named. * * *
>
> " * * * It does not follow, because it would be constitutional to tax both the property and capital stock of such companies, that both may be assessed for taxation, although no act of the general assembly authorizes it."

From the quoted portion of the above opinion, it is clear that only such property as has been subjected to taxation by the General Assembly is liable therefor, and reference to the quoted portion of H.C.S.H.B. 368, of the 63rd General Assembly, indicates that with respect to royalties of the type described in your letter of inquiry, the General Assembly has not subjected such royalties to taxation.

CONCLUSION

In the premises, we are of the opinion that royalties received from a lease of a patent are not subjected to the Missouri intangible personal property tax law for the reason that such royalties are not included within the definition of intangible personal property found in the act.

Respectfully submitted,

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APPROVED:

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WFB:LR