TAX COMMISSIONERS, STATE BOARD OF: Accounts receivable as evidenced by books of accounts are not taxable either as intangibles or as property.

February 3, 1944.

Opinion No. 12

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of November 13th, in which you ask the following questions:

"1. Are accounts receivable, which are evidenced by a book of accounts, Intangibles within the definition of Intangibles, as contained in Section 1 of Chapter 81 of the Acts of 1933, and if so, do they come under the designation of, 'written instruments evidencing and/or securing a debt not otherwise evidenced, including mortgages, chattel mortgages, bills of sale, conditional sales contract.'

"2. If they are not Intangibles within the provisions of Chapter 81 of the Acts of 1933, are they subject to assessment and taxation as personal property when owned on March 1st of the particular year when personal property is assessable for taxation."

In answer to your first question, the pertinent provision of the Intangibles Tax Law is found in subsection (a) of Section 1 of Chapter 81 of the Acts of 1933 as amended by Section 1 of Chapter 294 of the Acts of 1935 and Section 1 of Chapter 134 of the Acts of 1943 (64-901, Burns’ 1943 Replacement). That provision is as follows:

"Property Covered. The term ‘intangible’ and/or ‘intangibles’ shall apply to, mean, and include promissory notes, stocks in foreign corporations, bonds, debentures, final judgments from their date of finality, postal savings certificates, excepting postal savings bonds, certificates and/or other evidences of indebtedness issued to any person other than certificates of
deposit in any bank or trust company in this state; brokerage and/or other trading accounts with brokers and all accounts arising out of transactions involving deposits or loans of money, excepting deposits in any bank or trust company with its place of business in the state of Indiana; all instruments, however termed, with interest coupons or in registered form, known generally as corporate securities, and evidencing a debt; written instruments evidencing and/or securing a debt not otherwise evidenced, including mortgages, chattel mortgages, bills of sale, conditional sales contracts; written instruments evidencing an exchange of goods or property where the intent of the parties is the ultimate transfer of title excepting contracts for the sale of real estate or leases or real estate with option to purchase; written contracts for the payment of money, excepting contracts for personal services and/or for manufacturing or processing merchandise; certificates or other instruments evidencing an interest in property and/or rights whether held in trust or otherwise, for the benefit of the holders of such certificates or other instruments."

That provision of the statute expressly includes two types of accounts: First, brokerage and/or other trading accounts with brokers, and, second, accounts arising out of transactions involving deposits or loans of money. Of course, if the accounts receivable fall within one of those classifications, they are subject to the provisions of the Intangibles Tax Law.

Those two classifications, however, do not include the great mass of accounts receivable evidenced by the books of accounts of merchants. That alone is some indication that the ordinary merchant's book accounts were not intended to be included within the Intangibles Tax Law. Upon reading the further provisions of the above quoted act, the only provision which could possibly include book accounts within the definition of intangibles is that part which defines an intangible as a "written instrument evidencing and/or securing a debt not otherwise evidenced, including mortgages, chattel mortgages, bills of sale, conditional sales contracts; * * *.*"

Concerning the application of that definition to accounts receivable as evidenced by book of accounts two questions
arise: Is the ordinary book of accounts a written instrument, and, does the ordinary book of accounts evidence a debt? Considering those questions in the inverse order, it does seem clear that the ordinary book of accounts does evidence a debt, however, I am of the opinion that it is not a written instrument.

As indicative of what was intended by use of the words “written instrument,” the last part of the quoted definition sets forth some things which are written instruments. It must have been intended by the legislature that only writings of the same general nature were to be considered as written instruments. In State ex rel. v. Phillips, 157 Ind. 481, the court had under consideration whether a mechanics lien was within the meaning of “all other instruments” under the statute setting forth fees for recording. The court, in determining that a mechanics lien was such an instrument, quotes several definitions of instrument as follows:

“The word ‘instrument’, in a legal sense, is defined to be: ‘A writing, as the means of giving formal expression to some act; a writing expressive of some act, contract, process or proceeding, as a deed, contract, writ,’ etc. Webster’s Int. Dict. ‘A writing given as the means of creating, securing, modifying, or terminating a right, or affording evidence, as a writing containing the terms of a contract, a deed of conveyance, a grant, a patent, an indenture,’ etc. Century Dict. ‘A formal legal writing, e. g., a record, charter, deed or written agreement.’ Rapalje’s Law Dict. ‘Anything reduced to writing: A “written instrument,” or “instrument of writing”; more particularly, a document of formal or solemn character.’ Anderson’s Law Dict. ‘The term “instrument”, in its broadest sense, comprises formal or legal documents in writing, including contracts, deeds, wills, bonds, leases, mortgages,’ etc. 16 Am. & Eng. Ency. of Law (2nd ed.), p. 824. Abbott in his law dictionary defines the term instrument as ‘something reduced to writing as a means of evidence.’”

See also 32 C. J. 946.
In Curlee Clothing Co. v. Lowery, 275 S. W. Rep. 730 (Texas) the court cites the Indiana decisions and defines written instrument as follows:

"The term 'written instrument' is most frequently used by the parties to it to denote something by them reduced to writing as a means of evidence, and as the means of giving formal expression to some act or contract, such as deeds, bonds, conveyances, leases, mortgages, promissory notes, wills, and the like, and is so called because it has been prepared as a memorial of what has taken place or been agreed upon by them, but does not include accounts, letters in ordinary correspondence, memorandum, and similar writings where the creation of the evidence to bind the party, or the establishment of an obligation or title, is not the primary motive. We do not mean to hold that the writing must be signed by one or both of the parties to bring it within the rule, but we do mean to hold that the writing must not be a mere expression of only one of the parties, as in an order sheet prepared by a salesman for the information of the seller of the goods ordered by the buyer, but it must be 'a writing given as the means of creating, securing, modifying, or terminating a right, or affording evidence.'"

Also pertinent upon this point are Kinney v. Illinois State Journal Co., 64 Ill. App. 39, and State v. Scanlon, 94 N. W. 686 (Minn.).

For the expression of the Indiana Supreme Court upon the question of whether an open account is an intangible see Newell, Admr. v. Newell, 213 Ind. 261. In that case an open account of one item, although considerable in amount, was held not within the Intangibles Tax Law. Although the opinion is not in point on the question of book accounts it does reflect a tendency to eliminate accounts which are not within the statutory definition of intangibles.

I am, therefore, of the opinion that such accounts receivable evidenced by books of accounts are not within the Intangibles Tax Law. This construction is in accord with that of the State Board of Tax Commissioners. See Intangibles Tax Act Bulletin of State Board of Tax Commissioners, 1939 Revision, page 4.
The answer to your second question requires a construction of the general property tax laws of Indiana as related to the Intangibles Tax Law. Section 1 of Article 10 of the Indiana Constitution makes provisions for taxation, but it is not self-executing and any tax itself must be laid by the General Assembly. As stated in Hart v. Smith, 159 Ind. 182 at 185:

"* * * Notwithstanding the constitutional requirement as to the taxation of property, such provision is not self-executing, and a tax can not be laid unless the General Assembly selects the particular species of property to bear the burden of taxation."

Section 4 of Chapter 59 of the Acts of 1919 (64-104, Burns' 1943 Supplement) provides:

"For the purposes of taxation, real property shall include all lands and lots within the state and all buildings and fixtures thereon and appurtenances thereto, except as otherwise expressly provided by law; and whenever, distinct from the ownership of the surface thereof, by deed, contract, reservation in any conveyance or otherwise, an estate is created in such land or the mines or minerals therein, any and all such subsurface interests or rights shall be deemed real estate and each such subsurface estate shall be separately listed and taxed as such. All property of any nature or kind other than that above in this section specified shall be deemed personal property, and shall be listed and taxed as such, except in cases otherwise expressly provided for in this act."

By the same Act specific provision was made by the Legislature for the filing of a schedule by the taxpayer showing credits due. The provisions are as follows:

"Every person required by this act to make or deliver such statement or schedule shall set forth an account of the property held or owned by him as follows:

"PERSONAL PROPERTY—CREDITS

"First. All annuities and royalties.

"Second. All bonds, notes, mortgages, accounts, demands, claims, and other indebtedness owing to such
person, whether such indebtedness is owing from individuals or from corporations, public or private, and whether such debtors reside within or without the state.

“Third. All bona fide indebtedness owing to such person, which shall be held to mean notes and accounts only.”

Subsequently in 1921 by Chapter 260 the Legislature provided as follows:

“AN ACT concerning taxation, defining credits, authorizing taxpayers to deduct their indebtedness from such credits when listing their property for taxation, and exempting annuities paid by non-state educational institutions on endowments and declaring an emergency.

“Section 1. Be it enacted by the general assembly of the State of Indiana, That annuities, royalties, bonds (not exempt under state or federal law), real estate bonds, mortgage certificates, conditional sales contracts, accounts due or to become due, notes secured by mortgage including interest due thereon, all other notes including interest due thereon, shares in building and loan associations, interest on tax exempt bonds, dividends declared but not paid, money on deposit with banks, trust companies, or loan and deposit companies, due, owing to, or held by any taxpayer, and all other amounts due from any person, firm or corporation, shall be considered as credits, and upon return of his property for taxation he shall be entitled to deduct therefrom any bona fide indebtedness he may owe, and he shall be assessed for taxation for only such balance of such credits as may remain after such deduction.”

There can be little question but what under the Indiana law as it existed in 1921 and prior thereto, accounts receivable and debts were taxable as personal property.

Martin v. Wise, 183 Ind. 530;
Miami Coal Co. v. Fox, Treasurer, 203 Ind. 99.

Before considering the provisions of the Intangibles Tax Law of 1933 it is important at this point to consider the effect
of the 1921 Act upon the corresponding portion of the 1919 Act which dealt with credits. The question which must be resolved is whether the 1921 Act, although it does not purport to be an amendatory act, repealed the 1919 Act by implication. Whatever rules of construction may be applicable to this situation, the controlling consideration is that of legislative intent. The 1921 Act covered the same ground as the 1919 Act with regard to scheduling so-called credits and in its definitive parts, as a comparison of the two provisions will show, was more complete and exhaustive in its enumeration of credits taxable than was the 1919 Act. Further, the 1921 Act made explicit provision for the deduction of bona fide indebtedness owned by the taxpayer. Whatever rule of construction may be applicable to this situation, it is inescapable that the Legislature in passing the 1921 Act must have intended it as a substitute for the credit provisions of the 1919 Act. The rule concerning such implied repeals is well stated by the Indiana Court in Kramer v. Beebe, 186 Ind. 349 at 355:

"At this point we are reminded of two general rules of decision which might be urged quite persuasively as tending to affect our final conclusion in this case. These rules are generally applied where the question is one of repeal by implication, and they are founded upon the doctrine that repeals by implication are not favored. The first is, when there are two acts on the same subject, give effect to both, if possible; the second—But if the two are repugnant in any of their provisions, the later act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not in express terms repugnant, yet if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act."

See also:

Thomas v. Town of Butler, 139 Ind. 245, 253.

Thus, whether the 1921 Act was passed to clarify or to correct defects in the 1919 Act, I am of the opinion that it was intended as a complete substitute for the corresponding
parts of the 1919 Act; that is, those parts providing for the scheduling and taxation of intangible personal property, and therefore repealed the 1919 Act to that extent.

By Section 40 of the Intangibles Tax Law, which was Chapter 81 of the Acts of 1933 (64-940, Burns' 1943 Replacement), the 1921 Act was expressly repealed. That repeal, of course, left no provision in the general property tax laws for the taxation of credits including accounts receivable.

As persuasive of the conclusion which I have reached in this opinion I have considered the interpretation placed upon the various statutory provisions by the State Board of Tax Commissioners itself. Investigation shows that in the schedule of personal property drafted by the State Board of Tax Commissioners, being Form No. 1, 1933, immediately prior to the taking effect of the Intangibles Tax Law, ample provision was made for the listing of all types of intangible property including accounts due or to become due. Immediately after the Intangibles Tax Law became effective, in Form No. 1, 1934, all provisions for the scheduling of intangible personal property was omitted from the form and in its place was provided an oath that all taxes imposed under the Intangibles Tax Law were paid. That schedule and immaterial variations thereof have been used to the present time. The only conclusion which can be drawn is that the administrative agency itself must have thought that all provisions for taxation of accounts receivable as personal property were eliminated from our law.

While a consideration of such administrative interpretation is not conclusive, it merits serious consideration. As stated in Arnett v. State, 168 Ind. 180 at 190, under similar circumstances:

"We may also refer to the fact that the Governor of the State, who is charged with the enforcement of the law, has throughout treated the metropolitan police law as in force in all of the cities to which the act of 1897 relates, and when to this is added the consideration that to unsettle this construction would be likely to prejudice many people of the State who have acted upon it, we have a case in which it is clear, if there be room for substantial doubt, that the leaning should be in favor of the interpretation of the executive department. * * *"
And also in State v. Fidelity Health and Accident Co., 79 Ind. App. 377 at 381, in speaking of a construction placed upon a statute by the Insurance Department, the Court said:

"* * * While such construction of a statute will not prevail against its plain meaning, nevertheless, as stated by Black in his excellent work on statutory construction, it 'is entitled to great respect, and if the statute is doubtful or ambiguous, such practical construction ought to be accepted as in accordance with the true meaning of the law, unless there are very cogent and persuasive reasons for departing from it.' Black, Interpretation of Laws 221; The State Board, etc. v. Holliday (1898), 150 Ind. 216, 230, 49 N. E. 14, 42 L. R. A. 826."

There is left remaining the question of whether accounts receivable are taxable under the provisions of Section 4 of the Acts of 1919 as set forth herein (such provision defining personal property and providing for taxation thereof) without more explicit direction in the statute for the manner and method of such taxation. That question was raised in The State Board of Tax Commissioners et al. v. Holliday et al., 150 Ind. 216. There the statutory provisions were not identical, but sufficiently comparable so that the case is in point here. The constitutional provision was also considered. There the court said:

"* * * It is, therefore, a legislative power to select the subjects for taxation, and this constitutional provision imposes the duty and limitation upon the legislature of providing by law regulations or methods for a just valuation of all property, both real and personal, for taxation. * * * The statute must not only provide what property shall be taxed, but it must provide methods for the valuation of such property, and clothe some person, officer, or tribunal with power and authority to assess such valuation; and, if the statute contains no such provisions, it will be insufficient to subject such property to taxation."

Since no express provision is found in our property tax laws for the taxation of accounts receivable, the answer to your second question should be in the negative.