TAX BOARD: Taxation of intangibles.

Intangibles: Taxation of intangibles held in Indiana by Foreign Corporations. Taxation of intangibles held by pawnbrokers.

September 18, 1940.

Hon. Philip Zoercher, Chairman,
State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following questions:

"1. An out-of-state finance company, maintaining a branch office in this state, contracts to finance an automobile for a non-resident purchaser, the car being purchased from a non-resident dealer. The contract goes through the branch office in this state and payments are made to this branch. In other words, this account is credited to the Indiana branch. This contract is eventually mailed to the home office; however, record is kept in the branch office until satisfied. Is this contract a taxable intangible?

"2. A car is financed for a non-resident, but purchased from an Indiana dealer and the transaction goes through the Indiana branch. Is this contract a taxable intangible?

"3. Are loans made by pawnbrokers taxable under the Indiana Intangibles Tax Act?"

Section 2 of the General Intangibles Tax Act of 1933, (Acts of 1933, Chap. 81, p. 523), provides that on and after the passage of the Act every person residing in or domiciled in this State shall pay a tax to the State of Indiana at the rate and in the manner provided in the Act. The same Section provides that:

"Such tax at the rate provided in this act shall be measured by intangibles, wherever located:
“(a) Owned by any taxpayer except his intangibles having an actual business situs outside the State of Indiana.

“(b) Controlled by any person and/or fiduciary and having a business situs in this state and in the possession of or under the control and/or management of any such person and/or fiduciary.”

Construing the above language in connection with other provisions of the Act, the Supreme Court of Indiana has held that the intent of the Legislature in the enactment of the above Act was to place the tax on the owner of the intangible or on any person who controls such intangible and whose business situs is within the State of Indiana.

Zoercher v. Indiana Associated Telephone Corp., 211 Ind. 447 at p. 460.

With the above construction in mind, I desire to consider your first question, and in its consideration I think I should say that neither the place of residence of the purchaser of the automobile nor the dealer, from whom the automobile is purchased, is of any consequence. Whatever their respective residences may be the terms which you use in your first question indicate that an instalment contract was entered into between the dealer and the purchaser, and this contract was sold to the finance company referred to.

In the case described by you in your first question the finance company is an out of state company, from which I infer that you are intending to say that it was organized under the laws of some state other than the State of Indiana. However, it maintains a branch office in the State of Indiana and doubtless has complied with the laws of the State to authorize it to do business within the State. It, therefore, meets all the requirements so far as the taxability of its intangibles is concerned, as would apply to a corporation organized under the laws of the State of Indiana, and so long as the intangible is held or controlled by it through its branch office it would, in my opinion, be taxable under our General Intangibles Tax Act.

With respect to your second question, it is evident from what I have already said that the same answer applies to it
as to your first question. So long as the intangible is held or controlled by the Indiana branch it is, in my opinion, subject to taxation under our General Intangibles Tax Act.

With reference to your third question, I assume that the paper is executed by the borrower from the pawnbroker whereby the borrower agrees to repay the amount borrowed by him. This would make it an intangible under the definition contained in Section 64-901 of Burns' Indiana Statutes Annotated, 1933, unless it is excluded under sub-division (b) of that Section. An examination of sub-division (b) fails to disclose that pawnbrokers are excluded from the Act. This is more evident in consideration of the fact that at the time the General Intangibles Tax Act was enacted (Chapter 81 of the Acts of 1933) two other Acts, (same being Chapter 82 and Chapter 83 of the Acts of 1933) were enacted on the subject of taxation of intangibles, Chapter 82 having to do with the taxation of building and loan associations, and Chapter 83 having to do with the taxation of banks and trust companies. An examination of these companion measures shows that by express definition the term "association" as used in the Building and Loan Act, means "any building and loan association, rural loan and savings association, and guaranty loan and savings association organized and/or engaged in business under the laws of this State." (Burns' Indiana Statutes Annotated, 1933, Sec. 64-822.)

In defining "bank" as used in Chapter 83 of the Acts of 1933, the Legislature provided that:

"The term 'bank' means any bank, bank of discount and deposit, private bank or savings bank organized under any law of this state, and any national banking association organized under the laws of the United States and engaged in business in the State of Indiana."

The term "trust company" is defined to mean:

"* * * any trust company and any loan and trust and safe deposit company organized under the laws of this state."

These three Acts, that is, Chapter 81, Chapter 82 and Chapter 83 of the Acts of 1933, were evidently intended to
establish a complete system for the taxation of intangibles. Since pawnbrokers are neither building and loan associations nor banks, nor trust companies, it is reasonable to conclude that it was intended to tax their intangibles under the provisions of Chapter 81 of the Acts of 1933.

In my opinion, therefore, the intangibles evidencing loans made by the pawnbroker are taxable under the General Indiana Intangibles Tax Act.

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**MOTOR VEHICLE FUEL TAX: Cost-plus contractors not exempt from payment of fuel tax.**

September 24, 1940.

Mr. Frank G. Thompson,
Auditor of State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of recent date wherein you submit the following facts and questions:

"The taxability under state laws of sales of motor fuels to contractors for use in connection with national defense work under cost-plus contracts with the Federal Government is an important question in need of clarification.

"In response to several inquiries regarding the application of federal excise taxes to sales to contractors engaged in similar work, the Bureau of Internal Revenue issued a ruling in which it is recognized that the sales under question were made for the use of the United States Government.

"In view of the importance of this matter, it will be appreciated if you will provide this Committee with rulings concerning the following questions:

"Question No. 1:

"Will the supplier of motor fuels to the purchasing contractor be justified in accepting, in lieu of your state gasoline tax, U. S. Form 1094 executed by the