

**License Tax — Exemption of Holding Company —  
Whether Hennessy Mercantile Company a Holding Company.**

The Hennessy Mercantile Company, being organized to carry on a general mercantile, commercial and industrial business; to deal and trade in all kinds of real and personal property, goods, wares and merchandise; to acquire by purchase or otherwise, take, own, manage, deal in, sell, assign, transfer or otherwise dispose of real and personal property, is not a holding company such as to be exempt from the payment of the license tax under Chapter 79 of the Laws of 1917.

J. W. Walker, Esq.,  
State Treasurer,  
Helena, Montana.

My dear Mr. Walker:

You have requested my opinion whether a corporation organized and existing under the laws of Montana, which owns property, stock, or other property of other corporations, and receives rent from property or interest on moneys deposited in banks or interest on bonds of the United States Government, but which calls itself a "holding company," may be regarded as a corporation subject to the provisions of Chapter 79, Laws of 1917, as amended by Chapters 69 and 208, Laws of 1919, and Chapter 258, Laws of 1921.

Section 1, Chapter 79, Laws of 1917, reads in part as follows:

"\* \* \* There shall not be taxed under this title any income received by any \* \* \*

"Twelfth. Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; \* \* \*

This provision is, as far as I can ascertain, the only part of the law referring to a "holding company," and, it seems, clearly defines what such a holding company is and must be to entitle it to exemption from the tax.

Therefore, if the corporations making returns to you, which call themselves holding companies, show that they are organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by the Act, then they would come under the above quoted provision and be exempt from the tax; otherwise they are subject to such tax.

The fact that a corporation, which calls itself a holding company, turns over the entire income received to an organization which itself is exempt from the tax imposed by the Act in question, does not in itself exempt the corporation from liability for the license tax. The statute intended to exempt only such corporations as were organized for the exclusive purpose of holding the title to property and was not intended to exempt a corporation "engaged in business," even though the income received is turned over in its entirety to an organization which is exempt from the tax.

Each case in which a corporation might claim exemption on the ground that it is a holding company would present two questions of fact, namely: 1. Was it organized exclusively for the "purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title?" 2. Is it in fact confining itself in its operations to such purposes?

The articles of incorporation of the Hennessy Mercantile Company, the concern involved in this inquiry, read in part as follows:

"The purposes and objects for which said company is formed are: To do and carry on a general mercantile, commercial and industrial business; to deal and trade in all kinds of real and personal property, goods, wares and merchandise; to acquire by purchase or otherwise, take, own, manage, deal in, sell, assign, transfer or otherwise dispose of, all manner of real and personal property, including stocks and shares of stock in other incorporated companies."

The articles of incorporation not only state purposes other than those to which a holding company is limited, but they nowhere contain any reference to any other organization for which the Hennessy Mercantile Company is to be a holding company, or any indication that it is organized as a holding company.

The claim that it is a holding company for the Hennessy Estate also does not seem consistent with the fact that the corporation was organized, as shown by the records of the Secretary of State's office, January 2, 1900, while the records of the Historical Library give the

date of the death of Daniel J. Hennessy whose estate, it is presumed, is the one referred to in the return, as January 27, 1908, several years after the formation of the corporation.

For these reasons the corporation in question does not appear to come within the exception of Section 12, and it is my opinion that, in the absence of a showing of a state of facts different from the above, it is liable for the tax.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.