

Income tax- incomes received from royalties on patents and copyrights.

March 22, 1933.



Hon. Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Sir:

You have written me as follows:

"I have been informed that there are several large taxpayers in Missouri who are not paying income tax on royalties received on patents or copyrights, based on the U.S. Supreme Court decision decided May 14, 1928 in Long, Commissioner vs. Rockwood, as shown in Court decision Volume 277, U.S. Reporter, page 142, wherein it is stated that a State may not tax the income received, by its citizens, on royalties for the use of patents issued to him by the United States.

During 1932 it appears that the previous decision of the United States Supreme Court was overruled. In the case of the Fox Film Corporation vs. Doyal, Volume 286, page 123, U.S. Reporter, it appears that the State may tax income received by citizens on royalties from these patents.

The question that arises is whether this 1932 decision now permits the State of Missouri to go ahead and tax, for income tax purposes, royalties received by citizens for the use of patents, and if so, is this last Supreme decision retroactive back for the years 1929-30-31 as well as 1932?"

In reply to your inquiry, permit me to say that the case of Fox Film Corp. v. Doyal, 286 U.S. p. 123, decided May 16, 1932, held:

"Copyrights are not federal instrumentalities and income derived from them is not immune from state taxation. Long v. Rockwood, 277 U.S. 142, (holding otherwise as to patents) is overruled. PP. 128, 131.

The principle of immunity of federal instrumentalities from state taxation and of state instrumentalities from federal taxation is confined to the protection of operations of government. P. 128.

The mere fact that a copyright is property derived from a grant by the United States is insufficient to support the claim of exemption. Nor does the fact that the grant is made in furtherance of a governmental policy of the

United States, and because of the benefits which are deemed to accrue to the public in the execution of that policy, furnish ground for immunity. P. 128."

And same volume, l.c. p. 131, the Court expressly overruled the case of Long v. Rockwood, 277 U.S., 142, in the following language:

"The affirmance of the judgment in the instant case cannot be reconciled with the decision in Long v. Rockwood, 277 U.S. 142, upon which appellant relies, and in view of the conclusions now reached upon a re-examination of the question, that case is definitely overruled."

Under this decision of the Federal Supreme Court the State of Missouri can tax for income tax purposes royalties received by citizens for the use of patents.

You asked the further question, if the income tax can be collected for the years 1929, 1930 and 1931, as well as 1932. The case of Long v. Rockwood, 277 U.S. 142, was decided May 14, 1928. I assume from that date on the State collected no income taxes on income received by citizens for the use of patents.

Section 15 of Article II of the Constitution of Missouri of 1875 reads as follows:

"EX POST FACTO LAWS, ETC., PROHIBITED--That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly."

The income tax law of this state existed prior to the decision in the Long v. Rockwood case. The effect of the decision in this case by the Federal Court was in my judgment simply to suspend the operation of the income tax law of this state in so far as same applied to income received by citizens of Missouri from the use of patents or copyrights.

When the Federal Supreme Court in the case of Fox Film Corporation v. Doyal overruled the case of Long v. Rockwood, the legal effect was to make operative the income tax law of Missouri upon income of citizens of our state received from the use of patents. Therefore, it is apparent that no law would have to be enacted by this state in order to tax incomes received from patents after the date of the decision in Fox Film Corporation v. Doyal. The language of the constitutional provision quoted above is:

"That *** no law *** retrospective in its operation *** can be passed by the General Assembly."

The rule seems to be that a statute cannot impose retroactive taxation for previous years upon a class of property not then subject to taxation at all.

Cooley's Constitutional Limitation, 8th Ed. Vol. II, p. 772, says:

"There is no doubt of the right of the Legislature to pass statutes which reach back to and change or modify the effect of prior transactions, provided retrospective laws are not forbidden by the state constitution, and provided further that no other objection exists to them."

The question confronting me is: Does the existing income tax law passed before the decision in the Fox Film Corporation and Long v. Rockwood cases by Federal Supreme Court operate to tax incomes for 1929, 1930, 1931 and 1932? To so hold is to give the income law of our state a retrospective operation--to relate back and effect transactions already past.

A sound rule of construction is that a statute should have a prospective operation only unless its terms show clearly a legislative intention that it should operate retrospectively.

Our constitution forbids retrospective legislation and equally forbids a construction of a statute to make it operate retrospectively unless a clear intent so to do is expressed in the statute, and then such a construction would be wrong if it imposed a new obligation on the one affected thereby.

The income law of Missouri did not tax the income from patents or copyrights between the date of the decision of the Long v. Rockwood case and the decision of the Fox Film Corporation. If our income statute is construed to now reach back and tax income during the years past when under the Federal Court it could not be taxed, it would be taxing a class of property for previous years not then liable to taxation. This cannot be done under our Constitution, in my opinion. In

Smith v. Dirckx, 283 Mo., 188

the court, quoted Justice Story's definition, saying:

"Every statute *** which creates a new obligation *** in respect to transactions *** already past, must be deemed retrospective."

The Federal Supreme Court has held where no statute existed taxing bank shares at time an Act was passed taxing same for years prior thereto, such legislation was illegal.

Citizens Bank v. Kentucky, 217 U.S., 1343.

I am of opinion income taxes cannot be levied under our statute on incomes arising from use of patents or copyrights for years 1929, 1930, 1931 and 1932.

Yours very truly,

APPROVED:

EDWARD C. CROW

Attorney General