

ELECTIONS:
RESIDENCE:
TAXATION (INCOME):

An individual domiciled in this state who is absent from this state and who is eligible to receive a Missouri absentee ballot

for President and Vice President will be subject to the Missouri income tax law unless he (1) does not maintain a permanent place of abode in this state, (2) does maintain a permanent place of abode outside this state, (3) does not spend in the aggregate more than thirty days during the taxable year in this state, and (4) does not receive income derived from or connected with sources within this state, as defined in Section 143.181, Senate Bill No. 549, 76th General Assembly, Second Regular Session. Tax liability, if it exists, is present regardless of whether a person exercises his right to vote or not, and therefore the act of voting, by itself, does not determine whether a person is subject to the Missouri income tax law.

OPINION NO. 38

February 14, 1973

Honorable L. Edward Stone, Jr.
State Senator, District 26
Room 419A, Capitol Building
Jefferson City, Missouri 65101



Dear Senator Stone:

This opinion is in response to your request for a ruling on the following question:

"Does a former resident of Missouri who is out of the country on a temporary assignment who receives an absentee ballot to vote for President and Vice President subject himself to Missouri income taxes by virtue of such absentee voting?"

The facts giving rise to this opinion request are that this office last year issued two opinions, Opinion No. 277 to Wiley, dated October 16, 1972 and Opinion No. 289 to Young, dated November 3, 1972, in which we said that certain legal residents of Missouri who were not registered voters could receive absentee ballots for President and Vice President. While your opinion request speaks in terms of "former residents," under Missouri and federal statutes, only persons who are legally residents or domiciliaries of Missouri*

*". . . The words 'residence' and 'domicile' [for voting purposes] may be used interchangeably . . . because they are synonymous insofar as they apply to the situation here presented. . . ." State ex rel. King v. Walsh, 484 S.W.2d 641, 644 (Mo. banc 1972)

Honorable L. Edward Stone, Jr.

may receive ballots in Missouri elections. (There is one exception to this: persons who have moved from Missouri within 30 days of an election and who are not eligible to vote in their new residences may receive a ballot for President and Vice President despite the fact that they are no longer residents of Missouri. Section 111.031(2), RSMo Supp. 1971.)

This opinion will, therefore, deal with persons whose voting residence is within the state of Missouri, but who are absent from the state. The question you ask is whether these persons are subject to Missouri state income taxes.

In Senate Bill No. 549, 76th General Assembly, Second Regular Session (Chapter 143, V.A.M.S.), the General Assembly completely revised the Missouri income tax law. The new law became effective on January 1, 1973 and applies with some exceptions to all taxable years beginning on or after January 1, 1973. Section B. This opinion will answer your question as it is controlled by Senate Bill No. 549 and all section references are to Senate Bill No. 549.

Tax liability under the income tax law is determined by the "Missouri taxable income of every resident" and "the income of every nonresident individual which is derived from sources within the state." Sections 143.011 and 143.041. Therefore, to answer your question, we must determine whether people who receive absentee ballots are "residents" or "nonresidents" as defined in the income tax law.

The terms "resident" and "nonresident" are defined in Section 143.101, as follows:

"1. 'Resident' means an individual who is domiciled in this state, unless he (1) maintains no permanent place of abode in this state, (2) does maintain a permanent place of abode elsewhere, and (3) spends in the aggregate not more than thirty days of the taxable year in this state; or who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state.

"2. 'Nonresident' means an individual who is not a resident of this state."

As stated in the opinions dealing with voting cited above, only persons who are domiciled in the voting sense in Missouri

Honorable L. Edward Stone, Jr.

may receive absentee ballots for Missouri election officials. Voting domicile is a term which describes the place which a person considers to be his permanent home or place to which he plans to return. State ex rel. King v. Walsh, supra. It is our belief that the legislature used the word "domicile" in this sense in the income tax law, since the legislature then limited the inclusive nature of this term by adding an exception which makes some domiciliaries nonresidents for income tax purposes.

A person who receives an absentee ballot has, by his application, declared himself to be domiciled in Missouri, and therefore, he will be a resident for tax purposes unless he fits into the exception of Section 143.101(1). This exception provides that if a person's permanent place of abode is outside Missouri and he has no permanent place of abode in Missouri and he spends no more than thirty days of the taxable year in Missouri, then he is a nonresident for income tax purposes, even though he may be domiciled in Missouri and may have voted in a Missouri election. (To satisfy the exception, a person must meet all of its provisions, not just one or two.)

It should be noted that these definitions of "resident" and "nonresident" do not depend in any way upon the actual exercise of the right to vote by absentee ballot. The same facts which make a person eligible to vote may make him a resident for tax purposes and vice versa, but a person incurs no tax liability by voting, nor may he avoid owing a tax by giving up his vote. Both voting residency and tax residency are determined by reference to a person's domicile and permanent place of abode.

If the absentee voter is a nonresident of Missouri for tax purposes as defined in Section 143.101, he may still be required to pay Missouri income taxes, but only on income "derived from sources within this state" as defined in Section 143.181.

CONCLUSION

It is therefore the opinion of this office that an individual domiciled in this state who is absent from this state and who is eligible to receive a Missouri absentee ballot for President and Vice President will be subject to the Missouri income tax law unless he (1) does not maintain a permanent place of abode in this state, (2) does maintain a permanent place of abode outside this state, (3) does not spend in the aggregate more than thirty days during the taxable year in this state, and (4) does not receive income derived from or connected with sources within this state, as defined in Section 143.181, Senate Bill No. 549, 76th General Assembly, Second Regular Session. Tax liability, if it exists, is

Honorable L. Edward Stone, Jr.

present regardless of whether a person exercises his right to vote or not, and therefore the act of voting, by itself, does not determine whether a person is subject to the Missouri income tax law.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard E. Vodra.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 277
10-16-72, Wiley

Op. No. 289
11-3-72, Young