

10-31  
October 30, 1935.



Cullen, Fauntleroy & Edwards,  
Attorneys at Law,  
508 Olive Street,  
St. Louis, Missouri.

Gentlemen:

This department is in receipt of your letter of October 26 requesting an opinion as follows:

"The undersigned represent Berenece W. Eddy, Executrix of the Estate of H.W. Eddy, deceased, to whom W.F. Baumann, Collector of Revenue, St. Louis, has sent bill for 1932 tax assessed against 1931 income in the amount of \$270.21, plus interest in the sum of \$108.08 and collector's commission in the sum of \$5.40, or an aggregate bill of \$383.69.

"An agent of the Estate talked to Mr. Whitney of the State Income Tax Office and was informed that the interest, as set out in the statement was correct.

"Section 10136, Revised Statutes, 1929, as amended and which became effective August 24, 1931, provides: 'All taxpayers who become delinquent shall have the same penalties assessed against them as in the case of personal property taxes \* \* \*'.

"We therefore cannot understand why the estate is not entitled to the benefits as provided by the Laws of 1935, page 408, which would permit the computation of interest and penalties only after December 31st, 1934.

"If it is proper we shall greatly appreciate an expression from you so that the estate may pay the amount which is legally due."

This department has ruled in an opinion dated November 12, 1934, on a similar matter respecting Laws of Missouri, Extra Session 1933-34, page 166, which provides:

"That all penalties and interest on personal and real estate taxes, delinquent for the year 1932 and prior years shall be computed after December 31, 1933, on the same penalty basis as the taxes delinquent for the year 1933 until paid,"

that House Bill No. 124, as set out above, did not apply to drainage district assessments, the theory of the opinion being to the effect that drainage district assessments were not within the phrase "personal and real estate taxes".

Section 10136, R.S. Mo. 1929 provides:

"All taxes assessed on account of incomes shall become delinquent on the second day of June, where assessments are required to be made and certified to by the assessor prior to April 30, and subsequent to March 15, in all other cases taxes assessed on account of income, shall become delinquent thirty days after the tax book is required by law to be delivered to the collector; and all taxpayers who become delinquent, shall have the same penalties assessed against them as in the case of personal property taxes and suit shall be brought and the taxes collected in the same manner as delinquent personal taxes."

This section was amended by the General Assembly in 1935 (Laws of Mo. 1935, page 410) as follows:

"All taxes assessed on account of incomes shall become delinquent on the second day of June, where assessments are required to be made and certified to by the assessor prior to April 30, and subsequent to March 15; in all other cases taxes assessed on account of income, shall become delinquent thirty days after the tax book is required by law to be delivered to the collector; within thirty (30) days

after such delinquency the collector shall certify the names of the delinquent taxpayers to the State Auditor and the State Auditor shall, within sixty (60) days thereafter, certify the names of any individuals, associations, joint stock companies, syndicates, co-partnerships, corporations, receivers, trustees, conservators, or other officers appointed by any state or federal court, from whom such tax is due, to the Attorney General, and suit shall be instituted in any court of competent jurisdiction by the Attorney General or by the Prosecuting Attorney of the county at the direction of the Attorney General, in the name of the State, to recover such tax and enforce the lien therefor, and service may be had on both residents and non-residents in the same manner as provided by law in civil actions. The same penalties shall be assessed against such delinquent taxpayers as in the case of personal property taxes, except where different penalties are provided for by an act of the 56th General Assembly, and shown in the Laws of Missouri, 1931, at pages 365 to 375, both inclusive."

The General Assembly in 1935 passed a law relating to the payment of delinquent and back taxes, which provides as follows (Laws of Missouri, 1935, page 408):

"That all penalties and interest on personal and real estate taxes, delinquent for the year 1934 and prior years shall be computed after December 31st, 1934 on the same penalty and interest basis as the taxes delinquent for the year 1934 until paid."

The question presented at this time is whether or not income taxes can be properly included within the phrase "personal and real estate taxes". In 61 Corpus Juris, Section 2306 an income tax is defined as follows:

"An income tax is a 'special' tax, in the sense that it has peculiar and distinguishing characteristics, and is out of the ordinary; and it is a state tax, rather than a local tax, where it is made applicable to all inhabitants of the state and the power to assess and collect it has not been delegated to counties or municipalities but is retained by the state. \* \* \* An income tax is to be distinguished from an inheritance, legacy or estate tax, and also from a sales tax, which has been said to be its antithesis. Property, franchise, or occupation taxes on corporations measured by their earnings or receipts, taxes upon moneys in hand or in bank, although derived from income, and taxes upon moneys received or receivable, considered as personal estate, are not income taxes, but are to be distinguished therefrom."

Black, in his work on Income Taxation (3 Ed.), page 41, Section 36, says:

"A tax on incomes is not a tax on property, and a tax on property does not embrace incomes..... For the same reason a tax laid on incomes is different from a tax laid on the property out of which the income arises, and although a statute may tax land at a different rate from that imposed on incomes, it is not therefore in conflict with a constitutional provision that taxation on all species of property must be uniform."

In the early case of Glasgow v. Rowse, 43 Mo. 479, l.c. 491, the Court said:

"The income tax was uniform and equal as to the classes upon whom it operated; it did not come within the meaning of the term 'property' as used and designated in the constitution, and I think it was not in conflict with any provision of that instrument."

In the more recent case of *Wire Co. v. Wollbrinck*, 275 Mo. 339, the Court said:

"Neither are the revenues proposed by the present act measured by Section 8 of Article 10, since that provision also relates to the limitation 'of the tax on property', which term, as has been shown, whenever used in the clauses of the Constitution, does not embrace incomes. Indeed, the only contention of the learned brief for appellant as to the application of Sections 6, 7 and 8 of Article 10, is predicated upon the theory (which has been shown to be untenable under the settled construction of that term in this State) that the word 'property' does embrace incomes."

#### CONCLUSION

In view of the foregoing, it is the opinion of this department that Laws of Missouri, 1935, page 408, relating to the payment of delinquent and back taxes does not apply to income taxes, and that said section does not in any way abate the penalties and interest provided for in Section 10136, R.S. Mo. 1929, or as provided for in Section 10136 as amended in 1935.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.