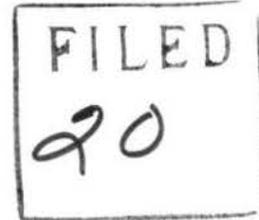


TAXATION AND REVENUE - Income Taxes: (1) Exemption of county employee or elective officer; (2) deductibility of campaign expenses.

February 6, 1935

Original
Hon. Elliott M. Dampf,
Prosecuting Attorney,
Cole County,
Jefferson City, Mo.



Dear Sir:

A request for an opinion has been received from you under date of January 21, 1935, such request being in the following terms:

"Will you kindly give your opinion as to whether an employee or elective officer of the County must pay the State Income Tax.

If said employee or elective officer of a county must pay said income tax, then is he allowed to deduct the amount paid in campaign expenses."

I

LIABILITY OF COUNTY EMPLOYEE OR ELECTIVE OFFICER TO PAY STATE INCOME TAX

R. S. Missouri, 1929, Section 10117, as amended by Laws of 1931, page 363, defines incomes (on which a tax is imposed by Section 10115, as amended by Laws of 1931, page 365) as follows:

"Income shall include gains, profits, and earnings derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid; * * *"

Sections 10118, 10119, 10120 and 10122 provide for various exemptions and deductions, which impliedly exclude exemptions and deductions not named therein. The only provision in any of these sections which might bear on the question under consideration is paragraph 5 of Section 10119 which exempts "the compensation of public officers for public service where the taxation thereof would be repugnant to the constitution." However, it will be noted that it requires a constitutional repugnance to the tax on such an income to

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make it exempt, and we have been unable to discover any such repugnance.

II

DEDUCTIBILITY OF CAMPAIGN EXPENSES
OF COUNTY ELECTIVE OFFICER

The reasoning under paragraph I supra, is likewise applicable to the deductibility of campaign expenses, since such expenses are not specifically allowed as a deduction by any of the statutes aforesaid. Although the question of such deductibility has not been before the courts of this State, the problem has been raised in connection with Federal income taxes in at least two instances, in which it was ruled adversely to the tax-payer, and the similarity between the Missouri and the Federal income tax laws furnishes a persuasive analogy. In one instance Senator David A. Reed attempted to deduct amounts paid to campaign committees when he was a candidate for public office, but it was held by the Board of Tax Appeals that this was not a proper deduction under Section 214 (a) (1) of Revenue Act of 1921, 13 B.T.A. 513.

The Treasury Department has made a similar ruling, to the effect that a congressman cannot deduct campaign expenses, on the theory that they are personal expenses which are not deductible. (O.D. 864. C.B. June, 1921, page 211).

In conclusion, it is our opinion that (1) the fact that income is received by an employee or elective officer of a county of this State for discharging the duties of such office, does not make such income exempt from taxation under the Missouri Income Tax Law, and (2) campaign expenses of such officer are not a proper deduction under the Missouri Income Tax Law.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General