

INCOME TAX:

Compensation paid officers and employees under the Federal Emergency relief Act of 1933 subject to taxation in Missouri.

March 7, 1935



Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an opinion, wherein you inquire whether or not compensation paid to officers of the State Emergency Relief Administration, under the Federal Emergency Relief Act of 1933, is subject to the Missouri State Income Tax and also whether the salaries of the employees of the State Emergency Relief Administration are subject to such tax.

It is the universal rule that every instrumentality, lawfully employed by the United States to execute its constitutional laws and exercise its lawful governmental authority, is necessarily exempt from state taxation or interference.

United States v. Bean 253 Fed. 1.

However this may be, it stands without cavil that the state may tax its own instrumentalities, just as the Federal Government taxes its own officers and instrumentalities, through the very income tax laws here considered.

In order to solve the question here before us it is necessary to determine the exact status of the funds granted by the Federal Relief Emergency Administration for relief purposes in Missouri. This status is best explained in our opinion by a letter from Mr. Corrington Gill, Assistant Administrator in the Federal

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Emergency Relief Administration at Washington, which letter is as follows:

"Mr. Forrest Smith, Auditor  
Jefferson City, Missouri

Dear Mr. Smith:

Mr. Hopkins has asked me to reply to your letter of December 20 concerning the status of funds granted by the Federal Emergency Relief Administration for relief purposes in Missouri.

\*\*\*\*\* In point of fact, under the provisions of the Federal Emergency Relief Act of 1933, the funds made available through this Administration are grants to the state and upon being granted become state money subject only to the regulations and other conditions under which funds are made available from month to month."

Section 5 of the Federal Emergency Relief Act of 1933 provides as follows:

"Any State desiring to obtain funds under this Act shall through its Governor make application therefor from time to time to the Administrator. Each application so made shall present in the manner requested by the Administrator information showing (1) the amounts necessary to meet relief needs in the State during the period covered by such application and the amounts available from public or private sources within the State, its political subdivisions, and private agencies, to meet the relief needs of the State, (2) the provision made to assure adequate administrative supervision, (3) the provision made for suitable standards of relief, and (4) the

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purposes for which the funds requested will be used."

In view of this letter and the provisions of the Federal Emergency Relief Act of 1933 there can be no doubt that the funds granted to the State of Missouri, by the Federal Government under this Act, become, when granted, state money. This is further shown by the fact that as these funds are needed from time to time a letter over the Governor's signature is forwarded to the Comptroller of the Federal Reserve Bank in St. Louis, requesting a part or all of these funds; checks are issued in the name of the Governor and made payable to him and he in turn endorses the checks to the State Relief Administrator who deposits them to the account of the Missouri Relief and Reconstruction Commission.

It may be urged that the compensation to the officers and employees of the State Emergency Relief Administration is exempt from the income tax laws of the State, by reason of the fact that the State Emergency Relief Administration is, in effect, an agent of the United States Government. We hold this theory to be untenable and as authority for our position respectfully refer your attention to the case of *People v. Lynch* (Court of Appeals of New York) 173 N. E. 571. In that case the United States Shipping Board entered into an agreement with a corporation, whereby said corporation was appointed as agent to handle claims against the Board. The Shipping Board agreed to pay a fixed fee plus expenses for the services rendered by the agent. Then Chief Justice Cardozo, now Associate Justice of the Supreme Court of the United States, in holding that the compensation paid the officer of the agent corporation was not exempt from the income tax laws of the State of New York, said:

"The relator makes the point that, if the form of a dividend be rejected, the compensation is to be viewed as salary paid by the Shipping Board, an agency of the federal government, and so exempt upon that ground. We think the claimed exemption must be held to be unreal. The relator was not employed by the Board.

He was employed by the agency, an independent corporation, which the Board carefully interposed between itself and the human agents by whom the work was to be done. \* \* \* \* \*

For one and all, the employer was the corporation, created for the very purpose of supplying an insulating medium that would break the line of contact between the agents and the government. The fee contributed by the government was, when received by the corporation, a fund available for salaries and for the expenses of the business generally. It did not turn the officers and managers in the service of the corporation into officers and managers in the service of the government. "

CONCLUSION

In view of the foregoing, it is the opinion of this department that the compensation paid to officers and employees of the State Emergency Relief Administration, under the Federal Emergency Relief Act of 1933, is subject to the income tax law of the State of Missouri.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General.

JWH:LC