

INCOME AX: Royalties received for use of patents issued by U.S. Government during years 1929, 30, 31 and up to and including May 16, 1932 are subject to income tax laws of the State of Missouri.

August 16, 1935.



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

Attention: Mr. E.T. Broughton

Dear Sir:

This department is in receipt of your letter of June 25 in which you request an opinion as to the following state of facts:

"This office is informed that several taxpayers are not paying state income tax on royalties received for the use of patents and copyrights based on the United States Supreme Court decision May 14, 1928 in the case of Long Commissioner vs. Rockwood as shown in Court decision Volume 277, United States 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 the year 1932 the decision of the United States Supreme Court above mentioned was overruled in the case of the Fox Film Corporation vs. Doyal, Volume 286, Page 123, United States Reporter, and held that the state may tax income received by citizens on royalties.

"The question before us is whether or not the state has a right to tax such royalties, for income tax purposes, received by citizens during the period

from May 14, 1928, when the Long Commissioner vs. Rockwood decision was given, and May 16, 1932, the date of the Fox Film Corporation vs. Doyal decision. Will you please give us your decision in this matter at your early convenience?"

On March 22, 1933 this department rendered an opinion that income taxes could not be levied under our statute on incomes derived from the use of patents or copyrights for the years 1929, 1930, 1931 and 1932. Since the rendition of that opinion, however, the Supreme Court of Wisconsin in the case of Laabs v. Wisconsin Tax Commission, 261 N.W. 404 specifically decided that royalties received by taxpayers for the use of patents issued by the United States Government were subject to tax during the years 1929, 1930, 1931 and 1932, and we therefore at this time overrule our opinion of March 22, 1933.

In the case of Laabs v. Wisconsin Tax Commission, supra, the Court, in passing on this specific question, said:

"In May, 1928, the Supreme Court of the United States, in Long v. Rockwood, 277 U.S. 142, 48 S. Ct. 463, 72 L. Ed. 824, held that income from patent royalties was not subject to taxation by the states.

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"On May 16, 1932, the United States Supreme Court in the case of Fox Film Corporation v. Doyal, 286 U.S. 123, 52 S. Ct. 546, 76 L. Ed. 1010, overruled the decision of Long v. Rockwood, supra, and held royalties on patents and copyrights to be taxable.

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"The first and principal question upon this appeal has to do with the effect of the overruling of the decision in Long v. Rockwood, supra, by the subsequent Fox Film Corporation Case.

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"The New Jersey court, in Stockton v. Dundee, Manufacturing Co., 22 N.J. Eq. 56, on virtually the same facts, held that the later decision

was retrospective in operation. The case of People v. Graves, 242 App. Div. 128, 273 N.Y.S. 582, involving the effect of the Fox Film Corporation Case upon the doctrine announced in Long v. Rockwood, likewise held the effect of the later decision to be retrospective and the state entitled to assess an income tax during the years that the Long Case was accepted as law.

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"In the instant case, there is no such situation as existed in the Gelpeke or Muhlker Cases. Plaintiff did not contract or acquire other property rights in reliance upon the doctrine of Long v. Rockwood. To compel him to pay a tax which, by the doctrine of the Fox Film Corporation Case, the state was entitled to collect, does not seem to us to produce injustice or undue hardship. To deprive the state of revenue to which it was justly entitled upon a correct view of the law would produce injustice."

#### CONCLUSION

In view of the foregoing, it is the opinion of this department that royalties received by taxpayers in the State of Missouri for the use of patents and copyrights issued by the United States Government during the years 1929, 1930, 1931 and up to and including May 16, 1932 are subject to the income tax laws of the State of Missouri.

Respectfully submitted,

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

APPROVED:

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ROY McKITTRICK,  
Attorney General.

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