INCOME TAXES: Net income received by non-resident as salary from resident corporation is taxable.

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#1753 Cooley Taxation.

October 25, 1935. 11-9

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

Dear Sir:

This will acknowledge receipt of the following inquiry from you:

> "Will you kindly advise this office as to whether or not in accordance with Section 10115 of the Revised Statutes, 1929, and Amended Laws, 1931, salary received by a non-resident individual for services rendered entirely without the State of Missouri to a corporation located within this State is taxable income to the State of Missouri."

Your inquiry is: A corporation resident within Missouri has a salaried employee who resides without this state and performs out of this state all of the services he performs for the corporation. Is such salary taxable income in Missouri within the meaning of the Missouri income tax law?

Section 10115 of the income tax law, being found in Laws of 1931, page 365, in part reads as follows:

> " * * * and a like tax shall be levied upon, assessed against, collected from, and paid by every individual, not a resident or citizen of this state, upon net income received from

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> all sources within this state, during the preceding year in excess of the exemptions now or hereafter provided."

The party in question receives his salary from "sources within this state", to-wit, the corporation which is within this state.

In the case of State ex rel. Manitowoc Gas Co. v. Wisconsin Tax Commission, et al., decided by the Supreme Court of Wisconsin in 1915, 152 N. W. 848, the court in construing that state's income tax law, said:

> "The taxing power of a state does not extend beyond its territorial limits. * * * If the tax be on property it, or its lawfully constituted situs, must be found within the state. If an interest in property is taxed the situs of either the property or interest must be found within the state. If an income be taxed the recipient thereof must have a domicile within the state, or the property or business out of which the income issues must be situated within the state so that the income may be said to have a situs therein."

In the case of Shaffer v. Carter, State Auditor, et al., 252 U. S. 37, l. c. 51, the United States Supreme Court, in discussing this question, said:

> "'All subjects over which the sovereign power of a State extends, are objects of taxation,' etc. In Michigan Central R. R. Co. v. Powers, 201 U. S. 245, the court, by Mr. Justice Brewer, said (pp. 292, 293): 'We have had frequent occasion to consider questions of state taxation in the light of the Federal Constitution, and the scope and limits of National interference are well settled. There is no general supervision on the part of the Nation over state taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to

objects and methods.' That a State may tax callings and occupations as well as persons and property has long been recognized. 'The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business..... It (taxation) may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction.' State Tax on Foreign-Held Bonds, 15 Wall. 300, 319. See also Welton v. Missouri, 91 U. S. 275, 278; Armour & Co. v. Virginia, 246 U. S. 1, 6; American Mfg. Co. v. St. Louis, 250 U. S. 459, 463.

"And we deem it clear, upon principle as well as authority, that just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein; enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders. This is consonant with numerous decisions of this court sustaining state taxation of credits due to non-residents, New Orleans v. Stempel, 175 U. S. 309, 320, et seq.; Bristol v. Washington County, 177 U. S. 133, 145; Liverpool etc. Ins. Co. v. Orleans Assessors, 221

> U. S. 346, 354; and sustaining federal taxation of the income of an alien non-resident derived from securities held in this country, De Ganay v. Lederer, 250 U. S. 376.
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> "That a State, consistently with the Federal Constitution, may not prohibit the citizens of other States from carrying on legitimate business within its borders like its own citizens, of course is granted; but it does not follow that the business of non-residents may not be required to make a ratable contribution in taxes for the support of the government. On the contrary, the very fact that a citizen of one State has the right to hold property or carry on an occupation or business in another is a very reasonable ground for subjecting such non-resident, although not personally yet to the extent of his property held, or his occupation or business carried on therein, to a duty to pay taxes not more onerous in effect than those imposed under like circumstances upon citizens of the latter State."

When a corporation is located within the State of Missouri and carries on a substantial part of its business within this state, it is assisted and protected therein by this state and by the legal machinery of this state, and the person who resides without this state and who carries on outside the state his part of the business of the corporation receives his income because of the existence of the corporation within this state and the protection which is afforded to the corporation by the State of Missouri. The fountain source of such salary is the corporation which is located in Missouri and which could not exist except by virtue of the laws of this state. The situs of the income under such conditions is within the State of Missouri.

CONCLUSION

It is our opinion that such a salary, less the exemptions, is taxable for income purposes under the income tax laws of Missouri.

Very truly yours,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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