

INCOME TAX: Salaries of county and city officials are considered in computing income tax.

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Hon. Barker Davis,
Prosecuting Attorney,
Canton, Missouri.

Dear Sir:

This will acknowledge receipt of your letter which is as follows:

"Please advise me if the following are subject to Missouri State Income Tax:

- "1. Salaries of County Officers.
- "2. Salaries and fees of City Officers, elected or appointed, in municipalities of Missouri."

Section 10115, Laws of Missouri, 1931, page 365, provides for a levy of an income tax of the amounts therein specified, and states:

"A tax shall be levied upon, assessed against, collected from, and paid by every individual, a citizen or resident of this state, upon net income received from all sources during the preceding year in excess of the exemptions now or hereafter provided."

Sections 10118, 10119, 10120 and 10122, R. S. Mo. 1929, prescribe the exemptions which are allowed under the income tax law of Missouri. The only provision of any of these sections which could have any bearing upon your question is sub-division (5) of Section 10119, which provides:

"The following income shall be exempt from the provisions of this article:
* * * (5) the compensation of public officers for public service where the taxation thereof would be repugnant to the constitution."

Section 6 of Article X of the Constitution of Missouri provides that certain properties therein named shall be exempt from taxation, the pertinent part of which is as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. * * *"

Section 7 of said Article provides as follows:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

In the case of State ex rel. Globe-Democrat Pub. Co. v. Gehner, 316 Mo. 694, with reference to the attitude of the law on exemptions, the court said, l. c. 696:

"The policy of our law, constitutional and statutory, is that no property than that enumerated shall be exempt from taxation."

In the case of People ex rel. Rice v. Graves, 273 N. Y. S. 582, 242 App. Div. 128, it is held that an income tax is founded upon the protection afforded to the recipient of the income by the State, in his person, in his right to receive the income and in his enjoyment of it when received.

In the case of Ludlow-Saylor Wire Co. v. Wollbrinck, 275 Mo. 339, which was the controlling case in this state upholding the constitutionality of the original income tax law passed in this state, and was decided at the April Term, 1918, of the Supreme Court, it is stated, l. c. 350:

"The government of this State is a representative republic in which all the power to make laws in the name and with the authority of its con-

stituent elements--its citizens en masse--is lodged in the temporary Legislature, subject only to the restraining clauses of the constitutions of the State and Nation. Upon this principle is founded the inherent power of that body to legislate at will on any subject and to any extent when, in so doing, neither the State nor the national Constitution is overridden."

And at l. c. 359, quoting from the Supreme Court of the United States, approvingly, the following:

"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."

And at l. c. 351 the court approvingly quotes the following:

"The power to tax rests upon necessity, and is inherent in every sovereignty. The Legislature of every State possesses it, whether particularly specified in the Constitution as a grant of power to be exercised or not. In reference to taxation, the Constitution is not so much to be regarded a grant of power as a restriction or limitation of power."

And at l. c. 353, speaking of the constitutional provision that taxes on property should be levied according to value, the court construes that provision not to apply to income taxes, and approvingly quotes from Black on Income Taxation (3 Ed.), p. 41, sec. 36, as follows:

"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."

And at l. c. 356 the court says:

" * * * it follows that the excluded classes of property embracing incomes, etc., are not within the regulative provisions of the Constitution (Secs. 6, 7, Art. 10) specifying what 'property' shall be exempt from taxation." (The court makes a like differentiation with respect to Sec. 8 of Art. 10).

In the case of Bacon v. Ranson, 331 Mo. 985, 56 S. W. (2d) 786, the constitutionality of the 1931 income tax law was again challenged, and the court there decided that an income tax is not a tax on property as the term is used in Sections 3, 4, 6, 7 and 9, Article 10 of the Constitution of Missouri, and likewise holds that this statute is not violative of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

The statutes exempting certain properties or income therefrom from the payment of an income tax in this state do not name the salaries of county officers, nor the salaries of officers of municipalities, as coming within the exempted class. On the contrary, Section 10115, Laws of Missouri, 1931, provides that the income tax shall be computed upon net income received from all sources during the preceding year in excess of the exemptions provided.

The 1931 Act became effective in the summer of that year, and there can be no question herein as to changing the salary of an officer during his term of office, if for no other reason, because of the lapse of time since the enactment of this law.

A person's salary, when received by him, does not thereafter belong to the county, or to the state, or to the person who has paid it to him, and there can be no application of the constitutional exemption of Section 6 of Article X of the State Constitution. A county officer or city official, when he is paid his salary, has received an income just the same, within

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the meaning of the income tax law, as if he had received this money from a private source, and by the terms of Section 10115 he is required to pay upon his net income, and in figuring what is his net income his salary should be included.

CONCLUSION

It is our opinion that in arriving at the net income of a person resident of Missouri who has received during the preceding taxable year an income in the form of salary from a county or from a city within Missouri, such salary so received should be considered a part of his income taxable under the laws of this state, and he should file a return and pay an income tax to the state unless after having so figured his net income the exemptions as set out in the above referred to Sections 10118, 10119, 10120 and 10122 relieve him of such duties.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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