

TAXATION & REVENUE : Corporations do not have to file tax
INCOME TAX : returns if they have no income.

Individuals do not have to file tax
returns unless income exceeds \$1,000.00
in case of a single person, or \$2,000.00
for head of family or married.

July 16, 1937

Mr. H. J. Simmons
Prosecuting Attorney
Vernon County
Nevada, Missouri



Dear Sir:

This Department is in receipt of your request
for an opinion containing two questions, as follows:

"No. 1. Is a non-exempt Manufacturing Business Corporation required under Chapter 22 of the Revised Statutes of Missouri 1929 and more particularly under Article 7 of said Chapter which has no income for the year 1936 of its fiscal year ending March 31, 1937, that is taxable under Article 20, Chapter 59 of the Revised Statutes 1929 and amendments thereto, required by such article and amendments or any other law of this State to make an income tax return to the State in respect of such tax year?

"No. 2. Is an individual who has no income for the year 1936 that is taxable under Article 20, Chapter 59 of the Revised Statutes of 1929 required by such Article and amendments or any other law of this State to make an income tax return to the State in respect of such tax year?

Or does Section 10125, Revised Statutes of Missouri, 1929, contemplate and require the filing of the

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return only where there is liability for an income tax?"

It appears that in the last analysis a construction of Section 10125, Revised Statutes Missouri 1929, is necessary, and that both questions being similar in nature will be treated in the analysis of said section, the section being as follows:

"Every one who is subject to a tax based on income shall on the first day of January of each year, or as soon thereafter as practicable, apply to the assessor of the proper district for a proper blank on which to make a return of income for the preceding year, which return shall be filed with the assessor on or before the 15th day of March next following, except in cases where such return is made by a corporation on a fiscal year basis and then such blanks shall be obtained and such return filed, with the assessor, on or before seventy-four days after the end of such fiscal year. The assessor shall be furnished all necessary printing, stationery, postage and office equipment, and he and his deputies shall be entitled to receive their actual necessary expenses incurred in the performance of their duties; and all such expenditures shall be audited and paid out of the state treasury in the same manner as other similar expenses are audited and paid. "

The above quoted section was amended in 1927. Instead of the clause "every one who is subject to a tax based on income shall on the first day of January each year * * *", as now contained in the statute, the statute of 1919, being Section 13116, contained the following

clause:

"Every person who has a taxable income shall on the first day of January each year* * * *".

The question arises what, if any, reason did the Legislature have in mind in changing the words "who has a taxable income" to "who is subject to a tax based on income." What, if any, difference is to be attributed to the meaning or to the change in the statute.

In the case of State ex rel. Buder v. Hackmann, 305 Mo. 1. c. 352, the Supreme Court defines "taxable income" as follows:

"Determination of the liability of the State to compensate relator for a part of the items for taking certain individual and corporation returns, depends upon what is meant by 'taxable income.'

"Relator contends that the words 'taxable income' relate to the source, class or nature of a given income, rather than to the amount thereof. But it is evident that both source and amount must be considered in determining whether a given income is taxable. All incomes from sources not specifically exempted (Section 13109) over and above the further general exemptions and deductions provided for (Sections 13110 and 13111) are taxable. Without entering into a consideration of fine shades of meaning of words, we are satisfied that 'taxable income' means income which may be taxed after all exemptions and deductions have been allowed from the total income.

Section 13116 plainly contemplates that only persons having a 'taxable income' shall make returns, which means that only persons shall make such returns who have incomes from taxable sources of such size that something is left to which the tax may be applied after all lawful deductions are made. For receiving and filing such returns (Sec.13116) the assessor is entitled to be compensated 'in like manner and in like amounts as for the assessments of other taxes.' (Sec.13124.) By Section 12816, Revised Statutes 1919, as amended by Laws 1921, page 671, assessors in counties of over 45,000 inhabitants are allowed twenty cents per list for all lists in excess of 3,000. This is the fee relator is entitled to receive. But this fee is payable for income tax returns made by persons having a 'taxable income.'

"It is clear from the admitted facts that relator is entitled only to \$62.20 for taking 311 corporation returns, and that he is not entitled to fees for taking 198 corporation returns 'which did not report any income and on which no taxes were assessable.' Relator is entitled to \$201.40 for taking 1007 individual returns and is not entitled to compensation for taking 233 such returns in which were reported 'net incomes, the amount of which, however, were not sufficient to require the assessment of a tax.' "

Succinctly stated by the Court "taxable income" means income which may be taxed after all exemptions and deductions have been allowed from the total income, and, as

stated by the Court in construing section 13116, the statute contemplates that only persons having a taxable income shall make returns, which means that only persons shall make such returns who have incomes from taxable sources of such size that something is left to which the tax may be applied after all lawful deductions are made.

In the decision of Hannibal Trust Company v. Elzea et al. 286 S. W. 371, 1. c. 377, the words "subject to" are defined as follows:

"In the interpretation of statutes, words in common use are to be construed in their natural, plain, and ordinary signification. 36 Cyc.1114. The words 'subject to' are defined by lexicographers as meaning 'liable,' and the word 'liable' is defined as 'bound or obliged in law or equity; responsible; answerable.' Webster's New International Dictionary; Century Dictionary. "

Clearly, by Section 10125, the legislators contemplated only those, whether it be an individual or a corporation, make a return by applying to the assessor at the proper time for a blank who are subject or liable or who have taxable income.

Under Section 10122, Revised Statutes Missouri 1929, the statute uses the following words:

"* * there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each resident individual, ascertained as provided herein, the sum of \$1,000 plus \$1,000 additional if the person making the return be the head of a family, or a married man with a wife living with him* *."

The words "exemption and deduction" contained in said statute being based on other conditions and facts.

Under Section 10115, Laws of Missouri 1931, page 365, the third paragraph, which refers to corporations, it is stated that taxes are levied, assessed and to be collected "of the net income from all sources in this state during the preceding year."

CONCLUSION

We are of the opinion

First: As to manufacturing and business corporations who are not exempt by any section of the statute, if they have no income for the year 1936 of any nature it is not necessary for said corporation to make an income tax return to the State of Missouri;

Second: In the case of an individual who has no income for the year 1936 or if the person's or individual's income is not subject to or liable for a tax, then such individual or person is not compelled to make any income tax return to the State of Missouri.

Third: To place any other construction on the words "subject to" would compel every person or corporation who has any income to make a return to the State Auditor and thereby place the burden on the State Auditor of determining, after deductions and exemptions are allowed, whether such person or corporation is subject to a tax. We think a reasonable construction of the statute is to the effect that every person or corporation

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must be the judge or determine themselves as to whether or not such person or corporation should make an income tax return. The statutes prescribe certain penalties for failure to make returns and pay a tax when such person or corporation is liable for the same. In other words, every person or corporation is presumed to know the law and failure to file a return when such person or corporation is subject to a tax, is a peril or risk which the person or corporation assumes.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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