

INCOME TAX:
DEPARTMENT OF COLLECTION
AND PAYING RETURNS:

Collection of income taxes and the
necessity of filing return by members
of the armed forces outside the United
States if such person's ability to pay
such tax is materially impaired or if
he is not in a position to make a re-
turn by reason of such service.

February 16, 1943

Hon. James A. Finch
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri



Dear Mr. Finch:

We acknowledge receipt of your letter of February 1st, last, requesting an opinion, which letter is as follows:

"Wish you would kindly advise whether or not it is the opinion of your office that those in the armed services of the United States who are out of the continental United States and for military reasons cannot disclose their location may delay, without penalty, the filing of State income tax returns, as is provided for making delayed Federal income tax returns.

"There are a great many State income tax payers who are now in foreign service who cannot, for military reasons, make a return, because to swear to the return would give their location and as a practical proposition it is difficult to know how to make the return, and it would seem to be a rather strict rule to require them to pay penalty or interest because of inability to make a return."

Section 100 of the Federal Soldiers' and Sailor's Relief Act of 1940, is as follows:

"In order to provide for, strengthen, and expedite the national defense under the emergent conditions which

are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force."

Section 513 of the Federal Soldiers and Sailors Relief Act of 1940, provides for the deferment of income tax collection and is as follows:

"The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the collection of such tax by distraint or otherwise shall be suspended for the period of military service of any individual the collection of whose tax is deferred under this section, and for an additional period

of nine months beginning with the day following the period of military service. The provisions of this section shall not apply to the income tax on employees imposed by section 1400 of the Federal Insurance Contributions Act."

The Soldiers' and Sailors' Relief Act of 1940 is almost identical with the Act of 1918, and the Act of 1918 and similar acts prior thereto were all held to be constitutional.

On March 16, 1802, Congress passed an Act (2 Stat. 136) which prohibited the arrest of any soldier for a debt of less than \$20 contracted before enlistment, or for any debt contracted after enlistment. Similar legislation was enacted during the Mexican War. During the Civil War the Act of March 3, 1863 (12 Stat. 755) and the Act of May 11, 1866 (14 Stat. 46) extended protection to all persons for acts done under military authority in conducting the war. During the World War the Soldiers' and Sailors Civil Relief Act of 1918 (40 Stat. 440) was passed. Similar state statutes have been enacted. *Granger v. Luther*, (1920) 42 S. D. 636, 176 N. W. 1019; *Studd v. Trueblood*, (1921) 190 Iowa 1225, 181 N. W. 445; *Thress v. Zemple*, (1919) 42 N. D. 599, 174 N. W. 85. None of these statutes have been held unconstitutional, either totally or partially, by the courts.

With regard to the Federal Civil Relief Act of 1918, the Supreme Court of Oregon in *Pierrard v. Hoch*, (1920) 97 Ore. 71, 191 Pac. 328, following the principle laid down by Chief Justice Marshall in *McCulloch v. Maryland*, (1819) 4 Wheat 316, that means which are appropriate and plainly adapted to carrying out the ends sought by the constitution are constitutional, said: "It is clear that under the war making power the national legislature has the authority to provide for the protection of its soldiers, to relieve them from anxiety and annoyance respecting litigation at home, and to make a general rule applicable alike to all those engaged in its service." In *Kuehn v. Neugebauer*, (1919, Tex. Civ. App.) 216 S. W. 259, the court said that, there is "no authority denying validity of this (Act of 1918) or any similar statute." The courts throughout many of the several

states have adopted the view that it is a legitimate function of Congress, under its power to declare war and to maintain armies, to enact laws designed to protect its soldiers and sailors engaged in the prosecution of a war, and thus to maintain the morale of its armies.

The courts have similarly held that such an act should be liberally construed. The reason for such liberal construction is clearly stated in the case of *Kuehn v. Neugerbauer* (Tex. Civ. App.) 216 S. W. 259, as follows:

"* * * * a remedial statute, enacted by Congress for highly important national ends, and * * * * its provisions must be liberally interpreted to ascertain the intent of Congress and give effect to that intent."

There also seems to be no doubt but what Congress in the exercise of its power to maintain an army and navy, can control the procedure in the state courts. *Konkel v. State*, (1919) 168 Wis. 335, 170 N. W. 715; *Bell v. Baker*, (Tex. Com. App. 1924) 260 S. W. 158; *Clark v. Mechanics' American Nat'l Bank*, (1922) 282 Fed. 589, citing *Stewart v. Kahn*, (1870) 11 Wall. 493 and *Erickson v. Macy*, (1921) 231 N. Y. 86, 131 N. E. 744; *Kosel v. First Nat'l Bank of Ashley*, (1927) 55 N. D. 445, 214 N. W. 249. In *Konkel v. State*, supra, the court decided that regulation in respect to the service of civil process upon persons in the military service is of a purely national character, and, therefore, the orderly administration of army and navy affairs requires that such regulation should be uniform throughout the United States. Nor is there any doubt but what the federal statute will supersede any similar state law, by virtue of Article 6, of the federal Constitution. *Konkel v. State*, (1919) 168 Wis. 335, 170 N. W. 715; *Pierrard v. Hock*, (1920) 97 Ore. 71, 191 Pac. 328. See also: *Selective Draft Law Cases*, (1918) 245 U. S. 366, 38 Sup. Ct. 159; *Sturges v. Crowninshield*, (1819) 4 Wheat. 122; *Savage v. Jones*, (1912) 225 U. S. 501, 32 Sup. Ct. 715.

It was held in the case of *Wenatchee Produce Company v. Great Northern R. R. Co.*, (D. C. Wash. 1941) 25 Fed. 784, that Congress may extend the statute of limitations as a war measure.

The following paragraph appears in Commerce Clearing House, Inc., War Law Service, Paragraph 19,051.23:

"The payment of any taxes or assessments, general or special, falling due during the period of military service in respect to real property owned and occupied for dwelling, agricultural or business purposes by a person in military service or his dependents may be postponed until six months after the termination of the period of military service, by filing the prescribed affidavit with the collector of taxes. If the property has been sold or forfeited for taxes, it may be redeemed within six months after the termination of military service, by the payment of the amount of back taxes together with 6% interest. Other penalties are to be waived. (Selective Service System, Release N. 83, October 23, 1940."

On April 13, 1942, by letter, the State Auditor ruled that the party in military service must file a request in writing with the State Auditor, in order to secure deferment under the act above quoted. Of course, exceptions will probably be made to this rule in cases where soldiers are not in this country, and are not in a position to make such a request. Section 513 above quoted, gives the right to deferment only in cases where "such person's ability to pay such tax is materially impaired by reasons of such service." Proof of service can be obtained by the soldier under Section 601 of the Soldiers and Sailors Civil Relief Act of 1940, which is as follows:

"(1) In any proceeding under this act a certificate signed by the Adjutant General of the Army as to persons in the Army or in any branch of the United States service while serving pursuant to law with the Army of the United States, signed by the

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Chief of the Bureau of Navigation of the Navy Department as to persons in the United States Navy or in any other branch of the United States service while serving pursuant to law with the United States Navy, and signed by the Major General Commandant, United States Marine Corps, as to persons in the Marine Corps, or in any other branch of the United States service while serving pursuant to law with the Marine Corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate:

"That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service.

"(2) It shall be the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificates to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same."

Section 3804 of the Internal Revenue Act provides for the postponement of the performance of a number of acts by reason of war including the filing of income tax returns and the payment of same. This section relates only to federal taxes. However, it is probable that a similar provision might be passed by this session of our state legislature, or a policy may be adopted that will give relief to persons in military service who are not in a position to make and file income tax returns.

Therefore, it is our opinion that persons in the armed services will not be required to pay interest and penalties for a failure to comply with the income tax laws of this state, if they furnish proof that their ability to pay such tax is materially impaired by reason of military service. As the Missouri Laws now exist, no exception is made for the filing of income tax returns by persons in the armed services, but it is probable that some relief will be granted in this respect to persons in the armed services.

Respectfully submitted,

LEO A. POLITTE
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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