

INCOME TAX: Section 11375, R. S. Mo. 1939, prohibits the examination of income tax returns or records for the purpose of obtaining information in connection with the collection of sales tax.

May 22, 1943



Mr. H. B. Lemonds  
County Clerk  
Kennett, Missouri

Dear Mr. Lemonds:

This department is in receipt of your letter of recent date, in which you request an opinion. Your letter is as follows:

"The question of whether or not the sales tax collectors have the authority to check on the income tax returns filed in the county clerk's office has arisen.

"We would appreciate your opinion on this matter. "

Section 11375, R. S. Mo. 1939, is as follows:

"It shall be unlawful for any person, persons or officers to divulge, give out or impart to any other person, or persons, any information relative to, or the contents of any income tax return filed under this article, or to permit any other person, or persons not connected with his office to see, inspect or examine the same; and it shall be unlawful for any person or officer to use any income tax return filed under this article in any manner whatever in connection with, or for the purpose of assessing of property tax or determining the amount of assessment of any person or corporation or to use the same in any way in making up an assessment roll. It shall be unlawful for any board of equalization, or any member thereof, or any officer to in any way permit the inspection of any such return or

to use the same in any way in making assessments other than the assessment of the tax provided for in this article, and any person violating the provisions of this section shall be deemed guilty of a felony and upon conviction thereof shall be fined a sum of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) or by imprisonment in the penitentiary for a term of not less than two years and not more than five years, or both such fine and imprisonment as the court may deem proper; and any officer convicted for the violation of this section, the judgment of conviction shall be construed and held to be a forfeiture of the office held by such convicted person: Provided, however, that this shall not apply to the state auditor, his agents or inspectors in the discharge of their official duties in the administration of the income tax laws. The state auditor, his agent or inspector, shall have power to and be permitted to examine any income tax return on file in the office of any county or township assessor, county collector, county treasurer or the assessor, auditor or comptroller of the City of St. Louis."

We submit herewith an opinion rendered by this department on November 3, 1934, written by Hon. John W. Hoffman, Jr., Assistant Attorney General, which covers the general question as to the divulging of information contained in income tax returns.

In discussing the statute above quoted, as it existed in the Laws of Missouri, 1919, the Supreme Court of Missouri en banc, in the case of State ex rel. Monier et al v. Crawford, 262 S. W. 341, l. c. 343, made the following statement:

"\* \* \* For instance, section 13135, R. S. 1919, directly forbids the inspection of income tax returns in the clearest and most positive language. \* \* \* \* \*"

This section was amended in 1925 by adding the following:

"\* \* \* \* \* Provided, however, that this shall not apply to the state auditor, his agents or inspectors in the discharge of their official duties in the administration of the income tax laws. The state auditor, his agent or inspector, shall have power to and be permitted to examine any income tax return on file in the office of any county or township assessor, county collector, county treasurer or the assessor, auditor or comptroller of the city of St. Louis."

The persons referred to in your letter, we presume are employees of the state auditor charged with assisting in the collection of sales tax. However, the proviso last above quoted gives the state auditor, his agents and inspectors the right to examine income tax returns "only in the discharge of their official duties in the administration of the income tax laws."

The general statement contained in the last sentence in the above quotation is limited by the specific statement limiting the right to the inspection of returns to those charged with the administration of the income tax laws.

On the question of construing statutes, the Supreme Court en banc, in the case of Keane v. Strodtman, Sheriff, 18 S. W. (2d) 896, l. c. 898, declared the law to be as follows:

"The nature of the law, and the absence of the enumeration from the charter of the calling sought to be taxed, precludes the invoking of the supplemental clause of article 20 of the charter to 'piece out' the power of the city in the imposition of the tax. The familiar maxim of 'expressio unius est exclusio alterius' may also be invoked, for the maxim is never more applicable than in the construction of statutes. Whitehead v. Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306; Hackett v. Amsden, 56 Vt. 201, 206; Matter of Attorney General, 2 N. M. 49."

May 22, 1943

Again in the case of McClaren v. Robins & Co., 162 S. W. 856, 1. c. 858, the Supreme Court defined the "ejusdem generis" rule as follows:

"\* \* \* The ejusdem generis rule is that where a statute contains general words only, such general words are to receive a general construction, but, where it enumerates particular classes or things, followed by general words, the general words so used will be applicable only to things of the same general character as those which are specified. Keane v. Strodtman, 323 Mo. 161, 18 S. W. 2d 896; Mangelsdorft v. Pennsylvania Fire Insurance Company, 224 Mo. App. 265, 26 S. W. 2d 818; Puritan Pharmaceutical Company v. Pennsylvania Railroad Company, 230 Mo. App. 848, 77 S. W. 2d 508."

In view of the policy of law discussed in Mr. Huffman's opinion attached hereto, and the above quoted authorities, it seems that the powers given the State Auditor and his agents or inspectors would be strictly construed, and that it was the intention of the Legislature to grant them the right of inspection only in connection with the enforcement and administration of the income tax laws.

CONCLUSION

It is the opinion of this department that no one other than the taxpayer has the right or authority to inspect income tax returns, except the State Auditor, his agents and inspectors in the discharge of their official duties in the administration of the income tax laws.

Yours very truly,

LEO A. POLITTE  
Assistant Attorney General

APPROVED:

---

ROY MCKITTRICK  
Attorney General

LAP:NH