

TAXATION:

Is a Missouri resident liable for income taxes on salaries and earnings outside of the State of Missouri?

INCOME TAX:

Is a citizen of a bordering state liable for income tax on salaries or income earned within the State of Missouri?

May 16, 1945.

5/19



Honorable Joseph A. Lennon,  
Assistant Attorney General,  
901 Central National Bank Bldg.,  
St. Louis, Missouri.

Dear Mr. Lennon:

I. This will acknowledge receipt of your letter addressed to Hon. J. E. Taylor, Attorney General, under date of May 2, 1945, which is in part as follows:

"I believe we should have an opinion from your office covering both of these questions, to-wit:

"1. Is a Missouri resident liable for income taxes on salaries and earnings outside of the State of Missouri?

"2. Is a citizen of a bordering state liable for income tax on salaries or income earned within the State of Missouri?"

II. Please be advised as follows:

(a) That Section 11343, R. S. Mo. 1939, provides in part as follows:

"A per centum 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, 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 all sources within the state, during the preceding year in excess of the exemptions now or hereafter provided\* \* \*."

(b) The per centum of the tax on net income above referred to, levied upon, assessed against and collected and paid shall be determined as follows:

(1) The remainder of the section definitely sets out the rate of and the method of determining the amount of the tax.

III. Section 11345 R. S. Mo. 1939, provides in part as follows:

(a) "Income shall include gains, profits, and earnings derived from salaries, wages or compensation for personal services of whatever kind and in whatever form paid; and from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or the use of any interest in real or personal property; and from interest, rent, dividends, securities and gains, profits and earnings from any other transactions of any business carried on for gain or profit; and from any source whatever; \* \* \*".

(b) "The net income shall be determined by deducting from income, deductions now or hereafter provided by law."

(c) "The State Auditor may prescribe reasonable rules and regulations for the administration of the provisions of the laws relating to the levy, assessment, collection and payment of taxes based on incomes,\* \* \*", (which he has not done to date.)

IV. Section 11365, R. S. Mo. 1939, provides:

(a) "That the State Auditor shall prescribe forms and furnish them to the various county or district assessors for the use of the taxpayer, and shall give instructions and opinions for carrying this chapter into effect, and all of his instructions shall be strictly complied with.\* \* \*".

V. Section 11354, R. S. Mo. 1939, provides in part as follows:

(a) "That on the first of January, or soon thereafter of each year, the taxpayer shall apply to his district for forms on which to make a return of income for the preceding year, and that the return shall be filed on or before March 15 of the current year.\* \* \*"

(b) "It is further provided in the chapter that all taxes assessed on account of income shall become delinquent on June 2nd of the current year, and if not paid within thirty days after delinquency, the county collector shall certify all delinquencies to the State Auditor, who shall within sixty days certify the names of the delinquents to the Attorney-General, who is authorized to bring suit, or to direct the prosecuting attorneys of the counties to do so, to recover the tax and the penalties."

VI. Section 11358 R. S. Mo. 1939, provides as follows:

(a) "Persons residing within the state shall make an income tax return to the assessor.

(b) "Persons residing without the state and deriving income from within the state shall make an income tax return to the assessor where his or their chief office is located, and if he or they have no office in this state, then the State Auditor shall designate the district where the taxpayer should file his return."

VII. Section 11359 R. S. Mo. 1939, provides that a certified copy of the federal tax return of the taxpayer must be attached to his state return and only the amount of the income received in this state is required to be shown on the verified copy of a nonresident taxpayer.

VIII. Various sections of the Income Tax Act provide exemptions and deductions to be taken into account in arriving at a net income, but Section 11349 provides for another deduction on income, in any taxable year, on which a tax is imposed by, and paid to, another state, and when such income is shown in said taxpayer's return; and it is further provided that a nonresident taxpayer can receive the benefits of exemptions provided for in Section 11351, only by filing with the assessor a true and accurate return of his total income received from all sources in this state;

IX. It will be seen from the foregoing quotations and statements of the law that the Income Tax Act levy is on income of citizens or residents of this state received from all sources, less certain deductions and exemptions, and that a deduction on income on which a tax is paid in another state, if shown in the taxpayer's return, is allowed.

X. Therefore, it would seem that the answers to your questions lie in the interpretation of the foregoing quotations and expressions of the law, and also turn on the question of what is income and what is source.

XI. Webster's New International Dictionary defines "income" as: a coming in, an entrance, an advance, something that comes in, as an addition, and an increase in the taxpayer's economic wealth.

Also, "income" is defined as something derived from property, labor, skill, ingenuity or sound judgment, or from two or more of them in combination. *Diefendorf v. Gallet*, 10 Pac. (2d) 307.

Income, subject to taxation, consists of increase in the taxpayer's economic wealth and is derived from labor, use of capital, including land, and profits from sale or exchange of capital assets, which profits represent accretion in value of such assets while in the taxpayer's hands. *Petition of the Union Electric Co. of Mo. Sup.* 161 S.W. (2d) 968.

XII. The word source is defined by the Standard Dictionary, and adopted as the language of the Missouri Supreme Court in 146 S.W. (2d) 631, and is as follows: The word source conveys only one idea - that of origin. That from which any account, gain or effect proceeds; a person or thing that originates, sets in motion, or is a primary agency in producing any course of action or result, a place where something is found or whence it is taken or derived.

XIII. It will be observed that Section 11343, supra, levies a tax on net income received by citizens or individuals of this state, from all sources, in excess of certain exemptions and deductions. *Atrophane Corp. v. Coala*, 133 S.W. (2d) 343, l.c. 349.

XIV. The State of Illinois has no income tax law, but that fact would not be a controlling factor here, only that the taxpayer could not claim deductions on income that he had paid to another state; but other states do have income tax laws from which many persons are employed in this state, and also, no doubt, there are many residents of Missouri employed in states which do have income tax laws and which collect an income tax from residents in Missouri who happen to be employed in that state.

XV. Referring to Paragraph VIII it will be seen that the taxpayer, who shows in his return income on which a tax was paid in another state, can deduct that amount from his gross income. It will also be seen that a nonresident may receive exemptions enumerated in Section 11351, R. S. Mo. 1939, only if he files a correct return, as provided for in that Section.

XVI. THEREFORE, it is the opinion of this department that, if a resident of this state makes a return as provided for by law, he can deduct income received in another state on which he has paid an income tax to such other state.

It is also the opinion of this department that a non-resident is liable for income tax on salaries and income earned within this state, but he is entitled to the exemptions provided by Section 11351 R. S. Mo. 1939, upon complying with the provisions thereof.

Respectfully submitted,

HARRY J. SALSBUURY  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
Attorney-General.

HJS/LD