

TAXATION AND REVENUE: Determination of net income of pawnbrokers under House Bill No. 948 of the 63rd General Assembly.



October 28, 1946

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Mr. Haskell Holman, Supervisor
Income Tax Unit
Division of Collection
Department of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

"It is respectfully requested that you furnish this department with an opinion clarifying and determining the meaning of the words 'net income' as applicable to pawnbrokers under House Bill 948, Section 2 (a) which reads as follows:

"The term "credit institution" means every person, firm, partnership, or corporation engaged principally in the consumer credit or loan business in the making of loans of money, credit, goods, or things in action, or in the buying, selling, or discounting of, or investing in, negotiable or non-negotiable instruments given as security for or in payment of the purchase price of consumer goods. Without limiting the generality of the foregoing, the term "credit institution" shall include persons, firms, partnerships, and corporations, operating or licensed under the "small loan laws" of this state, or under the laws of the state relating to "loan and investment companies", and pawnbrokers, but shall not include banks, trust companies, credit unions, insurance companies, mutual savings and loan associa-

tions, building and loan associations, or real estate mortgage loan companies.'"

The "net income" of taxpayers subject to the provisions of House Bill No. 948 of the 63rd General Assembly is defined in Section 5 of the Act mentioned, from which we quote:

"(a) 'Net Income' means gross income as defined in paragraph (b) of this section minus the deductions allowed in paragraph (c) of this section.

"(b) 'Gross Income' includes all gains, profits, earnings and other income of the taxpayer derived from sources within the State of Missouri, during the income period, including but not limited to interest from obligations issued by the United States Government or any political subdivision or any instrumentality thereof, or any state or political subdivision thereof, or issued by any foreign country or nation or political subdivision thereof, all rents, compensation for services, commissions, brokerage and other fees, all gains or profits from the sale or other disposition of any property, real or personal, tangible or intangible; and all recoveries on losses sustained in the ordinary course of business subsequent to the effective date of this Act; provided, however, that recoveries on such losses sustained during any prior income period within which the deductions, as permitted by subsection (c) of this section, exceed the taxpayers' gross income for said income period, computed in accordance with this subsection, shall not be included in the taxpayers' gross income for the income period in which they were received to the extent of said excess. Dividends received on shares of stock of any Credit Institution liable to tax under this Act shall not be included in gross income.

"(c) In computing net income there shall be allowed as deductions all ordinary and necessary expenses paid or incurred by the taxpayer during the income period in carrying on its trade or business in the State of Missouri. Without limiting the generality of the fore-

going there shall be allowed as deduction: a reasonable allowance for salaries and other compensation for personal services actually rendered; rents, repairs, bad debts and debts ordered to be charged off by the Commissioner of Finance; interest, cost of insurance and advertising; all taxes paid or accrued during the income period to the United States and all taxes paid or accrued on real estate to the State of Missouri or any political subdivision thereof; all contributions paid or accrued pursuant to the Unemployment Compensation Law of Missouri; reasonable allowances for depreciation and depletion; amortization of premiums on bonds, debentures, notes or other securities or evidences of indebtedness; a reasonable allowance for payments or contributions to or on account of any pension or retirement fund or plan for its officers or employees; contributions to any corporation, association or fund organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual to an amount which does not exceed five per centum of the taxpayer's net income as computed without the benefit of this deduction; losses from the sale or disposition of any property, real or personal, tangible or intangible; and all other losses sustained during the income period not compensated for by insurance."

You will note that we have emphasized the words "taxpayer" and "its" in the foregoing quotation. We have deemed it advisable to do so by reason of the peculiar conditions which surround the operation of the pawnbrokerage business. It is our understanding that pawnbrokers operate in a dual capacity, that is to say, in addition to receiving pledges of tangible personal property upon which loans are made, it is customary to conduct retail mercantile operations in connection with the same business. It is our further understanding that the merchandise offered for sale at retail is acquired from two sources, namely, the forfeiture of such pledges as have been the subject of loans which remain unpaid beyond the contractual period, and wholesale purchases made in the normal channels of trade, such as are used by other mercantile establishments retailing similar types of merchandise.

With these peculiar features of the pawnbrokerage business kept in mind, we have further examined other provisions of House Bill No. 948 of the 63rd General Assembly. We find the term "taxpayer" defined in paragraph (b) of Section 2 thereof, in the following language:

"The term 'taxpayer' means any 'Credit Institution' subject to any tax imposed by this Act."

That pawnbrokers are included within the taxing provisions of the Act appears from the following quoted portion of paragraph (a) of Section 2, wherein we find the following language:

" * * * Without limiting the generality of the foregoing, the term 'credit institution' shall include persons, firms, partnerships, and corporations, operating or licensed under the 'small loan laws' of this state, or under the laws of this state relating to 'loan and investment companies', and pawn brokers, but shall not include banks, trust companies, credit unions, insurance companies, mutual savings and loan associations, building and loan associations, or real estate mortgage loan companies."

With this in mind, it seems to us that the incorporation of the terms "taxpayer" and "its" in those portions of the Act quoted supra, relating to the determination of net income, can refer only to such business operations as are included within the term "credit institution" as defined in the Act. So, reading the procedural provisions relating to the determination of net income, it becomes apparent that the Act seeks only to tax those business operations as are comprehended within the term "pawnbroker."

The term "pawnbroker" has not been the subject of a judicial definition by the appellate courts of Missouri. However, we do find the following definition thereof in 31 Words and Phrases, Perm. Ed., page 446:

"The word 'pawnbroker' has been variously defined as any person whose business or occupation is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise or any kind of personal property whatever, as security for payment of money loaned thereon. One who makes a busi-

ness of loaning money for interest and receives personal property in security for the payment of the same. * * * "

In addition, the sale of unredeemed pledges taken in by one who had ceased to operate as a pawnbroker has been held to amount to the conduct of a pawnbrokerage business, as appears from the further definition of the term in 31 Words and Phrases, Perm. Ed., page 446:

"A person who had formerly taken in goods upon pledge, but who had ceased to do so, still continuing to sell the unredeemed pledges, is a pawnbroker, and as such subject to the bankrupt laws. Rawlinson v. Pearson, 5 Barn. & Ald. 124."

That the Legislature had in mind that such sales constituted an integral part of the pawnbrokerage business appears from that portion of paragraph (b) of Section 5 of the Act, relating to gross income, which requires that there must be included therein "all gains or profits from the sale or other disposition of any property, real or personal, tangible or intangible."

That the tax imposed under House Bill No. 948 of the 63rd General Assembly is one exacted for the privilege of exercising the franchises of the various types of businesses mentioned therein appears from paragraph (a) of Section 3 of the Act, which reads as follows:

"Every credit institution as herein defined shall be subject to an annual tax for the privilege of exercising its franchise within the State of Missouri, according to and measured by its net income pursuant to the provision of this Act."

Since the tax is imposed upon the privilege of exercising the franchise of pawnbroker, it seems clear that the "net income" to be used in computing such tax must relate solely to that derived from the business which is subject to taxation under the Act. Applying this rule to the definition of "pawnbroker," quoted supra, it seems that only such net income as is derived from the operation of the business of pawnbroker should be used in computing the franchise tax imposed by the provisions of the Act. This would necessarily exclude from such computation the net income earned as a result of conducting the ordinary business of a retail merchant, even though such other business be conducted in connection with the pawn-

brokerage operations, but would include interest received for loans made, together with the profit realized upon the sale of unredeemed pledges.

In determining the profit realized upon unredeemed pledges, it would, of course, be necessary to allocate to such sales the proportionate part of the ordinary business expenses incurred in making such sales. These expenses would be properly deductible under the provisions of paragraph (c) of Section 5 of the Act, and would be in accordance with the bookkeeping methods to be employed by taxpayers whose income is derived from sources partly within and partly without the State of Missouri, with respect to which the Act provides in paragraph (d) of Section 5, in part, as follows:

" * * * Where income of taxpayer is derived partly from sources within the State of Missouri and partly from sources without the State of Missouri, gross income, deductions and net income shall be computed on the basis of a separate accounting method."

To construe the provisions of the Act otherwise would subject to double taxation that portion of the taxpayer's operations as is represented by his dealings as a merchant. His stock of merchandise acquired through ordinary wholesale business channels is subject to tax under the provisions of H.C.S. H.B. No. 536 of the 63rd General Assembly, relating to the taxation of merchants. Double taxation is not favored and is not to be presumed. See *Wood v. Dueser*, 164 S. W. (2d) 303.

CONCLUSION

In the premises, we are of the opinion that the tax imposed under House Bill No. 948 of the 63rd General Assembly for the privilege of exercising the franchise of a pawnbroker is to be computed by including in the gross income the interest received from loans, together with the gains derived from the sale of unredeemed pledges, less the ordinary business expenses incurred in the operation of such business, and that in the event such pawnbroker also engages in the business of a merchant, the proportionate part of such expenses should be allocated to the gross income derived from the sources mentioned, based upon the ratio existing between gross income from each source.

Respectfully submitted,

APPROVED:

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