

Income tax - Personal exemptions of non-resident taxpayers shall be allowable in the same amount as for resident taxpayers.

Rule promulgated by state administrative agency contrary to statute is void.

TAXATION:

Senate Bill 152 to become effective April 14, 1950, enacted by 65th General Assembly, provides personal exemptions of non-residents subject to income tax shall be prorated on basis that the gross income in Missouri bears to the gross income of non-residents for all sources for the year.

February 20, 1950.

Honorable T. R. Allen,
Supervisor, Income Tax Unit,
Department of Revenue,
Jefferson City, Mo.



Dear Mr. Allen:

This office is in receipt of your letter dated January 25, 1950, requesting an opinion concerning the personal deduction allowable to a non-resident individual who is required to pay a Missouri state income tax. In your letter you quote from correspondence with the Kansas City Chapter, Missouri Society of Certified Public Accountants reading, in part, as follows:

"We have been informed that the "Instructions for preparing and filing Missouri income tax returns - individual combination long-short form 28-10" have been filed with the Secretary of State pursuant to the provisions of S.B.No. 196, Laws, 1945-1946. We understand that the filing of these instructions gives them the status of a "rule" under this statute.

"Among other things, the instructions contain the following statement:

"Income subject to tax: non-residents --
* * Such non-resident shall be entitled to deductions as provided for by Section 11349 of our statutes, but such deduction shall be subject to proration on the following basis: where the entire income of such non-resident is not earned or taxable in the State of Missouri, the allowable deduction, including personal exemption, shall be prorated on the basis that the gross income in the State of Missouri bears to the gross income of such non-resident from all sources for the year."

"The above rule, to the extent that it requires the proration of the personal exemption of non-residents, seems to be in conflict with Section 11351, R.S. 1939,

which provides in part as follows:

"For the purposes of this tax, there shall be allowed as an exemption in the nature of a deduction from the amount of net income of each resident individual, * * the sum of \$1,200 plus \$1,200 additional if the person making the return be the head of a family, or a married man with a wife living with him, * *. Provided, further, that if the person making the return is the head of a family there shall be an additional exemption of \$400 for each person dependent on such head of a family if related by blood or marriage * *. A non-resident individual may receive the benefit of the exemption provided for in this Section only by filing or causing to be filed with the Director of Revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in this State, in the manner prescribed by this Act; * *"

"We would appreciate very much an opinion of the Attorney General relative to the validity of the instructions relating to the personal exemption of a non-resident individual."

That it is the duty of the Director of Revenue to prescribe rules and regulations governing the administration of the income tax law is unquestioned. Section 11345, R. S. Mo. 1939, reenacted L. 1945, p. 1881, Sec. 1; L.1947, Vol. 1, p. 527, Sec. 1, provides:

"The Director of Revenue may prescribe reasonable rules and regulations for administration of the provisions of the laws relating to the levy, assessment, collection and payment of taxes based on income."

The rules and regulations prescribed by the Director of Revenue must, of course, be in harmony with the statutes enacted by the General Assembly and no valid rule could be prescribed by the Director which would conflict with the provisions of the statutes levying the tax. The Director of Revenue has filed with the Secretary of State rules and regulations dealing with the administration of the income tax law and has published these rules and regulations as instructions to the taxpayers. These rules and regulations contain the following statement:

"INCOME SUBJECT TO TAX: NON-RESIDENTS --
Liability of a non-resident includes every person who is domiciled elsewhere than in the State of Missouri and who is not a resident of Missouri, but who has income from the State of Missouri derived from property owned and earnings derived

from salaries, wages or compensation for personal services of whatever kind and whatever form paid for services performed within the State of Missouri. Such non-resident shall be entitled to deductions as provided for by Section 11349 of our statutes, but such deduction shall be subject to proration on the following basis: Where the entire income of such non-resident is not earned or taxable in the State of Missouri, the allowable deduction, including personal exemption, shall be prorated on the basis that the gross income in the State of Missouri bears to the gross income of such non-resident from all sources for the year. Non-residents of this state should prepare their return to the State of Missouri first and any reciprocal credit to be claimed must be claimed from their resident state."

The question which arises is whether this rule is a correct interpretation of the law to the extent that it requires the proration of the personal exemption of non-residents or should non-resident taxpayers be allowed the full personal exemption allowed to resident taxpayers, without prorating said exemption.

The income tax levy as provided for in Section 11343, R. S. Mo. 1939, Reenacted L. 1945, p. 1881, Sec. 1, reads in part:

"There is hereby levied a per centum tax on net income in each year as follows: * * * a 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 this state, during the preceding year in excess of exemption now or hereafter provided; exemptions shall be prorated and per centum of tax levied shall be allocated to portions of any year where entire year is not covered or different rates may prevail."

Allowable deductions, including personal exemptions to be allowed non-resident taxpayers are prescribed in Section 11351, R. S. Mo. 1939, Reenacted L. 1945, p. 1881, Sec. 1, as amended L. 1945, p. 1963, Sec. 1:

"For the purposes of this tax, there shall be allowed as an exemption in the nature of a deduction from the amount of net income of each resident individual, * * the sum of \$1,200 plus \$1,200 additional if the person making the return be the head of a family, or a married man with a wife living with him, * *. Provided, further, that if the person mak-

ing the return is the head of a family there shall be an additional exemption of \$400 for each person dependent on such head of a family if related by blood or marriage * *. A non-resident individual may receive the benefit of the exemption provided for in this section only by filing or causing to be filed with the Director of Revenue a true and accurate return of his total income, received from all sources corporate or otherwise, in this State, in the manner prescribed by this act; * * *."

In the foregoing sections the General Assembly has made provision for prorating personal exemptions to be allowed a taxpayer where the entire year is not covered in these words: "exemptions shall be prorated and per centum of tax levied shall be allocated to portions of any year where entire year is not covered or different rates prevail;" further provision is made for prorating other allowable deductions on the basis that the gross income in the State of Missouri bears to the gross income of a non-resident from all sources for the year. As an illustration, certain taxes paid to the federal government are allowable deductions, and in the case of a non-resident taxpayer such a deduction would be prorated in the ratio that his gross income in the State of Missouri bears to his gross income from sources outside this state.

The General Assembly, however, did not provide for prorating the personal exemption allowable to a non-resident taxpayer. For many years it has been the practice to allow a full personal exemption to non-resident taxpayers in the same amount as for resident taxpayers. Senate Bill No. 152 of the 65th General Assembly provides:

"Section 11351a (2).* * * Such nonresident shall be entitled to deductions as provided in Section 11349 but shall be subject to proration on the following basis: where the entire income of such non-resident is not earned in the State of Missouri the allowable deductions, including personal exemptions, shall be prorated on the basis that the gross income in the State of Missouri bears to the gross income of such non-resident from all sources for the year."

By this Act the General Assembly has changed the law to the extent that personal exemptions of non-resident taxpayers shall be prorated on the basis that the gross income in the State of Missouri bears to the gross income of such non-resident from all sources for the year.

It is the opinion of this department that where the entire income of a non-resident taxpayer is not earned or taxable in the State of Missouri, the allowable personal exemption of such non-resident

taxable shall be in the same amount as the allowable personal exemption of a resident taxpayer as provided by Section 11351, R.S. Mo. 1939, reenacted L. 1945, p. 1881, Sec. 1, as amended L. 1945, p. 1963, Sec. 1; further that a rule promulgated by the Director of Revenue providing for prorating the personal exemption allowable to a non-resident taxpayer is contrary to the statutory provision and therefore void; further that the 65th General Assembly has changed this law by Senate Bill 152, said act to become effective April 14, 1950, and provides that where the entire income of a non-resident taxpayer is not earned or taxable in the State of Missouri, the allowable deduction, including personal exemption, shall be prorated on the basis that the gross income in the State of Missouri bears to the gross income from all sources for the year.

CONCLUSION.

The law now provides that non-resident individuals who are required to pay an income tax to the State of Missouri shall be entitled to the personal exemptions as provided by Section 11349, R. S. Mo. 1939, as reenacted L. 1947, Vol. I, p. 527, Sec. 1, and such personal exemption for a non-resident taxpayer shall be in the same amount as for a resident taxpayer.

It is further the opinion of this office that a rule promulgated by a state administrative agency providing for prorating the personal exemption for non-resident taxpayers is contrary to the statutes and therefore void.

The above conclusion is an opinion of the law now in effect. Upon the effective date of Senate Bill 152, the rule or instructions referred to will be in accordance with the statute.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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