

TAXATION: When no income tax return is filed, director  
INCOME TAX: of revenue has four years from date on which  
DIRECTOR OF REVENUE: taxpayer is required by law to file return to  
TAXES: make assessment. Director of Revenue has four  
TAX RETURNS: years from date return was actually filed to  
make additional assessments.

June 12, 1957

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



Dear Sir:

This is in answer to your letter of recent date requesting official opinion of this department and reading as follows:

"This Department desires an official opinion with regard to Section 143.240 as it affects Statute of Limitation as referred to therein, and for the purpose of our request, we quote Section 143.240 in its entirety:

"'Estimate of income, when made--examination of books--credit slip--additional assessment--administration of oaths.--In case any taxpayer shall fail to make return as required by law, the director of revenue shall have authority to estimate the amount of such taxpayer's income, from such sources as he may be able to obtain including the business, records and books of any taxpayer, which business, records and books, the director of revenue is hereby given the right to examine during the usual business hours at any time within four years after the return of such taxpayer is required by law to be filed, and the director of revenue shall thereupon make the assessment including all penalties and interest provided. At any time within four years after any return shall have been filed the director of revenue shall have the right to examine, during the usual business hours, the business, records and books of any individual, corporation, joint stock company, joint stock association or partnership, and to make refund or issue a credit to any taxpayer at the taxpayer's election, if more tax has been paid than legally due, which credit shall be taken as deduction of the succeeding tax

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or taxes based on incomes to the extent of such credit. The director of revenue may determine any deficiency not returned by the taxpayer, and shall make an additional assessment including all penalties and interest provided; provided in case of overpayment of tax, the taxpayer shall not be precluded from any other remedy now or hereafter available. The director of revenue and his deputies shall have power to take and administer all oaths specifically required under any provisions relating to taxes based on incomes. Wherever the term "director" or "director of revenue" is used pertaining to the assessment, levy, collection or payment of taxes based on incomes it shall mean director of revenue or his deputies duly authorized by him. All claims for adjustment or refund shall be made in such form as the director of revenue by regulation shall prescribe.'

"It will be noted that it is apparent under the phraseology with respect to a taxpayer who fails to file a return and the time prescribed under which the Director of Revenue may examine the return as filed by taxpayer for the purpose of issuing credits or making additional assessments. Particular attention is called to that portion of the section providing the statutory limitations in case any taxpayer shall fail to make a return as required by law, in which it is stated that the Director of Revenue is given the right to examine during the usual business hours at any time within four years after the return of such taxpayer is required by law to be filed. Immediately following is the provision that any time within four years after any return shall have been filed, the Director of Revenue shall have the right to examine during the usual business hours the business records and books of any individual, corporation, joint stock company, joint stock association or partnership to make refund or render additional assessments.

"For the purpose of clarifying this request, is it to be construed that in the first instance, in the case of the failure of the taxpayer to file a return, the four years expires at any time within four years after the return of such a taxpayer is required to be filed?

"In the second instance, if, for example, a taxpayer might file his return on the 15th day of March and the statutory period for filing would be March 31 or April 15, as the case might be, would the four years statute

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run from the date the return was actually filed, or the statutory final due date?

"Further, in case taxpayer requests an extension of time and such extension is granted and taxpayer would file his return under the extension 90 days after the statutory filing period, from what date would the four-year statute for adjustment run?"

It is our view that under the provisions of Section 143.240, Cum. Supp. 1955, which you have quoted in your opinion request, the Director of Revenue is authorized, when no income tax return is filed, to estimate the amount of the taxpayer's income and to make the assessment of such income at any time within four years after the date when the return of such taxpayer is required by law to be filed, and the director is authorized, when a return has been filed, to make an additional assessment at any time within four years after the return has actually been filed, whether such return has been filed pursuant to an extension granted by the Director of Revenue or otherwise.

In the case of State v. Rogers, 172 SW2d 940, the Supreme Court of Missouri had before it the question of assessment of income taxes for prior years when no income tax returns had been filed for such years. It is true that in that case the court held as follows, l.c. 942:

"We hold that the County Assessor has no authority to assess an additional income tax or an income tax where the taxpayer failed to file a return unless the auditor's estimate is certified to him within three years after the income tax was due. \* \* \*"

However, since the court was actually passing only on the question of assessment of income taxes when no return had been filed, it is our view that such holding of the court is applicable only insofar as assessment is concerned, when no return has been filed for the year in question. Under such holding, therefore, we believe it to be clear that where no income tax return is filed, the Director of Revenue has four years from the date when such return is required by law to be filed to estimate the amount of such taxpayer's income and make the assessment.

However, it is to be noted that in the Rogers case, the court quoted approvingly from the case of State ex rel. v. Gehner, 27 SW2d 1, decided by the Supreme Court of Missouri en banc, as follows, 172 SW2d l.c. 942:

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"\* \* \* By laws of 1929, § 13123, p. 420, it is provided that, at any time within three years after any income tax return has been filed, the state auditor may certify to the assessor any deficiency therein determined by him, and thereupon the assessor shall make an additional assessment in accordance with such certificate.\* \* \*" (Emphasis added)

Under such holding by the court en banc in the Gehner case, it is clear that the provision of the 1929 law providing "shall have been filed", which is the same phrase as is found in the second sentence of Section 143.240 Cum. Supp. 1955, meant "has been filed". Therefore, it is our view that where an income tax return has been filed the Director of Revenue may determine any deficiency not returned by the taxpayer and make an additional assessment at any time within four years after the actual filing of such return, whether such return was filed pursuant to an extension granted by the Director of Revenue or otherwise.

#### CONCLUSION

It is the opinion of this department that when any taxpayer fails to make an income tax return, the Director of Revenue has authority to estimate such taxpayer's income and make the assessment of such income at any time within four years after the date when the return of such taxpayer is required by law to be filed.

It is the further opinion of this office that when an income tax return has been filed, the Director of Revenue may determine any deficiency not returned by the taxpayer and make an additional assessment at any time within four years after such return was actually filed, whether filed pursuant to an extension granted by the Director of Revenue or otherwise.

The foregoing opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Very truly yours,

John M. Dalton  
Attorney General

CEB/ld