

INCOME TAX:

VENUE:

FAILURE TO FILE REPORTS:

An income tax return is required to be filed either at a branch office of the Revenue Department or at the main office and that venue of the crime of failure to file can be properly laid in the county wherein a branch office is located or in Cole County.

December 30, 1959



Honorable William J. Geekie
Prosecuting Attorney
City of St. Louis
Municipal Courts Building
14th and Market Streets
St. Louis, Missouri

Dear Mr. Geekie:

You recently asked us for an opinion as follows:

"We have recently been requested to prosecute several residents of the State of Illinois for failure to make and file Income Tax Returns on earnings had in this state. We are dubious of the venue for such action and request your opinion.

"We have a copy of your opinion to Mr. L. A. Haake dated November 6, 1959, wherein you conclude that an 'Illinois resident who is employed in Missouri and required under Missouri law to file a Missouri income tax return-----may be prosecuted where the report was required to be filed.' Our question is, where are income tax returns by non residents required to be filed?"

The specific question you ask is: "Where are income tax returns by non-residents required to be filed?" Further conversation with you, however, indicated that your actual concern was as to venue for the criminal action of failure to file an income tax return.

We stated in an opinion dated November 16, 1959, written to Honorable L. A. Haake, Supervisor of the Income Tax Department, that an Illinois resident who is required by law to file

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a Missouri income tax return and who willfully fails to do so is guilty of a misdemeanor and may be prosecuted where the report was required to be filed.

Section 143.210, RSMo 1949, allows the Director of Revenue to set up branch offices. It reads, in part, as follows:

"* * * Returns by persons residing within this state and who are under a duty to file a return, and returns by persons residing without the state and deriving income from sources within the state and within its jurisdiction may be made to any of such branch offices * * * or to the main office of the state department of revenue; * * *."

The Director has set up a branch office in St. Louis and at other locations throughout the state. Returns which are required to be filed could be properly filed at any of these branches.

The answer to your first question, then, is that tax returns of non-residents are required to be filed in either a branch office or in the main office at Jefferson City.

In 1957 the Legislature passed Section 541.035 dealing with venue in cases where a report was not filed as required by law. It reads as follows:

"Offenses for failure or refusal to comply with any law requiring a report to be filed or made in or to the state of Missouri, or any department or officer thereof, shall be held to be committed in the county of the residence of the person failing or refusing to file or make such report, except where the person shall reside without the state of Missouri, in which event the unlawful act is deemed to have been committed in the county wherein the report is required by law to be filed."

It would appear that this crime could be prosecuted in any place where the report could have properly been filed. A similar situation arose in *United States v. Commerford*, 64 F.2d 28. The defendant in that case resided in an eastern district of New York

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and had a business place in the southern district of New York. He failed to file a Federal income tax return which could have been filed either in the eastern or southern district. The defendant took the position that this offense had only one venue and that the government must prove in which district the offense occurred. He relied, in part, on the Sixth Amendment of the Constitution of the United States that allows a defendant the right to a speedy and public trial by an impartial jury of the state and district wherein the crime is committed. The Missouri Constitution, Article I, Section 18a, affords a similar safeguard in that it allows a defendant a speedy public trial by an impartial jury of the county. The court in that case, l.c. 33, said as follows:

" * * * But filing a return in either district discharges the taxpayer's complete duty in both districts. Equally a failure to make a return in either district is an offense in both districts, and the offender may be tried in either district. The objection that this would permit a taxpayer to be tried twice for what is, in substance, one offense, is erroneous. We do not say that the taxpayer owes two duties to file a return or that failure to make a return constitutes two separate offenses. There is but one duty to make a return, and failure constitutes but one offense, and that duty exists and the offense occurs in two districts. This view is supported by the Supreme Court in *Haas v. Henkel*, 216 U. S. 462, 474, 30 S. Ct. 249, 54 L. Ed. 569, 17 Ann. Cas. 1112. There a statute was construed as meaning that the crime was to be considered as committed in both districts, and the court said this presented no difficulty, since the government must then elect to try the accused in one district or the other."

A similar situation was taken up in New York in *People v. Colbert*, 31 N.Y.S. 2d 246. Their law required a filing of an income tax return in any one of a number of district offices or at the state capitol. The defendant maintained that venue to hear the case was only in the state capitol. The court, in conclusion, l.c. 253, said as follows:

" * * * As the law now stands it affords the taxpayer an opportunity to make a return and pay a tax in any one of seven counties. Violation of his duty would seem to impose liability of prosecution in any of these counties."

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CONCLUSION.

Therefore, it is our opinion that an income tax return is required to be filed either at a branch office of the Revenue Department or at the main office and that venue of the crime of failure to file can be properly laid in the county wherein a branch office is located or in Cole County.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James E. Conway.

Yours very truly,

JOHN M. DALTON
Attorney General

JEC:mc