

TAXATION:  
INCOME TAX:  
REGULATED INVESTMENT  
COMPANIES:

The option to receive cash dividend or have dividends reinvested in additional stock is income within the meaning of Section 143.100, RSMo 1949.

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April 27, 1959



Honorable L. Haake, Acting Supervisor  
Income Tax Department  
Department of Revenue  
Jefferson City, Missouri

Dear Mr. Haake:

This is in reply to your inquiry of March 24, 1959, requesting an opinion on the taxability of optional dividends due shareholders of regulated investment companies. We have phrased your question as follows:

When a shareholder of shares in a regulated investment company has the option of receiving a cash dividend or having the amount of the dividend reinvested and receiving in return additional shares of the same company, is this income to the shareholder within the contemplation of the Missouri statutes governing the taxation of income?

Income is defined by Section 143.100, RSMo 1949. Portions of that statute applicable to the questions to be decided are quoted as follows:

"1. 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. In any case where real or personal property has been held for more than six months only fifty per cent of the gain or loss resulting from sale

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or exchange shall be taken into account in computing net income, but in such cases any loss used in computing the net income shall not exceed one thousand dollars over and above gains for the same period.

"2. Income shall also include 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 sources whatever; income shall also include the shares of each person in the undistributed profits and earnings of partnerships, and the share of each stockholder in the undistributed profits and earnings of corporations, joint stock companies, or joint stock associations whose income is not exempted and against whose income there is no provision for a tax."

The portion underscored will be further construed and discussed infra. Note that this section includes both "dividends" and "securities and gains" which would include either cash or dividends which the taxpayer elected to have reinvested in stock. Therefore, it remains only for us to decide whether this right to receive cash or additional investment is "income" within the meaning of this section.

In considering taxability of dividends reinvested in stock of regulated investment companies, it is evident first, that they do not come within any of the classes of tax exempt organizations listed in Section 143.120, RSMo 1949. Likewise, such a dividend does not come within the exceptions to inclusion in a taxpayer's income enumerated in Section 143.150, RSMo 1949, nor is it a deduction from gross income, as set forth in Section 143.160, RSMo 1949. Since it does not appear to be a part of those things which our legislature has seen fit to exclude from income, we next pass to the question of whether it fits within the category of income as defined by Section 143.100, RSMo 1949.

The phrase concerning income, underscored in Section 143.100, RSMo 1949, quoted supra, which reads "from any sources whatsoever," is analogous to Section 61 of the 1954 Internal Revenue Code, as found in Title 26 U. S. C. A., which reads in part "gross income means all income from whatever

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source derived." (Again the underscored emphasis is ours)

Under the Federal statute, it has been said by the United States Supreme Court, speaking through Mr. Justice Stone, in *Harrison v. Shaffner*, 312 U.S. 579, 580, 61 S.Ct. 757, 760, 85 L.Ed. 1055, 1. c. 580 [312 U.S.]:

"Decision in these cases was rested on the principle that the power to dispose of income is the equivalent of ownership of it and that the exercise of the power to procure its payment to another, whether to pay a debt or to make a gift, is within the reach of the statute taxing income 'derived from any source whatever.' "

Likewise, Mr. Justice Holmes said in *Corliss v. Bowers*, Collector of Internal Revenue, 281 U. S. 376, page 378:

"But taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed - the actual benefit for which the tax is paid. \* \* \*"

So, also, the question of anticipatory assignment of income as income to a donor was covered in *Helvering v. Horst*, 311 U.S. 112, 61 S.Ct. 144, 85 L.Ed. 75, 131 A.L.R. 655. Mr. Justice Stone said in that case, 311 U.S., at pages 115 and 116:

"In the ordinary case the taxpayer who acquires the right to receive income is taxed when he receives it, regardless of the time when his right to receive payment accrued. But the rule that income is not taxable until realized has never been taken to mean that the taxpayer, even on the cash receipts basis, who has fully enjoyed the benefit of the economic gain represented by his right to receive income, can escape taxation because he has not himself received payment of it from his obligor. The rule, founded on administrative convenience, is only one of postponement of the tax to the final

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event of enjoyment of the income, usually the receipt of it by the taxpayer, and not one of exemption from taxation where the enjoyment is consummated by some event other than the taxpayer's personal receipt of money or property. Cf. Aluminum Castings Co. v. Rentsch, 282 U.S. 92, 98. This may occur when he has made such use or disposition of his power to receive or control the income as to procure in its place other satisfactions which are of economic worth. \* \* \*

The principle set forth in these cases is the rule of "constructive receipt" of income. An excellent explanation of this principle is found in 2 Mertens, the law of Federal Income Taxation, Section 10.01, at page 1. We quote:

"The individual taxpayer usually thinks in terms of actual receipts and outgo, and accordingly ordinarily reports his income on a cash receipts and disbursements basis. Such a simple concept of net income proved unacceptable, however, because it left with the taxpayer the power to determine the time when items became income.

"There was an obvious necessity to implement the doctrine of actual receipt with the theory of constructive receipt as a test of realization of income. Such a measure of tax liability is not unreasonable in principle. A taxpayer may not deliberately turn his back on income and thus select the year in which he will report it. A failure to recognize constructive receipt of income as income realized would open the door to avoidance and possible evasion. A taxpayer should not have the right to select the year in which to reduce income to possession. It is now well settled that income which is subject to a taxpayer's unfettered command and which he is free to enjoy at his own option is taxed to him as his income whether he sees fit to enjoy it or not.

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"It will be seen from the foregoing that the theory of constructive receipt is properly applicable to those situations involving the question as to when income is received. It should be limited to this primary use, that is, to determine whether a person should be taxed on an item of income which, although not yet physically received, is within his unconditional capacity to reduce to possession. \* \* \*"

Clearly, the right to either receive income or have it reinvested would be income "to the taxpayer" within the meaning of this doctrine and Section 143.100, RSMo 1949.

Dividends of regulated investment companies are now specifically covered by the Federal Internal Revenue Code of 1954 as to federal taxation. See Title 26 U.S.C.A., Sections 851 - 855. See also the Income Tax Regulations for 1959, Section 1.851 and sections immediately following.

#### CONCLUSION.

Therefore, it is the conclusion of this office that where a shareholder in a regulated investment company has the option of receiving a cash dividend or having a dividend reinvested, receiving in return additional stock of the investment company, it results in a benefit to him which is income within the meaning of Section 143.100, RSMo 1949, defining income.

Very truly yours,

John M. Dalton  
Attorney General

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