

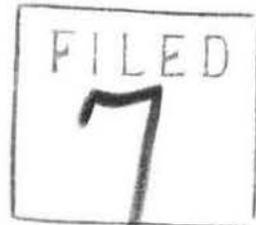
INCOME TAX:

In the interpretation of the meaning of "gross income" as used in Section 143.170, the term should be limited to "income" as defined in Section 143.100.

June 6, 1962

OPINION NO. 7 (1962)
267 (1961)

Honorable M. E. Morris
Director, Department of Revenue
Jefferson Building
Jefferson City, Missouri



Dear Mr. Morris:

This is in reply to your letter requesting an official opinion from this office. Your letter reads as follows:

"We should like to have your official interpretation of Sections 143.100 and 143.170 RSMo 59.

"Section 143.170 in part specifies that 'No person can be claimed as a dependent who has a gross income of four hundred dollars or more during the taxable year for which the return is filed . . .'

"In interpreting the meaning of 'gross income' should any income other than that defined in Section 143.100 be considered in determining a dependency credit?"

Section 143.100 referred to in your opinion request reads as follows:

"Income defined---net income.---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,

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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 of sale of capital assets, consisting of real or personal property which has been held for less than six months one hundred per cent of the gain or loss shall be taken into consideration in computing net income; 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 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 two thousand five hundred dollars over and above gain for the same period. The term 'capital assets', as used in this subsection means property held by the taxpayer (whether or not connected with his trade or business), but does not include:

(1) Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) Personal property used in his trade or business, of a character which is subject to the regular allowance for depreciation;

(3) A copyright, a literary, musical or artistic composition or similar property, held by a taxpayer in whose hands the basis of such property is determined, for the purpose of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property in

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the hands of the person whose personal efforts created such property;

(4) Gain or loss on the sale of property as defined in the foregoing descriptions, subdivision (1) to (4), shall be classified as ordinary gain or loss transactions taxable one hundred per cent;

(5) In the case (a) of a casual sale or other casual disposition of personal property (other than property of a kind which would be properly included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding one thousand dollars, or (b) of a sale or other disposition of real property, if in either case the initial payments do not exceed thirty per cent of the selling price, the tax on the net profit on such transaction, computed as aforesaid, shall be imposed only on that portion of such net profit which the amount actually received in payment of the purchase price bears to the total purchase price. As used in this section, the term 'initial payments' means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

"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 share 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.

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"3. Amounts received as an annuity under an annuity contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to three per cent of the aggregate premiums or considerations paid for such annuity, whether or not paid during such year, until the aggregate amount excluded from gross income equals the aggregate premiums or considerations paid for such annuity.

"4. Income shall also include all periodic payments, whether or not made at regular intervals, received by a wife who is divorced or legally separated from her husband under a decree of divorce or separate maintenance, but shall not include that portion of such periodic payments which are fixed by the decree or written instrument for the support of minor children of such husband. If any periodic payment is less than the amount specified in the decree or written instrument for the support of minor children, such payment, to the extent of such sum payable for such support, shall be considered a payment for such support. Such payments as are imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation for alimony shall be deductible from the adjusted gross income as determined in accordance with this section. No part of any court decree which represents payment for child support is deductible on the income tax return.

"5. Interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise, to the extent deductible by such residents, interest on any obligation secured by lien on any property having a situs in this state, to the extent deductible by the lienor, and wages, salaries and compensation paid

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to a nonresident for services rendered in this state, and undistributed profits and earnings of partnership accruing on account of business and transaction in this state, and dividends on capital stock, and 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, accruing on account of business transactions in this state, and gains, profits and earnings from any use or sale of real or personal property in this state, or any interest therein shall be considered as from sources within this state.

"6. Dividends on the stock of any subsidiary corporation incorporated under the laws of this state shall not be regarded as taxable income to the parent corporation where such parent corporation makes a consolidated return for income tax purposes to the United States and includes the income of such subsidiary therein. Dividends on corporate stock owned by another corporation shall not be income of the corporation receiving such dividends where the corporation declaring the dividend has paid its tax to this state on the portion of its income subject to tax by this state.

"7. Net income shall be determined by deducting from income the deductions now or hereafter provided by law."

Section 143.160 provides "In ascertaining net income there may be deducted from gross income derived during the same period the following: * * *". (Emphasis supplied). The statute then proceeds to set out allowable deductions to the taxpayer.

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Section 143.170 generally sets out the standard deductions for dependents and states " * * * No person can be claimed as a dependent who has a gross income of four hundred dollars or more during the taxable year for which the return is filed * * *". The statute then proceeds to define who may qualify as dependents.

The question presented by you hinges solely on the meaning of "gross income" as referred to in Section 143.170. Is this term limited by the definition of "income" referred to in Section 143.100 or is some other standard applied?

There is a general rule of statutory construction for revenue laws that they are construed in favor of the taxpayer and against the taxing authority. In re Kansas City Star Company, 142 SW2d 1029, 346 Mo. 658; State ex rel. Ford Motor Company vs. Gahner, 24 SW2d 13, 325 Mo. 24. The fact that a particular subject of taxation is within the purview and intendment of the taxing statute must clearly appear. Artophone Corp. vs. Coale, 133 SW2d 342, 347, 345 Mo. 344.

Another applicable rule of statutory construction is that the definition of a term in a statute must be given great weight in construing the statute. In the case of Producers Produce Company vs. Industrial Commission, 281 SW2d 619, the Springfield Court of Appeals noted, l. c. 629 [6-9]:

"We think the trial court disregarded the rule of construction that the statute as a whole should be considered in determining the intention of the Legislature in its passage. The lawmaking body's own construction of its language by means of definition of the terms employed, should be followed in the interpretation of the Act or section to which it relates and is intended to apply. Indeed a statutory definition supersedes the commonly accepted, dictionary or judicial definition. Where the Act passed by the Legislature embodies a definition it is binding on the courts."

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The Court in the above decision cited with approval the case of Lennox Realty Company vs. Hackett, 187 Atl. 895, 898, which held:

"* * * even if the mortgages here involved could be considered, practically or theoretically, as a part of the capital of the plaintiff corporation as the tax commissioner contends, they are not within the scope of any of the elements specified by the statute, and if it might be assumed that the General Assembly would have so enlarged the definition as to include them had it contemplated such a situation as is here presented, and it is not our province to supply the omission by inferior judicial construction." (Emphasis supplied).

To construe "income" as other than that as defined in Chapter 143, RSMo 1959, would make effective administration impossible. There is no other workable standard available other than that spelled out in this statutory definition.

CONCLUSION

In interpreting the meaning of "gross income" as used in Section 143.170, the term should be limited to "income" as defined in Section 143.100.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert D. Kingsland.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

RDK:mw:jh