

TAXATION (INCOME):

Section 143.140, RSMo 1969, does not authorize a deduction from gross income, in determining net income for income tax purposes, of amounts paid into a retirement plan trust by self-employed individuals.

OPINION NO. 111

April 15, 1971

Honorable Maurice Schechter
Senator, 13th District
41 Country Fair Lane
Creve Coeur, Missouri 63141



Dear Senator Schechter:

This official opinion is rendered pursuant to the request contained in your letter concerning the treatment, under the Missouri Income Tax Law, of retirement plan trusts created by self-employed persons.

More specifically, the question raised by your letter is whether or not Section 143.140, RSMo, as amended by Senate Bill No. 318, A.L.1959, authorizes the deduction from gross income in computing income tax liability of amounts paid into self-employment retirement plans.

The law as originally enacted (L.1941, p.690, §11347A) provided as follows:

"A trust created by an employer and employees as part of a stock bonus, pension or profit-sharing plan, for the exclusive benefit of employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees, the earnings and principal of the fund accumulated by the trust in accordance with such plan, . . . shall not be taxable under sections 143.030 to 143.080, but the amount actually distributed, or made available to any distributee shall be taxable to him in the year in which so distributed or made available, to the extent that it exceeds the total amount theretofore paid in by him."

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In 1959, this section of the statute was amended by adding in the first paragraph thereof the following language:

" . . . or a trust consisting solely of one or more restricted retirement funds, created for one or more self-employed persons as part of a retirement plan for the exclusive benefit of such self-employed person or persons, to which contributions are made by such self-employed person or persons, for the purpose of distributing to such self-employed person or persons, the earnings and principal of the fund accumulated by the trust in accordance with such plan, . . . " (S.B.318, A.L.1959)

It should be observed that Section 143.140 relates to the exemption from income taxation of the earnings and principal of certain trust entities. It does not expressly authorize a deduction to anyone for amounts contributed or paid into such retirement plan trusts. It is well settled that deductions in computing income taxes are a matter of legislative grace and cannot be granted in the absence of specific legislative authority. Mertens Law of Federal Income Taxation, Section 3.08. Furthermore, in our opinion, the language of Section 143.140 is unambiguous, therefore it must be construed in accordance with its manifest intent without reaching for a meaning beyond the statute itself. State ex rel. Bell v. Phillips Petroleum Co., 160 S.W.2d 764, 349 Mo.360; State ex rel. Allen v. Yeaman (App.1969) 440 S.W.2d 138. Inasmuch as the language of this statute clearly provides for the exemption of the earnings and principal of these trusts but fails to provide for a deduction of amounts contributed to the fund, the authority for deduction, if any exists, must be found elsewhere in the law.

No express provision is made in the law for deduction of amounts paid into employee retirement trusts created for self-employed persons or otherwise. However, Section 143.160, RSMo 1969, relating to deductions does authorize the deduction of certain expenses, stating:

"1. In ascertaining net income there may be deducted from gross income derived during the same period the following:

(1) Expenses: All of the ordinary and necessary expenses . . . paid within the year in the maintenance and operation of the taxpayer's business and properties, . . . "

Under the provisions of this section amounts paid by an employer (whether corporate, partnership, individual or otherwise) to an employee trust are sometimes allowed as a deduction from gross income as ordinary and necessary business expenses. (C.C.H. State Tax Reporter, Missouri, Paragraphs 10-600, 11-901). This, however, does not apply in the case of self-employed persons where the usual common law employer-employee relationship does not exist.

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The federal law contains special provisions allowing deduction of contributions by self-employed persons to qualified pension or retirement plans. The Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat.809) effective with respect to taxable years beginning after December 31, 1962, permits all self-employed individuals, who choose to do so, to be covered by a qualified pension or profit sharing plan in much the same way as employees are covered. This law gives self-employed individuals, including partners, the benefit of current tax deductions for contributions to a qualified retirement plan. At the same time, the Act permits a tax-free buildup of pension fund investments. No income will be taxed until it is distributed or made available to the self-employed individual or his beneficiary. (Internal Revenue Code 1954, §404).

There is no counterpart in the Missouri statutes authorizing deduction of such contributions. As indicated above, Section 143.140, RSMo 1969, does allow the tax free buildup of trust funds created by self-employed individuals for retirement purposes, but the legislature has not passed laws establishing a comprehensive system as now exists with respect to federal taxpayers.

In the letter requesting an opinion of this office it is suggested that the 1959 amendment to Section 143.140 attempted to set up the same procedure for a self-employed person under Missouri law as is contained in the federal statutes. In this regard we emphasize that the Self-Employed Individuals Tax Retirement Act of 1962 did not become effective until 1963, more than three years after the Missouri amendment became law. Inasmuch as Missouri law is silent with respect to granting such deductions, it is apparent that the federal law and the Missouri law are different in this respect.

CONCLUSION

It is the opinion of this office that Section 143.140, RSMo 1969, does not authorize a deduction from gross income, in determining net income for income tax purposes, of amounts paid into a retirement plan trust by self-employed individuals.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John E. Park.

Very truly yours,



JOHN C. DANFORTH
Attorney General