

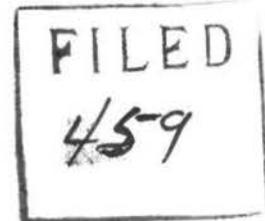
TAXATION (INCOME):
TAX SHELTERED ANNUITY:

One may deduct from his gross income reportable for Missouri income tax purposes an amount used to purchase a "tax sheltered annuity" pursuant to a deferred compensation agreement with the employer so long as that deduction is not in excess of the amount properly includable in the gross income of the employee pursuant to the provisions of the Internal Revenue Code of the United States.

OPINION NO. 459

December 29, 1971

Honorable Joseph W. Beckerle
Representative, District 61
6145 South Grand
St. Louis, Missouri 63111



Dear Representative Beckerle:

This opinion is in response to your question of whether an employee of the St. Louis Board of Education may deduct from his gross income reportable for Missouri income tax purposes an amount used to purchase a "tax sheltered annuity," pursuant to a deferred compensation agreement with the employer.

Earlier this year the 76th General Assembly enacted Senate Bill No. 270 (Section 143.100, RSMo). That section, in defining "income" states, in subsection 7:

"The amount to be included in the gross income of an employee attributable to contributions by or cost to his employer for group term life insurance, accident and health plans and pensions or profit-sharing plans on his behalf, or attributable to amounts received by an employee under such accident and health plans, or attributable to any agreement with his employer for a salary adjustment in return for a deferred compensation arrangement between the employer and the employee, shall be the same as, and not in excess of, the amount properly includable in the gross income of the employee pursuant to the provisions of the Internal Revenue Code of the United States."
(Emphasis added)

You enclosed forms that purport to authorize a salary reduction for employees in order to purchase a tax sheltered variable annuity as authorized by Section 403(B) of the Internal Revenue Code.

Honorable Joseph W. Beckerle

To qualify as a deduction under this section, the following elements must be present: (1) a deferred compensation agreement must be executed between employer and employee; (2) the compensation deferred must be used to purchase an annuity that qualifies for an income tax deduction under the Federal Internal Revenue Code.

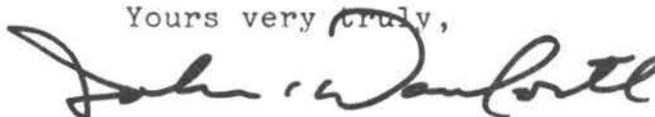
The foregoing are only general standards for the application of this new statute, Senate Bill No. 270. Determinations of the qualification of specific programs for deduction must be made on a case by case basis. Strict compliance with the terms of the statute will be necessary to qualify a deferred compensation program for the deduction provided by Senate Bill No. 270. It is a well established principle of the law of taxation that a deduction will be allowed only where clearly provided for by statute. Since such deductions represent statutory grants, general equitable considerations are irrelevant. E.g. State v. L. & A. Contracting Company, 133 So.2d 546 (Miss. 1961); 85 C.J.S., Taxation, Section 1099.

CONCLUSION

It is therefore the opinion of this office that one may deduct from his gross income reportable for Missouri income tax purposes an amount used to purchase a "tax sheltered annuity" pursuant to a deferred compensation agreement with the employer so long as that deduction is not in excess of the amount properly includable in the gross income of the employee pursuant to the provisions of the Internal Revenue Code of the United States.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Peter H. Ruger.

Yours very truly,



JOHN C. DANFORTH
Attorney General