

TAXATION (INCOME):  
CONSTITUTIONAL LAW:

The property tax relief act for the elderly (CCSHB Nos. 149, 417, 425, 471 and 47, 77th General Assembly) applies for the entire calendar year of 1973.

OPINION NO. 240

August 24, 1973



Mr. James R. Spradling  
Director of Revenue  
Department of Revenue  
Jefferson State Office Building  
Jefferson City, Missouri 65101

Dear Mr. Spradling:

This opinion is in response to your question asking:

"1. Does a claimant filing for a period ending on or after October 1, 1973 compute his or her credit by utilizing income received as defined in Section 1 (1) of the bill (Conference Committee Substitute for HB 149, HB 417, HB 425, HB 471 and HB 47) [77th General Assembly].

- a. For the entire taxable period,
- b. For the period from October 1, 1973 to the end of the taxable year,  
or
- c. For the proportionate part of the taxable period?

"2. Same question as above with respect to 'rent constituting property taxes accrued,' as defined in Section 1 (4) of the bill.

"3. Same question as above with respect to 'property taxes accrued,' as defined in Section 1 (6) of the bill."

The bill to which you refer grants tax relief to persons sixty-five years of age or over having income as defined therein of seven thousand five hundred dollars or less based on a graduated formula which takes into consideration the amount of real property taxes or rent, as therein defined, which the taxpayer has paid.

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The provision of the bill which is pertinent to your inquiry is Section 6, which provides:

"This act shall become effective on October 1, 1973, with respect to the calendar year 1973."

Earlier versions of the bill provided that "[T]his act shall become effective on January 1, 1974, with respect to the calendar year 1974."

Clearly, if the bill had not been so amended in passage it would have applied to the calendar year beginning in 1974. Likewise, if the bill contained no effective date it would have been effective by operation of law on September 28, 1973, under the provisions of Section 1.130, RSMo. However, in the latter case there would have been no literal indication of legislative intent with respect to the calendar year to which such relief would initially apply.

Under Section 2 of the bill, "[T]he credit regarding the property taxes of a calendar year may only be claimed on a return for the calendar year or for a claimant's return for a fiscal year that includes the end of the calendar year." Considering the bill as a whole and the nature of the problems attendant to any attempted proration, it appears that the legislature was thinking in terms of an entire calendar year when it provided in Section 6 that the "act shall become effective on October 1, 1973, with respect to the calendar year 1973."

The definition of "Gross rent", Section 1(5) of the bill, refers to "rental paid solely for the right of occupancy, at arms-length, of a homestead during the calendar year 1973 and later, . . ." (Emphasis added). Likewise the definition of "Property taxes accrued", in Section 1(6) of the bill, refers to taxes "levied on a claimant's homestead in 1973". (Emphasis added). The reference to 1973 in Sections 1(5) and 1(6) of the bill were the result of amendments made during passage to conform with the amended provisions of Section 6 respecting the application of the bill to the calendar year 1973. We conclude in the premises that the legislature referred to "calendar year" in Section 6 as the full or entire calendar year and not a portion thereof and that it was the legislative intent to allow the credit and the income, as defined therein, to be computed on the basis of the full calendar year.

The next obvious question is whether such an application is constitutionally permissible. Section 13 of Article I of the

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Constitution of Missouri prohibits the enactment of a retrospective law. Such section provides as follows:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

However, such constitutional provision has no application to the present act because such section has no application to the enactment of a law which impairs the state's rights.

The Supreme Court of Missouri in the case of Graham Paper Co. v. Gehner, 59 S.W.2d 49 (Mo. banc 1933), in commenting on the constitutional provision prohibiting retrospective laws said, l.c. 51:

"In this connection the plaintiff contends that although the amended law of 1927 is retrospective in its operation if construed to cover a period antedating the time it went into effect, yet as it is detrimental to the state only, and not to the taxpayer, there is no valid objection, so far as the state is concerned, to the law being retrospective. The provision of the Constitution inhibiting laws retrospective in their operation is for the protection of the citizen and not the state. The law is stated in 12 C.J. 1087 thus: 'The state may constitutionally pass retrospective laws impairing its own rights, and may impose new liabilities with respect to transactions already past on the state itself or on the governmental subdivisions thereof.' . . ."

In such case the Supreme Court also held that the provisions of Section 51 of Article IV of the 1875 Constitution prohibited the legislature from changing the income tax structure when such a change would in effect release or extinguish a debt due the state. A comparable provision is now found as Section 39(5) of Article III of the Missouri Constitution. However, it is our view that the constitutional provision prohibiting the releasing or extinguishing of an indebtedness, liability or obligation due the state has no application to the present act.

Section 6(a) of Article X of the Missouri Constitution which was adopted at the general election of November 7, 1972, and which

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became effective thirty days after adoption under the provisions of Section 2(b) of Article XII of the Constitution, provides:

"The general assembly may provide that a portion of the valuation of real property actually occupied by the owner or owners thereof, who are over the age of sixty-five, as a homestead, be exempted from the payment of taxes thereon, in such amounts and upon such conditions as may be determined by law, or the general assembly may provide for certain tax credits or rebates in lieu of such an exemption, but any such law shall further provide for restitution to the respective political subdivisions of revenues lost by reason of the exemption, and any such law may also provide for comparable financial relief to persons of such ages who are not the owners of homesteads but who occupy rental property as their homes."

The above section is, in effect, an extension of the provisions of Section 38(a) of Article III of the Constitution which prohibits grants to individuals but which allows certain exceptions such as "for old age assistance" and specifically authorizes tax credits or rebates.

Thus in our view, the bill is a welfare measure which utilizes the Income Tax Unit of the Department of Revenue as the operational vehicle for the administration of grants to the elderly persons who come within its provisions.

In view of this specific constitutional authorization we are of the view that it was within the power of the legislature to provide that the bill apply with respect to the entire calendar year 1973.

In reaching these conclusions it must be borne in mind that statutory provisions of a remedial nature are to be liberally interpreted. State to use Houseworth v. Dill, 60 Mo. 433 (1875). The same is true of statutes enacted for a beneficent purpose. Schmitz v. Carr Trombley Mfg. Co., 139 S.W.2d 1064 (St.L.Ct.App. 1940); Garrard v. State Department of Public Health and Welfare, 375 S.W.2d 582 (Spr.Ct.App. 1964).

#### CONCLUSION

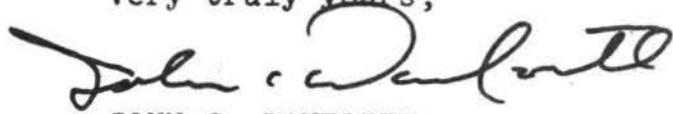
It is the opinion of this office that the property tax relief act for the elderly (CCSHB Nos. 149, 417, 425, 471 and

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47, 77th General Assembly) applies for the entire calendar year of 1973.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General