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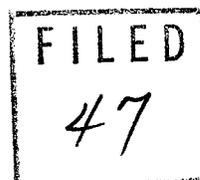
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March 21, 1985

OPINION LETTER NO. 47-85

The Honorable Travis Morrison
Representative, District 147
State Capitol Building, Room 114
Jefferson City, Missouri 65101



Dear Representative Morrison:

This letter is in response to your question asking if legislation were passed by the First Regular Session of the Eighty-Third General Assembly of the State of Missouri (the 1985 session) exempting all social security benefit payments from Missouri state income taxation, would such legislation exempt social security benefit payments paid or received prior to the effective date of the bill.

I.R.C. Section 86 makes certain social security and railroad retirement benefits received after December 31, 1983, includible in gross income for federal income tax purposes. Section 143.121.1, RSMo 1978, makes one's Missouri adjusted gross income, his federal adjusted gross income, subject to certain modifications not relevant here. Accordingly, under current Missouri law, certain social security benefit payments are subject to Missouri state income taxation.

In Graham Paper Co. v. Gehner, 332 Mo. 155, 59 S.W.2d 49, 51-52 (banc 1933), the court interpreted Article IV, Section 51, Missouri Constitution (1875) (now, Article III, Section 39(5), Missouri Constitution),¹ as prohibiting the General Assembly from

¹Article III, Section 39(5), Missouri Constitution, states:

The general assembly shall not have power:

* * *

To release or extinguish or to authorize the releasing or extinguishing, in whole or in part, without consideration, the indebtedness, liability or obligation of any corporation or individual due to this state or any county or municipal corporation.

The Honorable Travis Morrison

releasing or extinguishing inchoate tax obligations owed the State of Missouri, and, therefore, the General Assembly may not release or extinguish inchoate tax obligations incurred prior to the effective date of the legislation creating the release, extinguishment or exemption.

We do note, however, that State ex rel. Kolen v. Southwestern Bell Telephone Co., 316 Mo. 1008, 292 S.W. 1037, 1038 (1927) suggests that the General Assembly could exempt from Missouri state income taxation all social security benefit payments paid or received after the effective date of the legislation creating the exemption, and, in addition, the General Assembly could create a deduction (from other income paid or received after the effective date of the legislation) equal to the amount of social security benefits paid or received in the tax year prior to the effective date of the legislation. Assuming the individual in question has sufficient non-social security income paid or received after the effective date of such legislation, the resulting tax treatment is equivalent to a total exemption of social security payments paid or received for the year.

Yours very truly,



WILLIAM L. WEBSTER
Attorney General