

INCOME TAX: Income tax by foreign state may be deducted.

✓ 10115 -- 10117 - 10120 RE 311-1119

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Hon. Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Mr. Smith:

This department is in receipt of your letter in which you make the following request for an opinion:

"Will you please furnish this office an interpretation of the following paragraph, found under Section 10120, imposed by Revised Statutes, 1929, and Amended Laws, 1931:

'Income on which tax paid in another state: Such part of the income in any taxable year, on which a tax is imposed by any other state and paid to such state, shall be deducted where such income is included in the taxpayer's return, but this deduction shall not be allowed in any case where the net income applicable to this state shall be determined by multiplying the total net income by a fraction.'

An early reply will be appreciated."

Sec. 10115, R.S. Mo. 1929, as Amended Laws of Mo. 1931, p. 365 provides in part as follows:

****a tax shall be levied upon, assessed against, collected from, and paid by every individual, a citizen or resident of this state, upon net income received from all sources during the preceding year in excess of the exemptions now or hereafter provided, and a like tax

shall be levied upon, assessed against, collected from, and paid by every individual, not a resident or citizen of this state, upon net income received from all sources within this state, during the preceding year in excess of the exemptions now or hereafter provided; ****

The regulations of the State Auditor with reference to this section of the law are as follows:

(a) Individual Residents and Citizens. Every individual a citizen or resident of the State of Missouri is liable to tax on his or her entire net income from all sources within and without this state, even though he may own no assets within this state and derive no income from sources within this state. A person domiciled in the State of Missouri and any person who maintains a permanent place of residence within this state is considered a resident of this state. See Sec. 10117 for gross income of residents and citizens and Sec. 10120 for allowable deductions.

(b) Non Resident Individuals are liable to tax on net income derived from sources within the State of Missouri. Any non-resident individual employed by, or working for any corporation or individual, with principal office or branch office in this state is considered as receiving his income from sources in Missouri even though his employment may be entirely outside this state and only directed from such principal or branch office. Any individual actively engaged in employment in this state shall be considered as receiving income from this state regardless of where principal office or point of remuneration may be.

Non-resident individuals failing or refusing to file returns within the time required shall lose the right to claim personal exemptions. See Sec. 10117 for gross income from sources within Missouri, and Sec. 10120 for deductions allowable to non-resident individuals."

For the purpose of determining net income, the law permits certain deductions from gross income. The statutory deductions are in general, though not exclusively, expenditures other than capital expenditures, connected with the production of income. Sec. 10120 R.S. Mo. 1929 provides for these deductions, and listed thereunder is the following deduction:

"Income on which tax paid in another state: Such part of the income in any taxable year, on which a tax is imposed by any other state and paid to such state, shall be deducted where such income is included in the taxpayer's return, but this deduction shall not be allowed in any case where the net income applicable to this state shall be determined by multiplying the total net income by a fraction."

In interpreting the above paragraph, it may be helpful to illustrate our position by the use of two hypothetical cases:

(1) For instance, X lives in the State of New York and has income from said state and also, income from sources within the State of Missouri. A tax is imposed by the State of New York on the income received from the State of New York. In making his return to the State of Missouri, X includes the New York income. This may be deducted in arriving at the taxable net income in Missouri, for under Sec. 10115, R.S. Mo. 1929 a non-resident is taxed only "upon net income received from all sources within this state". However, in making his return to the State of Missouri, if X determines the net income applicable to this State by multiplying the total net income by a fraction, no deduction shall be allowed for the taxpayer has already subtracted the income earned without the State of Missouri and he is, therefore, under Sec. 10120 entitled to no deduction.

(2) The situation becomes more complicated when we consider the case of a resident of the State of Missouri. For instance: X, a resident of the State of Missouri receives income from the State of Missouri and also, from the State of New York. Under Sec. 10115, he is required to pay a tax "upon net income received from all sources". This necessarily means that a tax is

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imposed on all income, whether received from within or without the State of Missouri. This is equitable in so long as the foreign state does not impose a tax upon income earned within the foreign state. If such tax is imposed by the foreign state, it certainly cannot be said to have been the intention of the Legislature to tax the same income twice. Therefore, under the deduction allowed in Sec. 10120, X may, in determining his net income, deduct the income upon which a tax is imposed by the State of New York, providing he does not determine the net income applicable to this state by multiplying the total net income by a fraction.

It is therefore the opinion of this department, reading that portion of Sec. 10120 referred to by you as a whole, that a resident or non-resident individual having income from sources within the State of Missouri, and also income from without the state, and a tax is imposed by another state from which the other income is derived, and such income is included in the Return filed to the State of Missouri, that portion may be deducted in arriving at the net taxable income to the State of Missouri, provided the net income applicable to the State of Missouri is not determined by multiplying the total income by a fraction as provided in Sec. 10115.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
Attorney General

JWH:AH