

INCOME 1

Construction to be placed on the phrase
"head of a family" as used in Section 11351,
R. S. Mo. 1939.

February 27, 1945

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Attention: Mr. W. H. Holman
Income Tax Supervisor

Dear Sir:

Reference is made to your letter under date of
February 21, 1945, requesting an official opinion of this
office, and reading as follows:

"Section 11351, R. S. Missouri, 1939,
sets forth the exemptions and deductions
for dependents as allowed under the Mis-
souri state income tax law.

"Please advise whether or not in your
opinion an individual can qualify as
'Head of the Family' if unmarried and
having no dependent as defined in this
same section. If an individual can
qualify as 'Head of the Family' without
having a dependent as defined in this
section and is unmarried, please advise
what circumstances would justify the al-
lowance of such claim."

The pertinent parts of Section 11351, R. S. Mo. 1939,
regarding your request, read as follows:

"For the purposes of this tax, there
shall be allowed as an exemption in the
nature of a deduction from the amount of
the net income of each resident individual,

ascertained as provided herein, the sum of \$1,000 plus \$1,000 additional if the person making the return be the head of a family, * * * Provided further, that if the person making the return is the head of a family there shall be an additional exemption of \$200 for each child dependent upon such person, if under eighteen years of age, or if incapable of self-support because mentally or physically defective, * * *."

The Legislature did not define the phrase "head of a family," used in the statute mentioned, nor have we been able to discover any appellate court decisions construing the phrase in connection with this particular statute. In the premises, we are required to construe the words "head of a family" under the general rules of construction applicable to statutory interpretation.

Section 655, R. S. Mo. 1939, reads, in part, as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import; * * *"

Section 11351, R. S. Mo. 1939, first appeared in the original Missouri income tax law of 1917, and, with some changes in the amount of exemptions allowed, remains substantially the same to this date. The phrase "head of a family" was incorporated in the original law and was apparently taken from the laws relating to exemptions from levy of execution.

At the time of the passage of the original Missouri income tax law in 1917, the phrase "head of a family" had acquired a technical meaning, arising from the common law and appellate court decisions. The matter of construction of the words so used fall within the case of *Ex Parte Bethurum*, 66 Mo. 545, from which we quote:

"When words, which have long had a technical meaning, as used in statutes and judicial proceedings, are employed in constitutions and statutes, they are to be understood in their technical sense, unless there be something to show that they were employed in a different sense."

The technical meaning of the phrase "head of a family" had been established by appellate court decisions at the time of the enactment of the state income tax law. Such meaning was defined by the Missouri Supreme Court in the case of *Ridenour-Baker Grocery Co. v. Monroe*, 142 Mo. 165, reading as follows:

"Long before the adoption of our homestead act this court had defined the words 'head of a family' to be one who controls, supervises and manages the affairs about the house, not necessarily a father or a husband. *State v. Slater*, 22 Mo. 464; *Spengler v. Kaufman*, 46 Mo. App. 644; *Wade v. Jones*, 20 Mo. 75; *State to use v. Kane*, 42 Mo. App. 253.

"'A family is a collective body of persons who live in one house under one head or manager.' *Duncan v. Frank*, 8 Mo. App. 286."

A number of cases decided subsequently to the enactment of the original Missouri income tax law are to the same effect.

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CONCLUSION

In the premises, and in the light of the long established and well defined meaning given to the phrase "head of a family" at the time such phrase was incorporated into the Missouri income tax law, we are of the opinion that a single person can attain the status of "head of a family" in the event such person controls, supervises and manages the affairs of a household.

Respectfully submitted

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

HARRY H. KAY
(Acting) Attorney General

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2/23/45