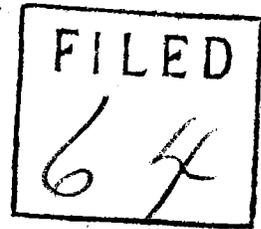


TAXATION AND REVENUE: Applicable personal exemptions to be allowed under Missouri income tax law for 1946.



August 20, 1946

8/27

Honorable M. E. Morris
Director of Revenue
Jefferson City, Missouri

Attention: Mr. W. H. Holman, Supervisor
Income Tax Unit, Division of Collection

Dear Sir:

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

"The present Missouri state income tax law provides for certain personal exemptions in Section 11351, R. S. Missouri, 1939, while House Bill #676 which was recently signed by Governor Donnelly provides larger personal exemptions than Section 11351.

"Please advise whether the allowable personal exemptions for the year 1946 will be the exemptions provided under the new law, or will it be necessary to prorate these exemptions according to the number of months each law was in effect.

"It is requested that you furnish this department with an opinion in this matter."

House Bill No. 676 of the 63rd General Assembly, referred to in your letter, became effective on July 1, 1946. Among other provisions incorporated therein, there appears Section 11351, reading, in part, 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 \$1,200 plus \$1,200 additional if the person making the return be the head of a family, or a married man with a wife living with him, or plus the sum of \$1,200 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,200 be deducted by both a husband and a wife: Provided, that only one deduction of \$2,400 shall be from the aggregate income of both husband and wife when living together: Provided, further, that if the person making the return is the head of a family there shall be an additional exemption of \$400.00 for each person dependent upon such head of a family if related by blood or marriage if said dependent receives more than one half of his or her support from the person making the return, * * *"

Comparison of this statute with Section 11351, R. S. Mo. 1939, discloses that increased personal exemptions are now allowable, namely, \$1,200 in the case of single persons, rather than \$1,000, previously allowed; \$2,400 in the case of married persons filing joint returns, rather than \$2,000, as previously, and \$400 for dependents, rather than \$300, as previously.

It is a primary rule of statutory construction that all statutes relating to the same subject matter must be construed together. In this regard, we direct your attention to the case of State v. Naylor, 40 S. W. (2d) 1079, 328 Mo. 335, from which we quote:

"We do not lose sight of the fact that all statutes that may be applicable must be read and construed together and, if possible, harmonized. * * *"

Applying this rule to the question at hand, we note that incorporated in House Bill No. 676 were two further provisions relating to exemptions. For instance, Section 11343 contains the following:

" * * * exemptions shall be prorated and per centum of tax levied shall be allocated to portions of any year where entire year is not covered or different rates may prevail. * * *"

We also find the same phraseology employed in subsection (c) of Section 11343.

Consideration of these clauses found in other parts of the act indicates to us that it was the intention of the Legislature that with respect to exemptions, such exemptions should be prorated for the portion of the year to which they are applicable.

That the Missouri income tax is not a unit was held by the Supreme Court en Banc, in *Graham Paper Co. v. Gehner*, 59 S. W. (2d) 49, wherein the court said, after referring to the decision reached in *Reed v. Swan*, 133 Mo. 100, 34 S. W. 483:

"This last holding effectually answers the contention made here that the income tax for a given year is a unit and not proportionable for a part of the year at one rate and for another part at another rate, * * * and that prior to the maturity date it does not have even a potential existence or rise to the dignity of an obligation."

The case of *Graham Paper Co. v. Gehner*, supra, is in many respects analogous to the situation presented by the enactment of House Bill No. 676. That case was for the purpose of obtaining a construction of an amendment to the existing Missouri income tax law, the amendment, in effect, providing that subsequent to July 3, 1927, a different method should be used for the purpose of determining the net income of corporations than that employed for that portion of the year prior to such date. So far as the particular taxpayer who was plaintiff in that action was concerned, the amendment had the effect of increasing the tax due. Collection of the increase was resisted on the ground that the entire tax should be computed on the basis provided by the law before amendment. That the Legislature might properly provide for a different rate to be levied upon the net income of taxpayers for different portions of the same tax year was distinctly held in the case, the court saying, l. c. 51:

"In *State ex rel. Koeln v. Southwestern Bell Telephone Company*, 316 Mo. 1008, 1011, 292

S. W. 1037, this court said: 'Whether a tax rate may be different for different parts of a year, instead of taking the year as a unit for taxation purposes, was settled by this court in case of Smith v. Dirckx, 283 Mo. 188, 223 S. W. 104, 11 A.L.R. 510. The Legislature may provide for an income tax rate prevailing part of the year with a different rate for the other part of the year.'

Although the opinion refers to the action of the Legislature in amending the 1927 income tax law as a "different rate," such in fact was not the case. What had been changed by the amendment was the basis for determining the net income to which the rate was applicable. Earlier in the opinion, l. c. 49, the court had said: "The rate of taxation was continued at 1 per cent." Reference to the legislative proceedings discloses this to be true.

We think the same reasoning to be applicable to your question relative to the personal exemptions which have been increased. It might be argued that the new personal exemptions should be allowed to the net income derived for the entire year. We do not believe, however, that this position would be tenable in that it does not rest within the power of the General Assembly to authorize the releasing or extinguishing of any indebtedness, liability or obligation due the state or any county or municipal corporation. We quote again from Graham Paper Co. v. Gehner, cited supra, 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.' See *New Orleans v. Clark*, 95 U. S. 644, 24 L. Ed. 521. This merely means that such laws are retroactive in their operation, but that the sovereign state may forego or waive its own rights and may be held to have done so by the enactment of the law called in question. It is therefore argued with much force that the act in question merely reduced the income taxes to be collected by the state, beginning with January 1, 1927, and though the act did not go into effect till July 3, 1927, the state could lawfully impair its own rights and relieve the taxpayer of part of the burden of taxes already incurred. Defendants' reply to this is that if the constitutional provision against retrospective laws is available to citizens only, and not to the state, there is another constitutional provision equally effective and clearly applicable in favor of the state as against legislative enactments purporting to release or extinguish obligations or liabilities to the state or any governmental subdivision of the same, to wit, section 51 of article 4 of the Constitution, which provides: 'The General Assembly shall have no power to release or extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State, or to any county or other municipal corporation therein.' The language of this constitutional provision is very broad and comprehensive in protecting the state against legislative acts impairing obligations due to it, in that it prohibits the release or extinguishment, in whole or in part, not only of indebtedness to the state, county, or municipality, but liabilities or obligations of every kind. It will be noticed that this constitutional provision is couched in the language and uses the same terms as are used with reference to retrospective laws. In determining what transactions or considerations are within the purview of retrospective laws, the courts

use the same terms as are used in this constitutional provision, to wit, liabilities or obligations, as well as debts. In contending in the *Dirckx* and *Bell Telephone Cases*, supra, that income taxes not due or capable of ascertainment till the end of the year could not be the subject of a retrospective law, the same argument was used as is now used to exclude same from the constitutional provision just quoted, to wit, that the income tax for the entire year is a unit and does not come into existence even as an obligation or liability till the end of the year, when for the first time it was capable of ascertainment. That would be true as to being an indebtedness, but, as there pointed out, it is not true as to being an obligation or liability. This argument was rejected as not sound in the *Dirckx* and *Bell Telephone Cases*, as it must be here. It was there held that an inchoate tax, though not due or yet payable, is such an obligation or liability as to be within the protection of the restriction against retrospective laws, and for the same reason we must hold that such inchoate tax is an obligation or liability within the meaning of the constitutional provision now being considered. In other words, if an unmatured tax has sufficient vitality to be protected in favor of the citizens against retrospective laws, it has sufficient vitality to be protected in favor of the state against being extinguished or released by legislative enactment. (Emphasis ours.)

The constitutional provision upon which the above holding was bottomed, namely, Section 51, Article IV, of the Constitution of 1875, has been readopted in the Constitution of 1945 and appears as subsection (5) of Section 39, Article III thereof. It reads as follows:

"The general assembly shall not have power:
* * * (5) 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 this state or
any county or municipal corporation: * * *

Under this rule the General Assembly could not enact a law which would have the effect of releasing the obligation for income tax computed under a prior law for a portion of the tax year, and we believe that the General Assembly was fully cognizant of this fact when it incorporated in other sections of House Bill No. 676 the quoted provisions relating to the proration of exemptions.

CONCLUSION

In the premises, we are of the opinion that the exemptions allowable in 1946 against net income for the purpose of determining the Missouri income tax for such year should be the aggregate of the proportionate part of such exemptions allowable under the provisions of Section 11351, R. S. Mo. 1939, for the portion of the calendar year 1946 said statute was in effect, and the proportionate part of such exemptions allowable under the provisions of Section 11351, found in House Bill No. 676 of the 63rd General Assembly, for the portion of the calendar year 1946 that said section is in effect.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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