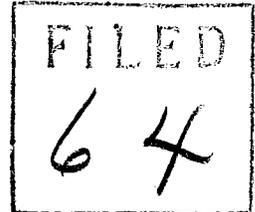


TAXATION AND REVENUE: Liability for taxation of mail carriers retirement pay as intangible personal property under H.C.S.H.B. No. 868.

January 22, 1947



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Mr. M. E. Morris
Director of Revenue
State Capitol Building
Jefferson City, Missouri

Dear Sir:

This will acknowledge your letter requesting an official opinion which reads:

"Please furnish this department with a written opinion stating whether or not a pension received by retired rural letter carriers would come within the meaning of House Bill 868 for taxation purposes."

H.C.S.H.B. No. 868 enacted by the 63rd General Assembly provides for the collection of a property tax on intangible personal property. Subsection (B), Section 1, defines intangible personal property subject to taxation and reads as follows:

"(B) Intangible personal property means moneys on deposit; bonds (except those which under the constitution or laws of the United States may not be made the subject of a property tax by the State of Missouri); certificates of indebtedness (other than capital notes issued by banks or trust companies); notes, debentures, annuities, accounts receivable; conditional sales contracts (which have incorporated therein promises to pay) and real estate and chattel mortgages."

Therefore, in answering your question we must determine whether or not payments received by a retired rural letter

carrier are included within the statutory definition of intangible personal property. Certain items of intangible personal property contained in the statutory definition can be readily eliminated such as "moneys on deposit", "bonds", "certificates of indebtedness", "notes", "debentures", "conditional sales contracts", and "real estate and chattel mortgages." Let us then more closely examine the other forms of intangible personal property subjected to taxation, which may include payments made to retired mail carriers.

The following definition of "Accounts Receivable" is found in Vol. 1, Words and Phrases, Permanent Edition, page 547 citing a Missouri case:

"'Accounts receivable,' which are amounts owing to a creditor on open account, being in the nature of 'credits' and 'personal property,' within Rev. St. 1919, Section 12967, are taxable, under section 12766, as amended by Laws 1923, p. 375, Mo. St. Ann. Sections 9977, 9756, pp. 8015, 7872, providing that certain enumerated property shall be listed for taxation, and that every other species of property not exempt shall be returned for taxation; rule of ejusdem generis being inapplicable. State ex rel. Globe-Democrat Pub. Co. v. Gehner, Mo., 294 S. W. 1017, 1018."

The term "annuity" was defined in the case of Pennsylvania v. Beisel, 338 Pa. 519, 13 Atl. (2d) 419, 128 A.L.R. 978. At A.L.R., l.c. 979-980 the court said:

"'Annuity' is a term somewhat loosely used in financial and legal nomenclature and is perhaps incapable of exact definition. Generally speaking, it designates a right--bequeathed, donated or purchased--to receive fixed, periodical payments, either for life or a number of years. Its determining characteristic is that the annuitant has an interest only in the payments themselves and not in any principal fund or source from which they may be derived. * * * *"

To determine whether or not the payments received by a retired rural mail carrier come within any of the above

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quoted definitions we must examine the nature of such payments. A rural letter carrier while actively employed is a civil service employee of the Federal Government.

The Civil Service Retirement Act as incorporated in Sections 691 to 738 inclusive, of Chapter 14, Title 5, U.S.C.A., provides for the retirement of civil service employees. Section 691 of Chapter 14, provides that all officers and employees to whom the chapter applies shall be eligible for retirement on an annuity upon fulfilling certain conditions of age and service.

Section 693 of Chapter 14, paragraph (a) provides:

"(a) This chapter shall apply to all officers and employees in or under the executive, judicial, and legislative branches of the United States Government, and to all officers and employees of the municipal government of the District of Columbia, except elective officers in the executive branch of the Government: * * * *"

Section 719 of Chapter 14 provides for salary deductions currently fixed at 5 per centum of the basic salary, payable, and further provides for the deposit of said deductions in the "Civil Service Retirement and Disability Fund" out of which the payments of annuities, refunds and allowances are made.

Under the provisions of Section 720, of Chapter 14, the Secretary of the Treasury is required to invest that portion of the fund as in his judgment may not be immediately required for the payment of annuities, refunds and allowances, and the interest earned on such investments becomes a part of such fund.

Under the provisions of Section 724, of Chapter 14, refunds from the fund are authorized together with interest thereon upon the separation or death of the officers or employees under the conditions set forth therein.

Under the provision of Section 719-1 an employee may deposit additional sums to apply toward his retirement pay upon

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which interest at the rate of 3 per cent per annum compounded annually is permitted. Such additional deposits, so increased by such interest, are available at retirement, for the purchase of an additional annuity based on an interest rate of 4 per cent per annum. In the event of death or separation from service of such employee before becoming eligible for a retirement annuity, the total amount of such additional deposits with interest at 3 per cent per annum compounded annually is to be refunded.

In the case of *Dismuke v. U. S.* 297, U. S. 167, 56 Supreme Court 400, petitioner filed a claim with the administrator of Veteran's Affairs for an allowance of an annuity under the Civil Service Retirement Act based on what is now Section 736a, Chapter 14, Title 5, U.S.C.A. The government contended that the claim was one for a "pension" and that under the provisions of the Tucker Act the court did not have jurisdiction to hear such a suit. In affirming the judgment in the lower court the U. S. Supreme Court speaking through Mr. Justice Stone said at Supreme Court l. c. 402-403:

" * * * * The proviso withholding jurisdiction of suits on claims for pensions was a part of the original Tucker Act, which became law March 3, 1887, long before the enactment of the Retirement Act of May 22, 1920, and at a time when the term "pensions" commonly referred to the gratuities paid by the government in recognition of past services in the Army or Navy. The annuities payable under the Retirement Act are not gratuities in that sense. The annuitant contributes to them by deductions from his salary or by actual payments into the fund, as in the present case, and the scheme of the act is to provide for payment of annuities, in part at least from contributions by employees, in recognition both of their past services and of services to be performed.

"(3) The act itself, in contradistinction to the numerous pension

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acts, see 38 U.S.C., 38 U.S.C.A., does not refer to the annuities as pensions, and expressly excludes from the service to be counted, in determining the class to which the annuitant is to be assigned, the period for which the employee 'elects to receive a pension under any law.' Section 3, Act of May 22, 1920, 41 Stat. 615, as amended, 5 U.S.C.A.

"Section 707. We conclude that annuities payable under the Retirement Act are not pensions within the meaning of the Tucker Act and that suits against the government to recover them are within the jurisdiction of District Courts, * * * *"

In the case of Miller v. Commissioners of Internal Revenue (C.C.A. 4, 1944), 144 Fed. (2d) 287, the question presented was whether the amounts withheld from the basic salary of a federal civil service employee, pursuant to the provisions of the Civil Service Retirement Act, constitute income within the meaning of Section 22 (a) of Internal Revenue Act. At l. c. 289 the court said quoting from an opinion of the Tax Court:

" * * * * As aptly said by the Tax Court in its Opinion, 'These aspects of the retirement plan seem to us to demonstrate that there have been purchased by the employee substantial rights, of a value which can in no event fall materially below the amount of his own contribution, which presently belong to him, and which are unequivocally provided for his ultimate benefit under whatever contingency and in whatever circumstance the occasion for that benefit should arise. They are in that respect comparable to, and for our purposes indistinguishable from, an annuity contract, of which the employer constitutes itself the issuer, setting aside reserves for that purpose and making investments thereof comparable to those which would be employed by companies engaged in that business. * * * *"

Again at l. c. 290 the court said:

"(3) There is no merit in the contention of the petitioners that in 1940, the employee had no vested rights under the Civil Service Retirement Act. In that year he had the right to receive an annuity upon retirement, and to receive a return of the amount withheld from his salary, with interest, upon separation from the service, or death. These rights were secured in consideration of contributions made from his salary, and at least to the extent of such contributions made, they could not be taken from him under the provisions of the Act, and we may not assume that Congress, if it could, would change the law so as to deprive him of the substantial rights acquired thereunder."

From the foregoing it appears that the payments received by retired civil service employees of the Federal Government, which would include rural mail carriers, are in fact payments under annuities owned by such employees from which a definite yield is received, and such annuities would come within the ambit of the statutory definition of intangible personal property subjected to the tax as provided in H.C.S.H.B. No. 868.

CONCLUSION

Therefore, it is the opinion of this department that payments received by retired rural letter carriers are payments received under annuities owned by such persons established under the provisions of the Civil Service

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Retirement Act, Chapter 14, Title 5, U.S.C.A. That such annuities come within the statutory definition of intangible personal property subjected to the tax as provided in H.C.S.H.B. No. 868, and are therefore taxable under the act.

Yours very truly

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APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

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