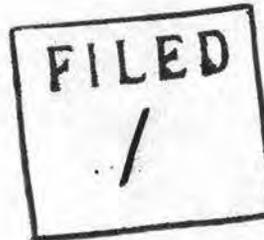


CONSTITUTIONAL LAW:
TAXATION OF INCOMES:
EXEMPTIONS UNDER HOUSE
BILL NO. 104, TAXABLE
WHEN:

House Bill No. 104, 66th General Assembly providing up to but not exceeding \$3000 service pay received in any one calendar year exempt from state income tax for 1950, and each year thereafter, unconstitutional and void as to exemptions for 1950, violates Subsection 5, Section 39, Article III, Constitution of 1945.

September 4, 1951

9-7-51



Honorable T. R. Allen
Supervisor, Income Tax Unit
Department of Revenue
Jefferson City, Missouri

Dear Sir:

This is to acknowledge receipt of your request for a legal opinion of this department, which reads as follows:

"In connection with the administration of the State Income Tax Laws, an opinion is desired in connection with the passage of House Bill 104, 66th General Assembly, with respect to additional exemption to be granted to members of the military forces.

"For your information I quote below subject matter of House Bill No. 104:

"AN ACT Relating to the taxation of the income of members of the armed forces of the United States on active duty, with an emergency clause.

"Section 1. The amount of service pay up to but not exceeding Three Thousand Dollars received by a member of the armed forces of the United States on active duty in any one calendar year shall not be taxable and need not be included in his state income tax return for the year 1950 and every year thereafter. No person receiving a dishonorable discharge shall receive this exemption. The

administrator, executor or next of kin of any deceased member of the armed forces may claim such exemption for such person.

"Section 2. Because the present law as it relates to the service pay of members of the armed forces causes great hardships and suffering among such persons and their families and produces gross inequities, and because this act is necessary for the immediate preservation of the public peace, health and safety of the inhabitants of this state, an emergency exists within the meaning of the constitution and this act shall be in full force and effect and after its passage and approval."

"This bill originated in the early part of the year and you will note in Section 1 that it was to be applicable to the year of 1950. Also, in Section 2 your attention is directed to the fact that this bill carried an emergency clause which provides for its effectiveness on being signed by the Governor. There was some delay in the passage of this bill and according to the records the bill did not become law until April 19, 1951. This, of course, was after the statutory due date for the filing of 1950 returns.

"The question herein involved on which I desire an opinion is whether or not this department can apply this legislation as being applicable to the 1950 year. Of course, in the meantime, many of those in the military service have filed their 1950 returns and paid the tax without any additional exemption being allowed. The matter of claims for credit will be involved and also such members of the military personnel who have not yet filed their 1950 returns will be coming up constantly to be passed on.

"You will, therefore, please advise whether or not House Bill 104 may be applied to transactions covering the filing of returns for the year 1950, as well as claims which may arise in connection with the same year."

The provisions of House Bill 104, are correctly quoted in your letter and we find it unnecessary to repeat it here, and shall refer to it from time to time in the course of our discussion.

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We have not been called upon to discuss the time when the bill became legally effective, and we shall assume that the emergency clause of Section 2, was sufficient and that the bill spoke as a law from the effective date of the emergency clause on April 19, 1951.

It is noted that this bill did not change any existing statutes regarding the time, manner of filing income tax returns, the rate of taxes and the payment of same, but that the purpose of the bill was to provide exemptions up to the maximum amount of three thousand dollars of service pay received in any one calendar year by members of the armed forces while on active duty, that such exemptions were not only tax free but were not required to be included in the return of 1950, and each year thereafter.

Section 143.230, RSMo 1949, in effect provides that those individuals subject to payment of state income tax are required to file a return for the preceding year's income with the director of revenue not later than the thirty first of March following. As intimated in your letter, you are wondering whether or not the exemptions provided in House Bill No. 104, supra, which became effective long after the last date for filing 1950, income tax returns are legally available to such armed forces members making returns for that year's income.

The nature of your inquiry calls for a consideration of the proposition as to whether or not the General Assembly had the power under the Constitution to pass House Bill 104, creating exemptions from income taxes to armed forces members, and to release such persons from the obligation to pay taxes on income for 1950, and each year thereafter, since the obligation had accrued long before House Bill 104, became a law.

In this connection we desire to call attention to the case of *Graham Paper Company v. Gehner*, 59 S.W. (2d) 49, in which the constitutionality of a former income tax law, and an amendment thereto were discussed, and which we believe to be a case in point with the present situation, and the inquiry presented in your letter.

In this case the court considered the amount of income tax to be paid by a corporation. Under the income tax laws formerly in force, the basis of the tax was the entire net income of the corporation. By an amendment passed in 1927, the tax was based upon the net income received from all sources within the state. Plaintiff corporation offered to pay on 42% of its income received from all sources within the state for the year 1927. Defendant objected and claimed that the method of computation of

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taxes for 1927, was incorrect since the amendment did not become effective until July 3, 1927, and that the tax should be based upon net income received during that portion of the year prior to the effective date of the amendment, and should be governed by the former law, and not by the amendment.

While the court discussed the retrospective effect of the law, we are not here concerned with whether or not House Bill 104, is or is not retrospective, but rather with the matter as to whether the General Assembly had the power under the Constitution to pass said bill. In order to sustain our position on this theory we rely upon the opinion in above cited case, particularly that part of the opinion discussing the constitutionality of the new amendment of 1927, at l. c. 51, the court said:

"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 inhabiting 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."

The constitutional provision upon which the court based its opinion in above cited case was Section 51, Article IV of the Constitution of 1875. This section has been re-adopted, and is now subsection (5) of Section 39, Article III, of the Constitution of 1945, and 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;
* * *."

As noted above the exemptions created by House Bill 104, were not only tax free, but were not required to be reported in the return for 1950, and each year thereafter. The obligation of the taxpayer to pay income taxes and make a return for the year 1950, part of the bill creating exemptions for the year of 1950, is to be given effect as written, it will be contrary to the holding in above cited case, and in violation of above quoted constitutional provision.

The General Assembly was without power to pass a law, the effect of which is to release obligations to the state, which had accrued before the law became effective, therefore, that part of House Bill 104, relating to exemptions from income taxes for 1950, is unconstitutional and void.

For the reasons given above, and in answer to your inquiry, it is our thought that the provisions of House Bill 104, supra, relating to income tax exemptions, may not be applied to transactions covering the filing of returns for 1950.

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CONCLUSION

It is the opinion of this department that House Bill 104, of the 66th General Assembly providing that up to, but not exceeding three thousand dollars of service pay received by members of the armed forces while on active duty shall be exempt from state income taxes for 1950, and each year thereafter is unconstitutional and void as to those exemptions provided for 1950, such provisions being in violation of subsection 5, Section 39, Article III, Constitution of 1945.

Respectfully submitted,

PAUL N. CHITWOOD
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

PNC:hr

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