

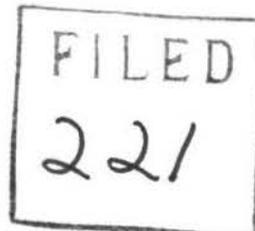
TAXATION (INCOME):

Interest received upon a promissory note executed by an individual borrower which note is guaranteed by the United States government is not exempt from Missouri state income tax under the provisions of Section 143.150, RSMo 1969, as interest upon the obligations of the United States or its possessions.

OPINION NO. 221

April 28, 1971

Honorable Robert Ellis Young  
Representative, District 133  
Room 203, Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Young:

This official opinion is issued pursuant to the request contained in your letter concerning the status for Missouri state income tax purposes of interest received upon a promissory note guaranteed by the United States government.

More specifically, the question as presented by your letter is:

"I would like to know if the interest received upon a promissory note guaranteed by the United States government is tax exempt. . . ."

Section 143.150, RSMo 1969, relating to income tax provides as follows:

"The following income shall be exempt from the provisions of this chapter:

\* \* \*

"(5) Interest upon the obligations of this state or of any political subdivision thereof, or upon the obligations of the United States or its possessions;"

The language used in providing an exemption from Missouri income taxation of interest received upon the obligations of the United States is substantially the same as the exemption of certain obligations contained in the federal statute.

Section 103 of the Internal Revenue Code of 1954 states:

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"Gross income does not include interest on--

"(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or the District of Columbia;

"(2) the obligations of the United States; . . ."  
(issued before September 1, 1917 or otherwise expressly provided for)

The term "interest upon the obligations of the United States" as used in these income tax statutes has been defined by the courts to mean interest received on obligations issued by the federal or state governments or political subdivisions thereof in connection with the borrowing power of such governmental entities. It does not exempt interest paid on every type of contract or legal liability incurred by such governmental authority. In *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 79 L.Ed. 211, the question was considered as to whether interest received from the federal government on a tax refund was exempt on the basis that it was paid by reason of an obligation of the United States. The court held the interest taxable saying:

". . . It is clear from a consideration of the entire section and of the subject matter that the purpose of Congress, in thus excluding from gross income interest upon such obligations, was to aid the borrowing power of the Federal government by making its interest-bearing bonds more attractive to investors. . . . The scope of the word 'obligations' as there employed must be narrowed accordingly, and not extended to include interest upon indebtedness not incurred under the borrowing power, as the court in the *American Viscose Case* properly held. . . ."

In the case of *Holley v. United States*, 124 F.2d 909 (C.C.A. 6th), the court reviewed the federal statute exempting interest received upon the obligations of a state, territory or any political subdivision thereof, and in the opinion it was stated:

"The statute does not exempt interest paid on every type of contract or legal liability incurred by a municipal corporation. This was the holding of the Court of Claims with reference to the same project and to two contracts identical with that involved herein. . . . The court there declared that Congress in enacting

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the statute involved did not intend to exempt interest on all types of municipal obligations but only such interest as accrued on debts incurred under the borrowing power of the city. Since the obligation entered into by the city of Detroit was incurred under the power of eminent domain, the court held that the interest was not exempt within the meaning of the Act. . . . Moreover, it follows the settled law upon this point. . . . As stated in the American Viscose Corp. case, Congress established the exemptions in this section of the statute to aid in the flotation of government bonds and securities by making them tax free, and therefore more attractive to investors. Hence the court concluded that the statute should not be so broadly construed as to cover a transaction which has no relation to the flotation of securities. This holding was expressly approved in *Helvering v. Stockholms Enskilda Bank*, supra, which declared that the predecessor of this section, identical, so far as this question is concerned, with the statute now considered, had been written to make attractive investment in the obligations of the United States, and therefore should be interpreted narrowly so as to exempt nothing more than Congress clearly intended to be exempted."

See also *American Viscose Corporation v. Commissioner of Internal Revenue*, 56 F.2d 1033; *Baltimore & O. R. Co. v. Commissioner*, 78 F.2d 460; *United States Trust Co. v. Anderson*, 65 F.2d 575.

The facts related in the letter requesting an opinion relate to interest received on a promissory note issued by a private citizen payable to another private citizen and guaranteed by the United States government pursuant to F.H.A. authority. It is clear that the obligation upon which interest is being paid is that of an individual primarily and only indirectly in the case of default that of the United States. Beyond that it is clear that this obligation was not issued under the borrowing power of any governmental authority. Under these circumstances, the interest received by a taxpayer on such a note is not exempt from Missouri state income tax.

#### CONCLUSION

It is the opinion of this office that interest received upon a promissory note executed by an individual borrower which note is

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guaranteed by the United States government is not exempt from Missouri state income tax under the provisions of Section 143.150, RSMo 1969, as interest upon the obligations of the United States or its possessions.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John E. Park.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth".

JOHN C. DANFORTH  
Attorney General