

TAXATION (INCOME):
CONSTITUTIONAL LAW:

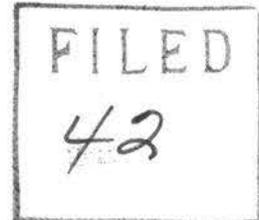
A taxpayer who has a fiscal period
which includes any part of 1972
and a part of 1973 may determine

his tax and taxable income pursuant to the provisions of Sections
143.011 to 143.996, Senate Bill No. 549, Second Regular Session,
76th General Assembly, if he files an election to that effect with
the Director of Revenue as provided in Section B of such Senate
Bill.

OPINION NO. 42

January 29, 1973

Mr. James R. Spradling
Director of Revenue
Department of Revenue
Jefferson State Office Building
Jefferson City, Missouri 65101



Dear Mr. Spradling:

This opinion is in answer to the opinion request of your predecessor which asks whether the provisions of Section B of Senate Bill No. 549, Second Regular Session, 76th General Assembly is applicable to income received prior to August 13, 1972, which was ninety days after the adjournment of such session and if so, whether these provisions are constitutional. Section B provides as follows:

"This act shall become effective on January 1, 1973; but it shall apply only with respect to taxable periods beginning on or after January 1, 1973. The repeal of the provisions of Chapter 143, RSMo., shall become effective January 1, 1973, but it shall not affect any taxable periods beginning before January 1, 1973, in any respect, including, but not limited to, the determination of tax, interest, penalties, procedures, and periods of limitations. Notwithstanding the first and second sentences of this section, section 143.471, relating to electing small business corporations, shall apply to such corporations and their shareholders with regard to taxable periods of such corporations ending on or after January 1, 1973. The preceding sentence shall not apply with regard to taxable periods of electing small business corporations beginning before January 1, 1973,

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if such corporation and all of its shareholders elect to that effect with the director of revenue on or before January 1, 1973. Notwithstanding the first four sentences of this section, a taxpayer who has a fiscal period which includes parts of each of the years 1972 and 1973 may determine his tax and taxable income pursuant to the provisions of this act if he files an election to that effect with the director of revenue on or before the due date (including extensions of time) of his return for the taxable period."

The clear, plain and unequivocal provisions of the last sentence of Section B provide that Senate Bill No. 549 is applicable to a taxpayer whose fiscal period includes any part of the year 1972 and part of the year 1973 and such taxpayer may determine his tax and taxable income pursuant to the provisions of Senate Bill No. 549 if he files an election to that effect as provided in such sentence.

It is a well settled principle of constitutional construction that only where there is a clear conflict between a legislative enactment and the Constitution are the courts warranted in declaring the law to void. In the matter of Burris, 66 Mo. 442, 450 (1877).

An act of the legislature has the presumption of constitutionality and courts shall not declare an act unconstitutional unless it plainly contravenes the Constitution. Borden Company v. Thomason, 353 S.W.2d 735 (Mo. banc 1962).

We find no clear violation of the Constitution by the enactment of the last sentence of Section B of Senate Bill No. 549 and it is, therefore, our view that a taxpayer whose fiscal period includes any part of 1972 and part of 1973 may file his income tax return based on the provisions of Senate Bill No. 549.

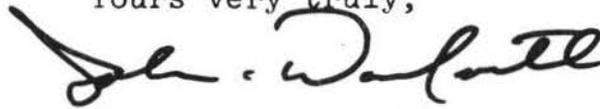
CONCLUSION

It is the opinion of this office that a taxpayer who has a fiscal period which includes any part of 1972 and a part of 1973 may determine his tax and taxable income pursuant to the provisions of Sections 143.011 to 143.996, Senate Bill No. 549, Second Regular Session, 76th General Assembly, if he files an election to that effect with the Director of Revenue as provided in Section B of such Senate Bill.

Mr. James R. Spradling

The foregoing opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH
Attorney General