

BLIND PENSIONS: Money received by applicant in settlement of fire insurance, life insurance or Workmen's Compensation claims should be considered as property instead of income.

June 9, 1942

Mrs. Lee Johnson
Chief Investigator
Missouri Commission for the Blind
162 Capitol Building
Jefferson City, Missouri



Dear Mrs. Johnson:

Under date of May 27, 1942, you wrote this office requesting an opinion as follows:

"Is money received in an insurance settlement to be considered as income or property?"

There are so many different varieties of insurance, and the field covered by your question is so broad, it is exceedingly difficult to furnish an opinion on the subject. There is fire insurance, life insurance, workmen's compensation insurance, health insurance, accident insurance and unemployment insurance. This opinion will be written to treat of fire insurance, life insurance and workmen's compensation insurance as these are, in all probability, the form of insurance payments with which you will be confronted. In the event a question arises as to the settlement of any other type of insurance, it is suggested this office be asked for an opinion setting out the facts in each case.

As you are aware, Section 9451, R. S. Missouri, 1939, which contains the income proviso does not define income. This office, in a previous opinion, has undertaken to define income as used in this section as net income which may be used for the support of the applicant.

No case has been found wherein the question has been determined as to whether insurance proceeds should be con-

sidered as income or capital, where the word income is used, as in Section 9451. There have been numerous decisions on the question for income tax purposes. But, in the income statutes specific provision is made for deducting the proceeds of certain types of insurance. For example, the Missouri income tax statute, Section 11348, is in part as follows:

"The following income shall be exempt from the provisions of this article:
(1) the proceeds of life insurance policies paid to the individual beneficiaries upon the death of the insured,
(2) the amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract; any amount received under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness,
* * * * *

The Federal income tax law also authorizes deducting certain types of insurance payments from income to be taxed. The following brief quotation is quite interesting, it is copied from the case of United States v. Supplee-Biddle Hardware Co., 265 U. S. 189, 68 L. Ed. 970, l. c. 974:

"It is earnestly pressed upon us that proceeds of life insurance paid on the death of the insured are in fact capital, and cannot be taxed as income under the 16th Amendment. Eisner v. Macomber, 252 U. S. 189, 207, 64 L. ed. 521, 528, 9 A.L.

R. 1570, 40 Sup. Ct. Rep. 189;
Merchants' Loan & T. Co. v. Smietanka,
255 U. S. 509, 518, 65 L. Ed. 751,
755, 15. A.L.R. 1305, 41 Sup. Ct.
Rep. 386. We are not required to
meet this question. It is enough
to sustain our construction of the
act to say that proceeds of a life
insurance policy paid on the death
of the insured are not usually
classed as income.

"Life insurance in such a case as
the one before us is valid, and is
not a wagering contract. There was
certainly an insurable interest on
the part of the company in the life
of Biddle. Mutual L. Ins. Co. v.
Board, A. & Co., 115 Va. 836, L.R.A.
1915F, 979, 80 S. E. 565; Keckley
v. Coshocton Glass Co., 86 Ohio St.
213, 99 N. E. 299, Ann. Cas. 1913D,
607; Mechanics Nat. Bank v. Commins,
72 N. H. 12, 101 Am. St. Rep. 650, 55
Atl. 191; United Security L. Ins. &
T. Co. v. Brown, 270 Pa. 264, 113 Atl.
445. Life insurance in such a case is
like that of fire and marine insurance,
-- a contract of indemnity. Central
Nat. Bank v. Hume, 128 U. S. 195, 32 L.
Ed. 370, 9 Sup. Ct. Rep. 41. The bene-
fit to be gained by death has no
periodicity. It is a substitution of
money value for something permanently
lost, either in a house, a ship or a
life. Assuming, without deciding, that
Congress could call the proceeds of such
indemnity income, and validly tax it as
such, we think that, in view of the
popular conception of the life insurance
as resulting in a single addition of
a total sum to the resources of the bene-
ficiary, and not in a periodical return,

such a purpose on its part should be express, as it certainly is not here."

Section 9451, R. S. Missouri, 1939, referred to above, is in part as follows:

"Every adult blind person, twenty-one years of age or over, of good moral character, who shall have been a resident of the state of Missouri for ten consecutive years or more next preceding the time for making application for the pension herein provided, and every adult blind person, twenty-one years of age or over, who may have lost his or her sight while a bona fide resident of this state and who has been a continuous resident thereof since such loss of sight, shall be entitled to receive, when enrolled under the provision of this article; an annual pension as provided for therein, payable in equal quarterly installments: Provided, that no such person shall be entitled to a pension under this article who has an income, or is the recipient, of six hundred (\$600.00) dollars or more per annum from any source whatever, or who owns property, or has an interest in property to the value of five thousand (\$5,000.00) dollars or more, or who lives with a sighted husband or wife who has an income or is the recipient of six hundred (\$600.00) dollars or more per annum from any source whatever or has property to the value of five thousand (\$5,000.00) dollars or more, * * * * *."

This section recognizes a distinction between income and property or capital.

In the case of *State ex rel. v. Revelle*, 257 Mo. 529, the Supreme Court approved the following language concerning a contract of insurance at l. c. 535:

"The essential elements of a contract of insurance are an agreement, oral or written, whereby for a legal consideration the promisor undertakes to indemnify the promisee if he shall suffer a specified loss. (1 May on Insurance, secs. 1, 2, and 43; *Duff v. Fire Ass'n.*, 129 Mo. l. c. 465; *State v. Phelan*, 66 Mo. App. l. c. 558.) * * * * *"

In *Funk & Wagnall's New Standard Dictionary* is found the following definition of the word "indemnify."

"(1) To compensate for loss or damage;"

In the case of *Phoenix Ins. Co.* 27 N. W. Reporter, the following definition of a fire insurance contract is found:

"A policy of fire insurance is a contract of indemnity. By such a contract the insurer agrees to compensate the assured for losses by fire of certain property for a given time. The existence of such contract gives the insurer an insurable interest in the property insured, coextensive with its liability. * * * * *"

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In the case of *In Re Thompson's Estate*, supra, is the following brief definition of both fire and life insurance, l. c. 535:

"'Insurance,' as generally understood, is agreement to indemnify against loss in case property is damaged or destroyed by fire, or to pay specified sum on the death of the insured, or on his reaching a certain age. * * * * *"

And, under the Workmen's Compensation Act, of Missouri, in the case of *Graf v. National Steel Products Co.*, 225 Mo. App., 702, we find the following brief statement of what the compensation is based on, l. c. 703-04:

"If our law is to be given the construction contended for by defendants, then the cases cited by them might be in point. But defendants misconstrue the theory of our law, which is based upon disability due to the loss of a member or part of a member or function and not upon diminution of earning power by reason of the loss of function. (*Lynch v. Gleaner Combine Harvester Corp.*, 17 S. W. (2d) 554, 556; *Betz v. Columbia Telephone Co.*, 24 S. W. (2d) 224.) * * * * *"

Each one of these three types of insurance, then, is to compensate for a loss.

In the case of *Diefendorf v. Gallet*, 10 Pac. 307, is the following definition of income:

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"'Income' is defined as something derived from property, labor, skill, ingenuity, or sound judgment, or from two or more of them in combination. Diefendorf v. Gallet (Idaho) 10 P. (2d) 307, 310."

While the proceeds of an insurance claim in any of the three above types of insurance would be money coming in and under the broad definition of income, as everything which comes in, might be considered as income. Yet, they merely compensate the person for the loss of something of value. The fire insurance payment pays for the lost home or furniture; the life insurance pays for the loss of life of some person in whom the beneficiary had an insurable interest; and the compensation insurance pays for the loss of a member or loss of ability to function.

CONCLUSION

It is, therefore, the opinion of the writer that the proceeds of the three types of insurance, when paid in a lump sum, should be considered as property and not income for the purpose of determining the eligibility of a person for a blind pension. Further, in this connection, it is suggested, if, in the future, a question arises as to the eligibility of an applicant for a pension, due to receipt of an insurance settlement, all the facts be laid before this office, as there are so many different types of insurance and such a variety of insurance contracts.

Respectfully submitted,

APPROVED:

W. O. JACKSON
Assistant Attorney-General

ROY MCKITTRICK
Attorney-General

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