INCOME TAX: Members of the military or naval forces do not have to make income tax returns, nor pay income taxes--civil officer-not being a prisoner of war or detained by anyforeign government liable.

September 14, 1943 10/5

FILED 83

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This will acknowledge receipt of your request, dated September 9, 1943, for an official opinion from this office, which request is as follows:

> "I am herewith submitting two questions which are in connection with House Bill No. 630 which was passed by the 62nd General Assembly and duly signed by the Governor.
>
> "I will thank you to give me your written opinion as to whether or not the two classes of individuals mentioned in questions (1) and (2) below, would be required to file a State of Missouri Income Tax Return, and pay the tax as provided under Sections 11354 and 11357 Revised Statutes of Missouri, 1939.
>
> " (1) Any Civilian officer or employee of any department who, at the time any such Return or payment which would otherwise become due, who is not a prisoner of war and who is not otherwise detained by any foreign government with which the United States is at war.
>
> "(2) Any individual in the military or naval forces of the United States, who is not serving on sea duty and is not outside the continental United States at the time any such Return or payment would otherwise become due.
>
> "Please let us have your opinion at your earliest convenience."

In answer to your first question, clause "B" of

of section 1, of House Bill 630, reads as follows:

> "any civilian officer or employee of any department who, at the time any such return or payment would otherwise become due, is a prisoner of war or is otherwise detained by any foreign government with which the United States is at war, or "***

It is the opinion of this office, that since the bill specifically provides that any civilian officer or employee of any department, who at the time a tax would become due, is a prisoner of war or is otherwise detained by any foreign government with which the United States is at war, but does not include such an officer, who does not qualify as above, then any such civil officer would be liable to make the return and pay his tax as provided by the Statutes of Missouri.

In answer to your second question, clause "A" of House Bill No. 630, reads as follows:

> " any individual in the military or naval forces of the United States, or "***

Section 2 of the Bill defines what is meant by, "individual or member of the military forces of the United States." Such section is as follows:

> "For the purpose of this Act the term 'continental United States' means the states and the District of Columbia, and the term 'individual' or 'member' of the military forces of the United States means any person in the Army of the United States, United States Navy, the Marine Corps, The Army or Navy Corps (Female), the Coast Guard, the Coast and Geodetic Survey, or the Public Health Service."

C O N C L U S I O N.

It is the opinion of this office that any individual in the military or naval forces of the United States, regardless of where he is stationed, or what he is doing, is not required to prepare a return or pay an income tax as provided under sections 11354 and 11357, R. S. Missouri, 1939, until (1) the fifteenth day of the third month following the month in which he ceases (except by reason of death or incompetency) to be a prisoner of war, or to be detained by any foreign government with which the United States is at war, or to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States, as the case may be, unless prior to the expiration of such fifteenth day he again is a prisoner of war, or is detained by any foreign government with which the United States is at war, or is a member of the military or naval forces of the United States serving on sea duty or outside the continental United States; (2) the fifteenth day of the third month following the month in which the present war with Germany, Italy and Japan is terminated, as proclaimed by the President; or (3) the fifteenth day of the third month following the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

Respectfully submitted,

GAYLORD WILKINS
Assistant Attorney General

GW:LeC

APPROVED:

ROY McKITTRICK
Attorney General