

INCOME TAX: Procedure to be followed by State Auditor in estimating original or additional income tax of members of the armed forces and certain civilians.

February 27, 1945



Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri

Attention: Mr. W. H. Holman  
Income Tax Supervisor

Dear Sir:

Reference is made to your letter under date of February 22, 1945, requesting the official opinion of this office, and reading as follows:

"This department requests a written opinion regarding the proper method of handling additional assessments and original assessments against members of the armed forces.

\* \* \* \* \*

"It is therefore desired that you please advise this office how additional assessments and original assessments on 1941 income should be handled. Will such assessments become outlawed if not filed on or before March 15 or will special action be necessary on these cases."

The procedure to be followed by the State Auditor in estimating income taxes or in estimating additional income taxes is governed by Section 11363, R. S. Mo. 1939. The pertinent parts of that section read:

"In case any taxpayer shall fail to make return as required by law, the state auditor shall have authority to estimate the amount of such taxpayer's income, from such sources as he may be able to obtain including the business, records and books of any taxpayer, which business, records and books, the auditor is hereby given the right to examine during the usual business hours at any time within three years after the return of such taxpayer is required by law to be filed, and shall certify the amount of income to be used as a basis for the tax to the proper assessor in the county, or the city of St. Louis, in which such taxpayer resides, if an individual, \* \*. At any time within three years after any return shall have been filed the auditor shall have the right to examine, during the usual business hours, the business, records and books of any individual, corporation, joint stock company, joint stock association or partnership, and to issue a credit slip to any taxpayer, if more tax has been paid than legally due, which credit shall be taken as deduction of the succeeding tax or taxes based on incomes to the extent of such credit, and to certify to the assessor any deficiency determined by the auditor, and not returned by the taxpayer; \* \* \*"

That this section operates as a three-year limitation upon the authority of the State Auditor to make such estimate has been established by State v. Rogers, 172 S. W. (2d) 940.

It is apparent from the plain terms of the statute quoted that a different period of time is allowed the State Auditor to make such estimates, dependent upon whether the taxpayer does not file a return, as distinguished from the situation in which a return is in fact filed. In the first instance, the three-year period commences running from the date the return is required to be filed, whereas if a return is in fact filed, the three-year period commences on the date the return is so filed.

February 27, 1945

The date for the filing of an income tax return and payment of the tax by members of the military or naval forces of the United States and by certain civilians has been fixed by a legislative enactment found in Laws of 1943, at page 1066, at a date later in time than such return or payment of tax would otherwise be due. We are of the opinion that such extension of time granted such members of the military or naval forces of the United States and certain civilians also serves to operate as an extension of the time in which the State Auditor can make estimates of income tax or additional income tax.

CONCLUSION

In the premises, we are of the opinion that in the event any of the persons who are within the purview of the legislative enactment found in Laws of 1943, at page 1066, fails to file an income tax return for any of the years for which such return of income tax and payment of such tax has been deferred by reason of such legislative enactment, that the State Auditor has three years after such return of income tax and payment of tax would be due as determined in accordance with Section 1, Laws of 1943, page 1066, to make an estimate of the taxpayer's income tax. We are further of the opinion that in the event any of the persons who are within the purview of the law referred to does actually file an income tax return at a time prior to that required by such law, the State Auditor must make his estimate of additional tax within three years after such return is actually filed.

Respectfully submitted

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

HARRY H. KAY  
(Acting) Attorney General

WFB:HR