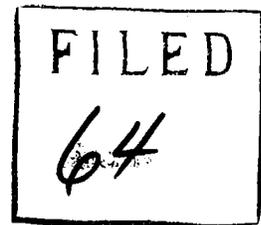


TAXATION AND REVENUE:

Allowable deductions by resident of Missouri with respect to income subject to Indiana gross income tax.

July 18, 1947



Mr. M. E. Morris
Director of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

"It is requested that you furnish this department with a written opinion advising whether or not income on which the Indiana gross income tax has been paid is deductible under Section 11349, R. S., Missouri, 1939, as revised by House Bill No. 1000 passed by the 63rd General Assembly of Missouri."

You have further informed us that your inquiry is directed solely to individual taxpayers, so in the preparation of this opinion we shall disregard provisions peculiarly applicable to other types of taxpayers.

Section 11349, R. S. Mo. 1939, as reenacted in House Bill No. 676, and amended by Senate Committee Substitute for House Bill No. 1000, both of the 63rd General Assembly, reads, in part, as follows:

"In ascertaining net income there may be deducted from gross income derived during the same period the following:

* * * * *

"Income on which tax paid in another state: Such part of the income in any taxable year, on which a tax is imposed by any other state and paid to such state, shall be deducted

where such income is included in the taxpayer's return, but this deduction shall not be allowed in any case where the net income applicable to this state shall be determined by multiplying the total net income by a fraction."

The reference in the quoted portion of the statute to the determination of the net income applicable to Missouri being determined by multiplying the total net income by a fraction is inapplicable to individual taxpayers, and therefore we shall disregard it.

The Indiana Gross Income Tax Act is found as Sections 64-2601 to 64-2632, Burns' Indiana Statutes Annotated. Subsequent revisions of the original Act of 1933 have been incorporated herein where germane, the last revision having occurred in the Laws of Indiana of 1945, Chapter 143.

Section 64-2602, providing for the levy of the tax, reads, in part, as follows:

"There is hereby imposed a tax upon the receipt of gross income, measured by the amount or volume of gross income, and in the amount to be determined by the application of rates on such gross income as hereinafter provided. Such tax shall be levied upon the receipt of the entire gross income of all persons resident and/or domiciled in the state of Indiana, except as herein otherwise provided; and upon the receipt of gross income derived from activities or businesses or any other source within the state of Indiana, of all persons who are not residents of the state of Indiana,
* * *"(Emphasis ours.)

Section 64-2605, relating to deductions which may be allowed, reads, in part, as follows:

"(a) In computing the amount of tax imposed under the provisions of this act, for any year, there shall be deducted by any taxpayer who is a retail merchant as defined in this act, an amount of three thousand dollars (\$3,000) from that part of his income derived from selling at retail, as defined in this act. * * *

"(b) In computing the amount of tax imposed under the provisions of this act for any year, there shall be deducted from the gross income of any taxpayer not provided for in subsection (a), an amount of one thousand dollars (\$1,000). * * *"

Further provisions of the same section provide for prorating the deductions authorized upon the basis of time such taxpayer is subject to the provisions of the Act, compared with a twelve months' period.

From the foregoing, it appears that a resident of Missouri, deriving income from activities conducted within the State of Indiana, is subject to the Gross Income Tax Act of that state, and is authorized to deduct the proportionate part of the total annual deductions allowed computed upon the period of time such taxpayer is subject to the provisions of the Act.

Comes, then, the question of whether or not such income so received from sources in the State of Indiana must be included in the return made to the State of Missouri by residents of Missouri.

Section 11343, R. S. Mo. 1939, as reenacted by House Bill No. 676 of the 63rd General Assembly, provides, in part, as follows:

"There is hereby levied a per centum tax on net income in each year as follows: * * * and for the whole of each succeeding year thereafter, at the times and in the manner now or hereafter provided, a tax shall be levied upon, assessed against, collected from, and paid by every individual, a citizen or resident of this state, upon net income received from all sources during the preceding year in excess of the exemptions now or hereafter provided, * * *"

This clearly indicates that a resident of Missouri must necessarily include in his return to the State of Missouri income derived from sources in the State of Indiana.

Therefore, such income having been included in the return made to the State of Missouri, it may be deducted therefrom in the event that it has been reported to the State of Indiana and the gross income tax of that state paid thereon, as pro-

vided by Section 11349, R. S. Mo. 1939, as reenacted and amended by the 63rd General Assembly, quoted supra.

You will note that the income tax of the State of Indiana is based upon the gross income received by the taxpayer, whereas, under the Missouri Income Tax Act, the tax is computed upon the net income of the taxpayer. It, therefore, seems the proper procedure to be followed by a resident of Missouri who has derived income from sources within the State of Indiana is to include all of such income so received from sources in Indiana, deducting from such total the amount upon which a tax has actually been paid to that state. Further, in view of the fact that the Missouri income tax is based upon net income, such taxpayer should also be permitted to make such other statutory deductions as are permitted under the laws of Missouri in arriving at net income. Such taxpayer should not be permitted to deduct such statutory deductions in toto, but only proportional to the total amount of such statutory deductions as would be permitted under Missouri law in arriving at net income, computed upon the ratio existing between the amount of income exempt under the Gross Income Tax Act of Indiana compared to the total gross income received from sources within that state.

CONCLUSION

In the premises, we are of the opinion that a resident of the State of Missouri who has received income derived from sources within the State of Indiana must necessarily include in his return to the State of Missouri the gross amount of such income so received.

We are further of the opinion that such taxpayer may be permitted to deduct from such total of gross income the portion thereof upon which a tax has actually been paid to the State of Indiana, and may further deduct all statutory deductions authorized under the law of Missouri in determining net income, in so far as such statutory deductions are applicable to that portion of the total gross income derived from sources within the State of Indiana upon which the Indiana gross income tax was not paid.

Respectfully submitted,

WILL F. BERRY, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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