

TAXATION:
INCOME TAX:

In computing individual state income tax, taxes are allowable deductions only by the person upon whom they are imposed.

March 2, 1951

Mr. T. R. Allen,
Supervisor,
Income Tax,
Department of Revenue,
Jefferson City, Missouri.



3-14-51

Dear Mr. Allen:

This will acknowledge receipt of your request for an opinion from this office on a question which you present as follows:

"In connection with the administration of State income taxes, I desire an opinion in connection with Section 143.160, Subdivision 4 thereof which reads as follows:

'Taxes: All taxes paid within the year imposed by the authority of the United States or its territories or possessions, or foreign country or under authority of any state, county, school district or municipality or other taxing subdivision of any state or country, not including those assessed against local benefits and inheritance taxes and taxes based on income, except those imposed by the United States on incomes.'

"On January 5, 1950 this department promulgated a ruling in connection with the portion of the Statutes above quoted, same being filed with the Secretary of State, which had to do with the disallowance of certain taxes imposed by the United States in various forms, commonly referred to as 'hidden taxes', which are paid to service organizations or retailers and which become a part of the cost of such service or such merchandise classified as excise taxes, such taxes not being paid direct to the taxing authority by the consumer. Under these classification of taxes are many items, such as cigarette, admission, luxury, liquor, and many other taxes too numerous to mention. These deductions when claimed by taxpayer are almost 100% arbitrary amounts and, likewise, amounts that if the taxpayer is called upon to substantiate cannot be done with any accuracy. This is due to the fact

that their having been included in the cost of service or merchandise and such amounts are not readily segregated or a matter of actual record insofar as the taxpayer is concerned.

"Due to the fact that they are not paid direct to the taxing authority and it being the interpretation of this section of the law that it applies only to taxes paid by the taxpayer to the taxing authority, it is felt that in all equity from the standpoint of administration that such items should not be allowed as a deduction in arriving at taxable income to this state.

"The ruling made by this department is being contested and in order to avoid controversies in this regard which are arising, will you kindly give us your opinion as to the position taken by this department."

We have carefully considered section 143.160 paragraph 4, cited in your letter, which reads as follows:

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

"(4) Taxes: All taxes paid within the year imposed by the authority of the United States or its territories or possessions, or foreign country or under authority of any state, county, school district or municipality or other taxing subdivision of any state or country, not including those assessed against local benefits and inheritance taxes and taxes based on income, except those imposed by the United States on income."

A careful search of the cases decided by our state courts do not disclose that the particular question involved has been decided by the court. Therefore in construing this statute we may only look for guidance to the general rules of construction of statutes laid down by our courts. One of the primary rules of construction is to determine the intent of the Legislature in enacting the statute as that intent is expressed in the Act. This rule was reiterated by the Supreme Court of Missouri in the case of American Bridge Co. v. Smith, 179 S.W. (2d) 12, l.c. 15, as follows:

"The primary rule of construction of statutes is to ascertain the lawmaker's intent from the words used if possible; and to put upon the language of the Legislature, honestly and faith-

fully, its plain and rational meaning and to promote its object, * * *."

In enacting the statute quoted above from section 143.160 allowing as a deduction from gross income all taxes paid within the year imposed by the designated taxing authorities (with specified exceptions) this department construes this to mean that taxes are deductible only by the person upon whom the tax is imposed.

For specific examples, it is common knowledge that a "merchant's and manufacturer's tax" is levied by the state. This tax paid by a merchant or manufacturer increases the overhead expense incurred in the operation of the business and this cost must be absorbed in the selling price of a commodity when purchased by a consumer. However, we believe it is quite clear that a consumer could not prorate a portion of this tax to the commodity paid for by him and claim such amount as a deductible item as a tax paid. Such was clearly not the intention of the Legislature in providing that all taxes with specified exception would be allowable deductions.

On the other hand there are taxes paid by the purchaser of commodities on services which are not paid directly to the taxing authority but are collected through a distributor or retailer who remits the tax to the taxing authority. An example of this is the state "sales tax" which is levied on the sale and while paid by the purchaser it is not paid directly to the taxing authority by the taxpayer but is collected for the taxing authority through retail dealers. This tax being imposed upon the purchaser is a deductible tax under the state income tax law though not paid directly to the taxing authority. We find as a similar example the "motor vehicle fuel tax" levied at the rate of two cents per gallon on such motor vehicle fuel as gasoline. This tax is not paid by the consumer of gasoline directly to the taxing authority although imposed upon the consumer and collected through a distributor of the motor fuel. This tax is allowed to be deducted by the person upon whom the tax is imposed, i.e. the consumer, although not paid directly by him to the taxing authority.

We can also cite many examples to the converse in which a tax is levied upon the property or income of one individual and becomes a part of the overhead costs of operating a business, but the individual taxpayer to whom these taxes are finally "passed on" who purchases or uses the commodities or business taxed does not have the tax imposed directly upon him and may not claim any part of such cost as a deductible tax.

From the foregoing we arrive at the conclusion that it was the intention of the state Legislature that taxes referred to as

Mr. T. R. Allen,

3-2-51

allowable deductions was meant to be construed that taxes are deductible only by the person upon whom they are imposed by the taxing authority and those taxes which are merely "passed on" to another as a concealed part of the purchase price for goods or services are not deductible as taxes imposed upon the individual taxpayer. Whether any particular tax in question should be allowed as a deduction would depend upon whether that tax was imposed by the taxing authority upon taxpayer making the return or whether it had been imposed upon some other service or commodity and had become a part of the selling price of the service or goods. In the event the tax were merely passed on to the ultimate user of the commodities or services as a part of the selling price then the tax so passed on would not be deductible to the consumer.

Of course, the burden rests with the taxpayer claiming the deduction to establish that he has paid any particular tax imposed upon him and the amount thereof.

CONCLUSION.

For computing individual state income taxes in ascertaining net income there may be deducted from gross income taxes paid within the year imposed by taxing authorities as designated by Section 143.160 (4) RSMo. 1949. It is the construction by this office that the "taxes" referred to in said section are deductible only by the person upon whom they are imposed by the taxing authority.

Respectfully submitted,

JOHN E. MILLS
Assistant Attorney General.

APPROVED:



J. E. TAYLOR
Attorney General

JEM/ld