

INCOME TAX:  
TAXATION:  
DEPRECIATION:  
RULES AND REGULATIONS:

Director of Revenue cannot promulgate rule allowing depreciation in amount greater than original cost price of item.

OPINION NO. 191

October 5, 1964



Honorable M. E. Morris  
Director of Revenue  
State of Missouri  
Jefferson City, Missouri

Dear Mr. Morris:

This is in answer to your opinion request dated May 6, 1964. Your request reads as follows:

"On November 30, 1962, Missouri Income Tax Regulation M.R. 140 was rescinded and a new regulation adopted. A photograph of the regulation changes is enclosed, with a copy of the law and regulations in effect in 1962.

"The 1964 U. S. Revenue Act, Section 203 amending Code Sections 48 and 1245 provides that on the first day of the taxpayer's first taxable year beginning after December 31, 1963, the basis of depreciable property must be increased by the amount of the credit previously taken under the investment credit act of 1962.

"Examples of depreciation schedules are attached. Please note example #3 where \$700 was allowed as additional depreciation in 1962 under revised regulation of November 30, 1962. Following the same procedure as federal, this

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\$700 will be added to the depreciation schedule, and will over the life of the asset be allowed again as depreciation. This will result in an allowance of \$700 over the cost of the asset.

"Please review Section 143.160, 143.190, and 143.200 of the Missouri Income Tax Law, and advise whether or not the state can accept an adjustment of the depreciation base for state income tax purposes on the same basis as the federal adjustment, or must the state collect tax on the additional allowance taken in prior years?"

Section 143.200, RSMo 1959, empowers the Director of Revenue to prescribe reasonable rules and regulations for the administration of the income tax laws and also states such rules and regulations shall follow as nearly as practicable the rules and regulations prescribed by the United States Government on income tax and collections. However, the Director of Revenue is not authorized to promulgate rules and regulations contrary to a state statute.

The question you wish answered arises because the Federal Income Tax Law provides for a seven percent investment credit for certain new investments. When the Federal statute was first passed, it was provided that the investment credit be deducted from the cost price to arrive at the base upon which depreciation was calculated. When this was done, the taxpayers requested the Missouri Department of Revenue to take some action which would let the taxpayers use the same depreciation figures in both the Federal and State returns. The Missouri department did this by giving an additional first year of depreciation allowance equal to the investment credit under the Federal law. However, the Federal statute has now been amended so as to provide that the base upon which depreciation is calculated instead of being the cost price less the investment credit will be the cost price. The taxpayers have now requested the Missouri department to amend its regulation so that the same figures for depreciation can be used in the State and Federal returns. It can be seen from this that if the Missouri regulations were so amended, there would be a total

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depreciation greater than the actual cost of the item, that is, greater by an amount equal to the first year additional depreciation that was allowed to make the depreciation figures of the State and Federal returns the same.

Section 143.160, RSMo, provides for the deductions that may be taken by taxpayers. Subsection (2) provides in part as follows:

"(a) Losses actually sustained during the year incurred in a taxpayer's business or trade, including reasonable allowance for exhaustion, depreciation, obsolescence, wear and tear of property in the business or trade, \* \* \*"

(Emphasis supplied.)

Depreciation, to be "reasonable", cannot under such statute exceed the original cost of an item. If, therefore, a rule and regulation which provided for an adjustment of the depreciation base for State income tax purposes authorized the taxpayer to deduct depreciation in an amount greater than the original cost price of the item depreciated, such rule and regulation would be invalid.

#### CONCLUSION

It is the opinion of this office that the Director of Revenue cannot promulgate a rule and regulation authorizing a taxpayer to take as a deduction on his income tax return depreciation in an amount greater than the original cost price of an item.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, C. B. Burns, Jr.

Yours very truly,

*Thomas F. Eagleton*  
THOMAS F. EAGLETON  
Attorney General