

STATE INCOME TAX:
PROFITS FROM SALE OF
BREEDING CATTLE:
VALUATION:

Director of revenue lacks power under Section 143.200, RSMo 1949, to make regulation that profits of individual taxpayer, from sale of breeding stock or dairy ~~cattle~~ is to be assessed at full value unless owned 12 months prior to sale.

December 18, 1952



12-31-52

Honorable Cecil T. Taylor
County Representative
Shelby County
Shelbyville, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which request reads in part as follows:

"I would like to have, at your earliest convenience, your official opinion on the following matter.

"Mr. T. R. Allen, Supervisor of the Income Tax Division of the Dept. of Revenue, has recently ruled that the profit on breeding stock or dairy stock, when owned and sold as Capital Investment, is taxable at 100% unless it is owned 12 months or more."

As we understand the facts, a ruling has been made by the director of revenue to the effect that the profits realized from the sale of breeding cattle for stock or dairy purposes shall be assessed at full value for state income tax purposes, unless the taxpayer has owned the breeding cattle for a minimum period of twelve months prior to the sale.

Your objection to the rule is that it nullifies certain sections of the statutes, and you cite us to Sections 143.100 and 143.200 RSMo 1949. It is claimed that the director of revenue relies on the latter section as his legal authority for making the ruling here in question.

While the opinion request does not expressly so state, we assume that the particular inquiry for which such request is made is whether

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or not, under the above mentioned circumstances, the director of revenue has been granted the power by Section 143.200 to make such ruling.

The opinion request fails to state whether the ruling, was meant to apply to the individual citizen or resident taxpayer, but for the purposes of our discussion we shall assume that the inquiry was meant to refer to individual citizens or resident taxpayers, and we call attention to Section 143.010, RSMo 1949, relating to this class of taxpayers. Said section reads in part as follows:

"1. Every individual, a citizen or resident of this state, shall pay a tax upon net income received from all sources during the preceding year in excess of the exemptions herein provided."

(Underscoring ours.)

It is noted that the tax is based upon net income only, and that Section 143.100, RSMo 1949, defines net income and reads in part as follows:

"1. Income shall include gains, profits, and earnings derived from salaries, wages or compensation for personal services of whatever kind and in whatever form paid; and from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or the use of any interest in real or personal property. In any case where real or personal property has been held for more than six months only fifty per cent of the gain or loss resulting from sale or exchange shall be taken into account in computing net income, but in such cases any loss used in computing the net income shall not exceed one thousand dollars over and above gains for the same period."

(Underscoring ours.)

Section 143.200, supra, reads as follows:

"The director of revenue may prescribe reasonable rules and regulations for administration of the provisions of the laws relating to the levy, assessment, collection and payment of taxes based on incomes. Such rules and regulations

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shall follow as nearly as practicable the rules and regulations prescribed by the United States government on income tax assessments and collections."

(Underscoring ours.)

Ordinarily a public officer may be legally granted the power by the legislature to make reasonable rules and regulations relating to the duties of his office, so long as such rules or regulations do not contravene the express provisions of any statutes. In this respect it appears that the general rule has been stated in Volume 67, page 370, C. J. S., which reads as follows:

"Under some statutes an officer has express authority to make rules and regulations, and usually he has implied authority to adopt such reasonable rules and regulations as are necessary to the due and efficient exercise of the powers expressly granted. In order to be valid, a rule or regulation must be reasonable, and in accordance with, subordinate to, and not in conflict with, statutory provisions. The validity of a regulation may also depend on the performance of certain preliminary conditions.

* * * * *

"Powers conferred on a public officer can be exercised only in the manner, and under the circumstances, prescribed by law, and any attempted exercise thereof in any other manner or under different circumstances is a nullity.
* * *"

Section 143.200, supra, empowers the director of revenue to make reasonable rules and regulations only "for administration of the provisions of the laws relating to the levy, assessment, collection and payment of taxes on incomes * * *."

From the language used in this section it is obvious that the intention of the legislature was that the rule making power of the director of revenue should be confined to the subject matter specifically provided, or that necessarily implied therefrom, and that such rules are limited to those of procedure for the administration and enforcement of the income tax laws. The standard for any rules or regulations made by the director of revenue is provided by this section, and any rules which fail to meet the standard thus fixed are a nullity.

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We are unable to find any Missouri decisions in point on the rule making power of public officials, and particularly those of the director of revenue under above mentioned circumstances, consequently, we must look to the decisions of the courts of other states for authority. We here call attention to the case of Duncan v. A. R. Krull Co., 114 Pac. 2d 888, in which the court said at l.c. 889:

"Rules and regulations by an administrative or executive officer or body are always subordinate to the terms of the statute and in aid of the enforcement of its provisions."

In the opinion of this case the court quoted from 11 Am. Jur., 955, Sec. 240, as follows:

"The general principle governing the conditions under which the power to make rules and regulations may be delegated has been stated as follows: A legislature, in enacting a law complete in itself and designed to accomplish the regulation of particular matters falling within its jurisdiction, may expressly authorize an administrative commission, within definite valid limits, to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose. So long as a policy is laid down and a standard is established by a statute, no unconstitutional delegation of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply."

(Underscoring ours.)

It is our thought that the regulation of the director of revenue here in question is not a reasonable rule or regulation promulgated for the purpose of enforcing the income tax laws of Missouri, within the meaning of Section 143.200, supra. The regulation fails to measure up to the standard provided by this section, in that it does not fall within the limits of those matters upon which the officer has been empowered to make regulations. Instead of purely procedural matters for the administration of the income tax laws, to which the officer's rule making power is limited, it is apparent that the regulation goes far beyond such limitation and attempts to provide a new method for the valuation of profits realized from the sale of livestock held for breeding or dairy purposes, and that the regulation contravenes the provisions of Sections 143.100 and 143.200, supra, particularly that portion of the former section quoted and

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underscored above. It further appears that such ruling ignores the term "net income," and attempts to place a value on the profits referred to in excess of those provided by Section 143.010 and 143.100, supra.

Lacking the power under Section 143.200, supra, to make the regulation, said regulation of the director of revenue is a nullity.

CONCLUSION

It is, therefore, the opinion of this department that the director of revenue lacks the power, under Section 143.200, RSMo 1949, to make a regulation that the profits realized by an individual taxpayer from the sale of breeding stock or dairy stock shall, for the state income tax purposes, be assessed at full value unless said stock was owned for a period of twelve months prior to the sale.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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