

**OPINION
58-192**

January 24, 1958 (OPINION)

TAXATION

RE: Authority of Commissioner to Enter Reciprocal Agreement

This is in reference to your letter of January 18, 1958, in which you requested an opinion on the question of whether a temporary reciprocal agreement between the tax commissioner of North Dakota and Minnesota is authorized under the North Dakota Income Tax Law.

I find it appropriate to quote in full your letter which reads as follows:

Chapter 360, S.L. 1957, enacted by the last Legislative Assembly, extensively amended section 57-3804 of our income tax law, which section relates to the allocation of gross income of individuals.

Subsection 2, of section 57-3804 was amended by this chapter to provide that 'income received from personal or professional services performed by residents of this state, regardless of where such services are performed, . . . shall be assigned to this state.' The subsection further provides that, if a tax is paid to another state or a foreign county on such income, it may be deducted from the North Dakota tax provided the amount so deducted does not exceed the amount of tax assessed by North Dakota on the same income.

Subsection 1 of section 57-3804 was amended by chapter 360 to provide that 'income from personal or professional services performed in this state by individuals shall be assigned to this state regardless of the residence of the recipients of such income.' Prior to this amendment a nonresident receiving income from personal or professional services performed in North Dakota did not have to report such income to North Dakota if two conditions were present: first, that he customarily returned to his home in his state of residence at least once a month, and, second, that his state of residence either did not tax North Dakota residents on the same kind of income earned in that state or allowed them a credit against the tax imposed on them that was substantially similar in effect.

The State of Minnesota has a law similar to the former North Dakota provision described in the preceding paragraph, and the effect of those two laws was to require North Dakota residents working in Minnesota to report their income therefrom to North Dakota and to pay any tax thereon to North Dakota and to require Minnesota residents working in North Dakota to report their income therefrom to Minnesota and pay any tax thereon to Minnesota.

The 1957 amendment to subsections 1 and 2 of section 57-3804 by

requiring North Dakota residents to report such income earned in Minnesota to North Dakota and taking a limited credit for any Minnesota tax thereon and by requiring residents of Minnesota working in North Dakota to report such income to North Dakota and pay to North Dakota any tax thereon put into operation, according to the Minnesota tax officials, a provision of the Minnesota income tax law which will require the North Dakota resident working in Minnesota and the Minnesota residents working in North Dakota to report such income to Minnesota and pay any tax thereon to Minnesota without any credit allowed for taxes paid on the same income to North Dakota. The effect of this, according to the Minnesota officials, is that the Minnesota resident working in North Dakota must pay an income tax to both Minnesota and North Dakota on the same income without being allowed any kind of credit in either state for the tax paid in the other state.

The Minnesota tax officials have advised me that they will ask the next session of the Minnesota legislature, which will convene early in 1959, to allow their residents working in North Dakota a credit for the year 1958 and later, but that there is presently no way under the Minnesota law that they can allow a credit or other relief now for the 1957 returns (which are due on April 15 of this year) other than by way of a reciprocal agreement with the North Dakota tax commissioner permitting Minnesotans working in North Dakota to file their 1957 returns of such income with Minnesota, as before, and permitting North Dakota residents working in Minnesota to file their 1957 returns of such income with North Dakota, as before.

Subsection 8 of section 57-3804 was renumbered but was not changed by chapter 360, S.L. 1957. It provides that 'the privileges granted nonresidents shall apply only where other states grant to the residents of North Dakota the same privilege'. No change was made in section 57-3856 of the income tax law which provides, in part, that the tax commissioner 'may enter into reciprocal agreements with the authorized tax officials of other states to assist in the enforcement of such chapter and to avoid injustice to taxpayers from double taxation.'

In view of the foregoing facts and any applicable statutes, your opinion is respectfully requested as to whether I am authorized by law to enter into a temporary reciprocal agreement with the tax commissioner of Minnesota, which agreement would relate only to income tax returns for the year 1957, and under which agreement Minnesota residents who received income in 1957 from personal or professional services performed in North Dakota would report that income to Minnesota for income tax purposes and North Dakota residents who received income in 1957 from personal or professional services performed in Minnesota would report that income to North Dakota for income tax purposes."

An analysis of the allocation provisions only of section 57-3804 as amended by chapter 360, S.L. 1957, shows a legislative intent to tax all income of individuals which the state has jurisdiction to tax

either because the income is derived from sources in North Dakota or because the income is received by residents of North Dakota. However, Chapter 360 did not expressly repeal, or in any way refer to, that part of section 57-3856 of the income tax law which provides that the tax commissioner "may enter into reciprocal agreements with the authorized tax officials of other states * * * to avoid injustice to taxpayers from double taxation." On the contrary, it retained as part of section 57-3804, the section amended, the provision in subsection 8 that "The privileges granted nonresidents shall apply only where other states grant to residents of North Dakota the same privilege."

"Taxpayers' as used in the quoted part of section 57-3856 may include nonresidents as well as residents. (See subsection 6 of section 57-3801). No privileges are granted to nonresidents under the other subsections of section 57-3804, the only section of the income tax law amended by Chapter 360. Therefore, subsection 8 of that section, if it has any meaning at all, must refer to some other provisions of the income tax law. It is logical to assume that it refers to the reciprocal agreement provision in section 57-3856, particularly since subsection 8 was first enacted by Chapter 255, S.L. 1943, which reenacted without change section 2 of Chapter 278, S.L. 1941, charging the tax commissioner with the administration of the income tax law and authorizing him, in exactly the same language used in section 57-3856, to enter into reciprocal agreements with other states "to avoid injustice to taxpayers from double taxation."

To hold that the tax commissioner is now prevented by Chapter 360, S.L. 1957, from entering into reciprocal agreements "to avoid injustice to taxpayers from double taxation" would require a holding that the provision in section 57-3856 authorizing such agreements is in irreconcilable conflict with Chapter 360, S.L. 1957, and is therefore repealed. Such a holding would also have the effect of nullifying subsection 8 of section 57-3804. The courts, and therefore this office also, are guided by the rules of statutory construction that statutes must be harmonized and reconciled whenever reasonably possible in order to avoid a repeal by implication. (50 Am. Jur. 367-370, sections 363 and 364; 50 Am. Jur. 546, section 539), and that "the legislature will be presumed to have inserted every part thereof for a purpose, and to have intended that every part of a statute should be carried into effect." (50 Am. Jur. 361, section 358).

It is therefore, the opinion of this office that you as tax commissioner of North Dakota have the authority under present law to enter into a reciprocal agreement with the tax commissioner of Minnesota relating to income received in 1957 for personal or professional services performed in one state by residents of the other state in order "to avoid injustice to taxpayers from double taxation," provided that residents of North Dakota be accorded the same treatment by Minnesota under the agreement as will be accorded by North Dakota to Minnesota, a requirement prescribed by subsection 8 of section 57-3804.

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