

1992 WL 532113 (Conn.A.G.)

*1 Office of the Attorney General

State of Connecticut
Opinion No. 92-024
September 11, 1992

The Honorable John B. Larson
President Pro Tempore
Connecticut State Senate
Legislative Office Building, Room 3300
Hartford, Connecticut 06106

Dear Senator Larson:

In your letter of May 22, 1992, you requested our opinion on behalf of your constituent Charles N. Francis concerning “the constitutionality of taxing a person's tax-sheltered annuity under the state income tax.” In your letter you state that Mr. Francis “is being taxed for money he earned long before the state income tax went into effect.” Mr. Francis did not specify the tax-sheltered annuity to which he had contributed. We gather from your letter, however, that Mr. Francis has made a more detailed inquiry to the Department of Revenue Services (the “Department”) which, as you are aware, has primary responsibility for interpreting and applying Connecticut revenue laws.

As to the general question whether money earned before the income tax became effective may lawfully be taxed, it is our opinion that income received by a cash basis taxpayer is properly taxable in Connecticut when received.

Connecticut law follows federal tax law which generally imposes tax liability on individuals in the year in which income is received even if the year of receipt is not the year in which the income was earned. 1991 Conn.Pub.Acts 91–3 § 52(b) (Spec.Sess. June 1991). The Internal Revenue Code of 1986 (the “Code”) unequivocally states that “the amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer....” Code § 451(a). Income is received by a taxpayer when it is “credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time.” Treas.Reg. § 1.451–2(a). The constitutional validity of applying tax statutes to monies earned in earlier years, but not made available to the taxpayer until later years, is well established. [Corliss v. Bowers, 281 U.S. 376 \(1930\)](#). The Connecticut Supreme Court has also examined the constitutionality of the State's taxing monies earned before the tax was enacted and found that the tax was constitutional. [Kellems v. Brown, 163 Conn. 478 \(1972\)](#).

The Connecticut income tax applies “to taxable years of taxpayers commencing on or after January 1, 1991.” 1991 Conn.Pub.Acts 91–3, § 168(1) (Spec.Sess. June 1991). The taxable year of a taxpayer for Connecticut income tax purposes is “the same as such taxpayer's taxable year for federal income tax purposes.” 1991 Conn.Pub.Acts 91–3, § 59(a) (Spec.Sess. June 1991). The United States Supreme Court has repeatedly held that the limited retroactive application of taxation statutes is constitutional. [Welch v. Henry, 305 U.S. 134 \(1938\)](#); [Reinecke v. Smith, 289 U.S. 172 \(1933\)](#). Thus, as a general principle, income received by a Connecticut taxpayer on or after January 1, 1991, is taxable, constitutionally, under the Connecticut income tax.

Very truly yours,

*2 Richard Blumenthal
Attorney General
Anne O'Leary
Assistant Attorney General

ATTACHMENT

May 22, 1992

Office of the Attorney General

55 Elm Street

Hartford, CT 06106

Dear Attorney General Blumenthal:

I am writing regarding the constitutionality of taxing a person's tax-sheltered annuity under the state income tax. The situation was brought to my attention by a constituent who removed \$30,000 from his tax-sheltered annuity prior to the state income tax being passed and was subsequently taxed by the state of Connecticut. He states that he is being taxed for money he earned long before the state income tax went into effect and should not be taxed. Enclosed please find a copy of the letter.

Apparently, according to the Department of Revenue Services, the state tax law follows federal tax law in that any income such as his is taxed when received, not earned.

If your office could review the constitutionality of this matter, I would greatly appreciate it. Thank you in advance for your time.

Sincerely,

John B. Larson

President Pro Tempore

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