

County Attorney's Fees--Exempt from Federal Income Tax

St. John's Law Review

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Recommended Citation

St. John's Law Review (1931) "County Attorney's Fees--Exempt from Federal Income Tax," *St. John's Law Review*: Vol. 6 : No. 1 , Article 36.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol6/iss1/36>

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and incidence of federal taxes, such variations are not *ipso facto* in conflict with the Constitution.¹²

J. L.

COUNTY ATTORNEY'S FEES—EXEMPT FROM FEDERAL INCOME TAX.—Appellee was employed by the Board of Commissioners of Duval County, Florida, to represent it as legal advisor. His salary, covering compensation for attendance at meetings, preparation of resolutions and contracts, legal advice and services in litigated matters of an ordinary nature, was fixed by resolutions of the Board, and was paid to him monthly. In connection with certain litigated cases, extraordinary in nature, and for services rendered in regard to issuance of bonds extra compensation was paid him. It is conceded that he maintained his private law office during this period, but that he devoted approximately seventy-five per cent of his time as attorney for the Board, and did not allow his private practice to interfere with his duties to the county. *Held*, that appellee was an employee of a political subdivision of a state and as such his compensation was exempt from taxation pursuant to the Revenue Act of 1926.¹ *United States of America v. J. Turner Butler*, 49 F. (2d) 52 (C. C. A. 5th, 1931).

An attorney who has not contracted to give his entire and exclusive services to a state instrumentality but was free to engage, and was engaged in private practice, did not thereby become an officer or employee within the purview of the statute.² The court here, however, takes the position that the statute³ authorizing the deduction of compensation received as an employee of a state, or a political subdivision thereof, does not require that such employee shall give his full time to the subject of his employment, and whether he gives his full time or not has no legal significance as a test. But, if it has any, appellee has satisfied the requirement, for he was first obligated to give all the time necessary to accomplish the tasks re-

¹² *Grand Trunk Western Ry. Co. v. United States*, 252 U. S. 112, 40 Sup. Ct. 309 (1920); *Bistline v. United States*, 229 Fed. 546 (C. C. A. Idaho, 1916); *Northern Pacific Ry. Co. v. Cash*, 67 Mont. 585, 216 Pac. 782 (1923).

¹ Section 1211 provides: "Any taxes imposed by the Revenue Act of 1924 or prior revenue acts upon any individual in respect of amounts received by him as compensation for personal services as an officer or employee of any state or political subdivision thereof (except to the extent that such compensation is paid by the United States Government directly or indirectly), shall, subject to the statutory period of limitations properly applicable thereto, be abated, credited, or refunded."

² *Blair v. Byers*, 35 F. (2d) 326 (C. C. A. 8th, 1929).

³ *Supra* note 2.

quired of him by the Board and could take no other business, except in his spare time.

Hutcheson, *C.J.*, in a concurring opinion takes the stand that as to those services for which appellee was allowed extra compensation he was not an employee, but that the remuneration thus received was paid to him as an agency of the Board; nevertheless, the income thus derived was exempt, for to tax it would be to affect a governmental agency in such a manner as directly to interfere with the functions of government.⁴

The idea of control or right of control characterizes the relation of employer and employee and differentiates the employee from the independent contractor.⁵ Except that appellee was required to use his judgment and skill as an attorney, his services were under the direct control of the Board.

The attempt of the government to tax the appellee's income was based on an extremely narrow interpretation of the statute, and was properly frustrated.

P. A.

INCOME OF CORPORATION—TAXABLE IN STATE OF ORIGIN—ARBITRARILY ALLOCATING FORMULA.—Appellant, a New York corporation, established a plant in Asheville, North Carolina, and there manufactured its entire output of heavy leathers. A warehouse and salesrooms were maintained in New York State. Sales were made throughout the United States and Canada; the evidence tended to show that forty per cent of the output of the Asheville plant was sent to New York and the balance was shipped direct on orders received from there. Evidence was offered to show that seventeen per cent of the total income of the corporation was attributable to its manufacturing and tanning operations in North Carolina. The assessment as allocated by the Commissioner of Revenue of that state allotted to the state for the purposes of taxation, pursuant to the prescribed statutory method, approximately eighty-five per cent of the appellant's annual income. Appellant aggrieved by adverse decisions in the state courts which upheld the validity of the state statutes appealed to the United States Supreme Court on the ground that the statute in question was arbitrary and its operation repugnant to the Fourteenth Amendment, *Held*, that the statutory method as applied to the appellant's business for the years in question operated unreasonably and arbitrarily in attributing to North Carolina a percentage of income out of all appropriate proportion to the business

⁴ *Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 46 Sup. Ct. 172 (1926); *Panhandle Oil Co. v. Mississippi*, 277 U. S. 218, 48 Sup. Ct. 451 (1928).

⁵ *Standard Oil Co. v. Anderson*, 212 U. S. 215, 29 Sup. Ct. 252 (1909); *Chicago, Rock Island & Pacific Ry. Co. v. Bond*, 240 U. S. 449, 36 Sup. Ct. 403 (1916).