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The Honorable Timothy W. Jones
Speaker, Missouri House of Representatives
State Capitol, Room 308A
201 West Capitol Avenue
Jefferson City, Missouri 65101-6806

Dear Speaker Jones:

You ask whether the changes in Senate Substitute for House Bill 253 (2013) – vetoed by the Governor – “applied retroactively,” and therefore would enable taxpayers to “seek refunds of taxes previously paid for up to three prior tax years.”

In the opinion of this Office, the plain language of the new legislation suggests that, if certain triggering events set forth in the statute occur, taxpayers may seek refunds of taxes paid in the three preceding tax years.

The language that gives rise to this conclusion may be found in two key provisions of the new legislation. First, the proposed amendment to § 143.011.1(1) establishes the base tax table:

for all tax years beginning on or before the later of December 31, 2013, or the first calendar year after the amount of general revenue collected in the previous fiscal year exceeded the highest amount of general revenue collected in any of the three fiscal years prior to such year by at least one hundred million dollars.” (emphasis added).

Second, the proposed new § 143.011.2 provides that “[i]f the federal Marketplace Fairness Act of 2013,” or “similar legislation,” becomes law, then:

the director of the department of revenue shall, by rule, adjust the tax tables of subsection 1 of this section to decrease the maximum rate of tax by one-half of a percent.

A taxpayer’s right to a refund for previous tax years depends on the interplay of these two provisions. If the statutory criteria are met such that § 143.011.1(1)’s changes to the tax table become effective, the base tax table is set not just for that calendar year, but also for all tax years before that year. That is, the new § 141.011.1(1) would set the tax rate not only for the tax year the provision becomes effective, but also retroactively for every preceding tax year in Missouri history.

Of course, that change alone would not entitle taxpayers to seek refunds for payments in previous tax years, because the base tax table defined in the new § 141.011.1(1) is identical to the base tax table in the old statute.

If the federal Marketplace Fairness Act of 2013 or similar legislation also passes, however, the maximum tax rate in every tax table included in subsection 1 is decreased by one-half of a percent. § 143.011.2. As noted above, the new subsection 1 sets the tax table for the tax year the provision becomes effective and every year before. It follows, then, that the maximum tax rate would be reduced by one-half of a percent not only for the tax year in which the new legislation became effective, but also for all previous tax years. Because there is a three-year statute of limitations on filing an amended tax return, a taxpayer could seek a refund for the three previous tax years. *See* § 143.801.1 (providing for a “refund of an overpayment” for up to three years after the original return was filed).

To illustrate the point, consider the following hypothetical: In 2010, 2011, and 2012, a taxpayer making \$100,000 in taxable income each year would have been required to pay \$315 plus 6% of the excess over \$9,000 (or \$5,460) in state income tax. Now suppose that in 2013, HB 253 became the law, the conditions were met that required the tax table in § 143.011.1(1) to be adopted, and the federal Marketplace Fairness Act (or similar legislation) was enacted. As a result, this taxpayer’s tax rate, per the tax table in § 143.011.1(1), would be decreased by .5%, lowering his or her maximum tax rate to \$315 plus 5.5% of excess over \$9,000. And because the tax table in § 143.011.1(1) applies to “all tax years beginning on or before” the tax year in which § 141.011.1(1) becomes effective, this taxpayer’s tax rate for 2010, 2011, and 2012 would be retroactively lowered as well. Using the newly revised rate, the taxpayer would have overpaid by \$455 each year. That taxpayer, relying on the retroactively revised tax tables, may seek a refund.

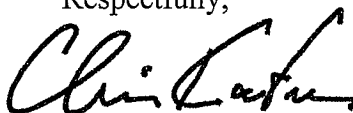
In your opinion request, you state that “the members of the House of Representatives need to be aware of any statutory language that would inadvertently cause Missouri Revised Statute § 143.011.1 to be applied retroactively.” The portion of § 143.011.1(1) that resets the base tax table for “all tax years beginning on or before” the year the provision becomes effective contains just such language. Inadvertent or not, the plain language of the statute is the first and most persuasive guide for courts in determining legislative intent. *See Hadlock v. Dir. of Revenue*, 860 S.W.2d 335, 337-38 (Mo. banc 1993). Here, the plain language of the statute alters the tax rate not just for the year the new provision becomes effective and onward, but expressly alters the tax rates for tax years “before” that year. If the General Assembly did not intend that taxpayers should get any benefit from the backward-looking change, why include that language? Courts are loathe to render statutory language meaningless, *see id.*; to say that the tax tables in § 141.011.1(1) apply only prospectively robs the phrase “or before” of any meaning. Moreover, even if the language of the statute could be considered ambiguous, courts require a construction in favor of the taxpayers of our state and strictly against the government when taxes are imposed. *See President Casino, Inc. v. Dir. of Revenue*, 219 S.W.3d 235, 239 (Mo. banc 2007).

In a memorandum, dated August 9, 2013, that was sent to you from the Committee on Legislative Research and that has since become publicly available, two arguments are made in support of the purely prospective application of the new legislation:

First, the memorandum acknowledges that Missouri law permits taxpayers to seek refunds for overpayments in prior tax years, citing § 143.801, but argues that “The section has never been interpreted to permit reopening past tax periods due to later-enacted deductions, credits, or other tax breaks.” The memorandum ignores, however, the specific language of this particular taxation statute, which, by its express terms, resets the tax tables for tax years before the year in which the provision becomes effective. Contrast this with a number of other tax changes and deductions in which the effective date of the new provision applied to “all taxable years beginning on or after” a particular date. *See, e.g.*, § 143.118; § 143.127; § 143.173.2.

Second, the memorandum suggests that Article I, § 13 of the Missouri Constitution, which prohibits any law that is “retrospective in its operation,” would prevent taxpayers from seeking refunds for past years (that is, “retrospectively”). But as the very case relied upon by the memorandum states, “The provision of the Constitution inhibiting laws retrospective in their operation is for the protection of the citizen and not the state. . . . ‘The state may constitutionally pass retrospective laws impairing its own rights, and may impose new liabilities with respect to transactions already past on the state itself or on the governmental subdivisions thereof.’” *Graham Paper Co. v. Gehner*, 59 S.W.2d 49, 51-52 (Mo. banc 1933); *see also Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys. of Mo.*, 950 S.W.2d 854, 858 (Mo. banc 1997) (“Because the retrospective law prohibition was intended to protect citizens and not the state, the legislature may constitutionally pass retrospective laws that waive the rights of the state.”). Thus, the constitutional prohibition against the retrospective application of laws would not pose a barrier to taxpayers seeking refunds under these circumstances.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Koster", with a stylized flourish at the end.

CHRIS KOSTER
Attorney General