

Opinion No. 269.

**Taxation—Income Tax—WPA
Employees.**

HELD: Employees of the Works Progress Administration are in reality employees of the United States and salaries or wages of WPA employees are not subject to Montana income tax.

April 17, 1936.

Hon. Elmer Holt
Governor of Montana
The Capitol

Your letter to us of April 13, is as follows:

"The State Board of Equalization has seen fit to require that the earnings of the employees of the WPA be accounted for through the Montana Income Tax Department. The WPA employees claim that inasmuch as they are Federal and not State employees, this is unjust and illegal. Will you please give me your opinion as to whether or not the State Board of Equalization is correct in maintaining their position?"

The Emergency Relief Appropriation Act of 1935 was approved by the President on April 8, 1935. It appropriated \$4,000,000,000 to be used in the discretion and under the direction of the President for the purpose of furnishing relief and work relief and increasing employment by providing for useful projects of a public character. This sum is made available for use only in the United States and its Territories and possessions. The provisions of the Act of February 15, 1934 (48 Stat. 351), relating to disability or death compensation and benefits shall apply to those persons receiving from the appropriation, for services rendered as employees of the United States, security payments in accordance with schedules established by the President. The President may appoint, without regard to the provisions of the civil service laws, such officers and employees as may be necessary, prescribe their authorities, duties, responsibilities, and tenure, and fix their compensation.

Any administrator or other officer, or the members of any central board,

or other agency, named to have general supervision at the seat of government over the program and work contemplated under the appropriation and receiving a salary of \$5,000 or more per annum from such appropriation, and any state or regional administrator receiving a salary of \$5,000 or more per annum from such appropriation shall be appointed by the President, by and with the advice and consent of the Senate. The President is authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of the act. He shall require to be paid such rates of pay for all persons engaged upon any project financed in whole or in part, through loans or otherwise, by funds appropriated by the act, as will in his discretion accomplish the purposes sought, and not affect adversely or otherwise tend to decrease the going rates of wages paid for work of a similar nature. He may fix different rates of wages for various types of work on any project, which rates need not be uniform throughout the United States. Any person who knowingly and with intent to defraud the United States makes any false statement in connection with any application for any project, employment, or relief aid under the provisions of the Act, or diverts, or attempts to divert, or assists in diverting for the benefit of any person or persons not entitled thereto any moneys appropriated by the Act, shall be deemed guilty of a misdemeanor and shall be fined not more than \$2,000 or imprisoned not more than one year, or both. No part of the funds appropriated shall be expended for the administrative expenses of any department, bureau, board, commission, or independent agency of the government if such administrative expenses are ordinarily financed from annual appropriations, unless additional work is imposed thereon by reason of the Act.

On May 6, 1935, the President, pursuant to the authority vested in him by the Act, issued Executive Order No. 7034, establishing among other things the Works Progress Administration. This order provides that the Works Progress Administration shall be responsible to the President for the honest, efficient, speedy and coordi-

nated execution of the work relief program as a whole, and for the execution of that program in such manner as to move from the relief rolls to work on projects or in private employment the maximum number of persons in the shortest time possible. It vests the Works Progress Administration with the following powers: (1) To establish and operate a Division of Progress Investigation and to coordinate pertinent work of existing investigative agencies of the government, so as to insure the honest execution of the work relief program. (2) With the approval of the President, to require uniform periodic reports of progress, recommend appropriate measures for eliminating delay, and recommend termination of projects if they do not economically afford the amount of employment warranting their continuance. (3) With the approval of the President, to prescribe rules and regulations to assure that as many persons employed on all work projects as is feasible shall be persons receiving relief, and to govern the selection of such persons. (4) To formulate and administer a system of uniform periodic reports of the employment on such projects of relief and non-relief persons. (5) To investigate wages and working conditions and to make and submit to the President such findings as will aid the President in prescribing working conditions and rates of pay on projects.

Under the Act the President appointed an Administrator of the Works Progress Administration and also an Administrator for each State. Every employee who receives compensation for services from the fund created by the Act is chosen by the President or by some agent acting in his behalf. The pay checks received by employees are issued against the United States Treasury. From all that has been said the conclusion is inevitable, therefore, that employees of the Works Progress Administration are in reality employees of the United States.

Chapter 181, Laws of 1933, provides for the imposition of an income tax. Section 7 thereof, however, exempts from this form of taxation salaries, wages and other compensations received from the United States of offi-

cial and employees thereof. (Pomeroy v. State Board of Equalization, 99 Mont. 534.)

Such being the mandate of the statute, it is clear that salaries or wages of WPA employees are not subject to our state income tax.