

Opinion No. 60.**Taxation—Income Tax—Employees
of Reconstruction Finance Corpora-
tion and Regional Agricultural Credit
Corporation of Spokane.**

HELD: Employees of Reconstruc-
tion Finance Corporation and the Re-
gional Agricultural Credit Corporation
of Spokane, are not immune from pay-
ment of the state income tax on the
salaries received from such corpora-
tions.

March 13, 1937.

Hon. J. R. Wine
Local Counsel, Regional Agricultural
Credit Corporation
Helena, Montana

Dear Mr. Wine:

You have called my attention to the case of People of the State of New York ex rel. Rogers v. Graves, decided by the Supreme Court of the United States on January 4, 1937, and upon this authority you have asked me to consider the question whether the salaries of the employees of two-governmental agencies functioning in this state, to-wit; Reconstruction Finance Corporation and Regional Agricultural Credit Corporation of Spokane, are subject to tax under the State Income Tax Law. Upon this authority you mention that the decision of our Supreme Court in *Pomerooy v. State Board of Equalization*,

99 Mont. 534, 45 Pac. (2) 316, cannot be sustained. You have called attention particularly to the following language of Mr. Justice Sutherland:

"The Railroad Company (Panama Railroad Company, a wholly-owned instrumentality of the United States), being immune from state taxation, it necessarily results that fixed salaries and compensation paid to its officers and employees, in their capacity as such, are likewise immune."

In the case of *People of the State of New York ex rel. Rogers v. Graves*, supra, the relator, who was the general counsel for the Panama Railroad Company, claimed that his salary from such company was exempt from the New York income tax. We are unable to agree that the language of Mr. Justice Sutherland, above quoted, furnishes the test whether salaries of employees of the Reconstruction Finance Corporation and the Regional Agricultural Credit Corporation of Spokane, are subject to our state income tax, for, as we understand that case, the test was whether the railroad company was an instrumentality of the United States, engaged in maintaining, operating and protecting the Panama Canal. In other words, the court held that the railroad company was an auxiliary of the Panama Canal, and therefore partook of the nature of the canal itself and that the creation, management and operation of the canal are all strictly governmental functions within the constitutional power of Congress to provide for the National defense and to regulate commerce under the commerce clause of the Constitution, as distinguished from the functions of the Government carried on in its proprietary capacity.

That such was the view of the court is apparent from the language used in the opinion. The Supreme Court of the United States rejected the view that the railroad company was a government-controlled corporate agency engaged in a commercial proprietary function. We quote from the opinion:

"The Appellate Division held that the railroad company was a government-controlled corporate agency engaged in a commercial proprietary function, and was not immune from state taxation since, it said, such

taxation did not hinder or restrain functions which are unquestionably, properly and usually governmental in their character.' * * *

"In order to reach a correct determination of the question whether the railroad company is exercising functions of a governmental character, the railroad and ships are to be considered not as things apart, but in their relation to the Panama Canal; and it is clear that the railroad and ships after the completion of the canal, continued to be used chiefly as adjuncts to its management and operation. The question, therefore, to be answered is whether the canal is such an instrumentality of the federal government as to be immune from state taxation; and, if so, are the operations of the railroad company so connected with the canal as to confer upon the company a like immunity?"

After referring to the authority for the construction and operation of the Panama Canal, Justice Sutherland continued:

"That under these laws, the creation, management and operation of the canal are all governmental functions and the laws well within the constitutional power of Congress to provide for the national defense and to regulate commerce under the commerce clause of the Constitution, does not admit of doubt. *California v. Pacific Railroad Co.*, 127 U. S. 1, 39; *Luxton v. North River Bridge Co.*, 153 U. S. 525. * * *

"Such being the status of the canal, it requires no argument to demonstrate that all auxiliaries primarily designed and used to aid in its management and operation, and which have that effect, partake of its nature and are themselves cooperating regulators—or, perhaps more accurately speaking, constitute, with the canal, a single great regulator—of national and international commerce. And this, we think, is the effect of the interrelation of the railroad company's activities with the management and operation of the canal."

We must conclude, therefore, that the basis of the Supreme Court's decision and the language of the opinion

quoted by you, must be related to the holding of the court that the operation of the Panama Railroad, as an auxiliary to the Panama Canal, was strictly a governmental function and that the language used by the court and quoted by you cannot be considered apart from such holding. We are unwilling to concede that the language quoted by you must be considered by itself, and it alone furnish the basis of the court's decision.

Our Supreme Court, in *Pomeroy v. State Board of Equalization*, supra, held that an employee of the Reconstruction Finance Corporation, which, although an instrumentality of the Government, is owned by it in its proprietary rather than in its governmental capacity, is not an employee of the United States within the meaning of the State Income Tax Law (Section 7) exempting salaries of federal officials and employees. The court said:

"The employees of the corporation are employees of the government in the sense that they are employed in an establishment which is an instrumentality of the government, but which is owned by the government in its proprietary, rather than its governmental, capacity and then not in outright ownership, but as the stockholder in the corporation. These employees are the employees, not of the stockholder, but of the corporation."

The Regional Agricultural Credit Corporation of Spokane, is essentially of the same character as the Reconstruction Finance Corporation. Until the Supreme Court of the United States shall directly hold that employees of corporations owned and operated by the government in its proprietary rather than its governmental capacity, are exempt from the State Income Tax, we feel compelled to abide by the decision of the Montana Supreme Court.

It is therefore my opinion that employees of the Reconstruction Finance Corporation and the Regional Agricultural Credit Corporation of Spokane, are not immune from the payment of State Income Tax on the salaries received by them from such corporations.