

Opinion No. 12

Taxation — Personal Income Tax — Personal Exemption — Non- Resident Taxpayers.

HELD: Under Section 84-4915, R.C.M., 1947, a taxpayer who has been a resident of the State of Montana for part of the taxable year and a non-resident for part of the taxable year is not required to file a state income tax return if all of his Montana income was earned during the period in which he was a resident and amounts to less than \$1,000 in the case of a single taxpayer or \$2,000 in the case of a married taxpayer who was living with a husband or wife, or a taxpayer who is the head of a family.

May 16, 1955.

Mr. J. F. Reid, Chairman
State Board of Equalization
State Capitol Building
Helena, Montana

Dear Mr. Reid:

You have requested my opinion upon the following question:

"Is a taxpayer who has been a resident of the State of Montana for part of the taxable year and a non-resident for part of the taxable year required to file a state income tax return if all of his Montana income was earned during the period in which he was a resident and amounts to less than \$1,000 in the case of a single taxpayer or \$2,000 in the case of a married taxpayer?"

Your question concerns the interpretation of Section 84-4915, R.C.M., 1947, which provides:

"Effect Of Changing Resident Status. If a taxpayer changes his status from that of resident to that of nonresident, or from that of nonresident to that of resident, during the taxable year, he shall file two (2) returns, one as a resident covering the fraction of the year during which he was resident, and one as a person other than a resident covering the fraction of the year during which he was a nonresident. The exemptions provided in Section 84-4910 shall be divided ratably between the two (2) returns so filed, according to time. If the aggregate of the taxpayer's net income from all sources during the fraction of the year in which he was a resident, and his net income from sources within this state during the fraction of the year in which he was a nonresident, is less than one thousand dollars (\$1000) in the case of a taxpayer who is single or who is married and not living with or supporting a husband or wife or family, or is less than two thousand dollars (\$2000) in the case of a taxpayer who is married and living with a husband or wife or is the head of a family, no return shall be required under this section."

It is evident in reading this section that the last sentence creates an exception to the rule laid down by the first two sentences. In the absence of this exception, all persons who had changed their residential status during the year would be required to file two returns and to divide their personal exemptions in proportion to the time spent within and without the State of Mon-

tana. The exception grants to persons who have changed their residential status during the year the same right which Section 84-4914, R.C.M., 1947, grants to residents of the state; that is, to file no return at all if the yearly income is below the figure set out in the statute. It seems plain from the language employed in the statute that the legislature intended to permit persons changing their residential status during the year the same right to exemptions accorded residents. The language seems very plain, and its meaning equally plain, that persons with incomes of less than \$1,000 if single or \$2,000 if married and living with a spouse shall not be required to file a return at all.

When the language of the statute is clear, there is nothing to construe. The Montana Supreme Court said, in the case of *Cruse vs. Fischl*, 55 Mont. 258, 175 Pac. 878:

" . . . It is a rule which has been in force in this jurisdiction for more than thirty-five years, that, whenever the language of a statute is plain, simple, direct and unambiguous, it does not require construction, but it construes itself. In other words, it is immaterial what may have been the legislative thought if no ambiguity exists in what the lawmakers said, and the language of the statute plainly expresses an intent, the letter of the law will not be disregarded under the pretext of pursuing its spirit. (Citing cases) . . . "

There is no ambiguity in the language used in this statute. Therefore, there need be no resort to rules of construction. As was said in the case of the *Great Northern Utilities Co. vs. Public Service Commission*, 88 Mont. 180, 293 Pac. 294:

"The intention of the legislature must be inferred from the plain meaning of the words. This rule must be first resorted to before resort should be had to other rules."

It is therefore my opinion that under Section 84-4915, R.C.M., 1947, a taxpayer who has been a resident of the State of Montana for part of the taxable year and a non-resident for part of the taxable year is not

required to file a state income tax return if all of his Montana income was earned during the period in which he was a resident and amounts to less than \$1,000 in the case of a single taxpayer or \$2,000 in the case of a married taxpayer who was living with a husband or wife, or a taxpayer who is the head of a family.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.