

OFFICIAL OPINION NO. 54

December 2, 1955

Mr. Frank T. Millis
Commissioner of Revenue
141 South Meridian Street
Indianapolis, Indiana

Dear Mr. Millis:

I have your request for my Official Opinion in answer to the following question:

“Are unemployment compensation benefits taxable to the recipient under the Indiana Gross Income Tax Act?”

Your request makes specific reference to Section 6 (d) and (g) of the Gross Income Tax Act, as amended by the 1955 session of the General Assembly. These subsections, being the Acts of 1937, Ch. 117, Sec. 6 (d) and (g), as last amended by the Acts of 1955, Ch. 291, Sec. 1, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 64-2606 (d) and (g), provide as follows:

“There shall be excepted from the gross income taxable under this act:

* * *

“(d) Amounts received under insurance policies and contracts paid by reason of the death or personal injury of the insured, and amounts paid under wrongful death, workmen's compensation, or other similar statutes: Provided, however, That this exception shall not apply to interest or earnings paid by the insurer on amounts held for the beneficiaries.

* * *

“(g) Pensions paid from funds created wholly or in part by deductions, assessments, or contributions paid into such funds by the taxpayer, or his employer or amounts received under the federal social security act, except that all such pension payments in excess of \$3,000.00 per annum shall be subject to tax.”

Your request further states:

* * *

“It has been suggested that unemployment benefits might be considered to be amounts paid under ‘or other similar statutes’ under subsection (d) or that they might be included under ‘amounts received under the federal social security act’ under subsection (g).”

The rule governing exemptions is that an intention upon the part of the General Assembly to grant an exemption from the taxing power of the state can never be implied, but must be expressed in clear and unmistakable terms. This is for the reason that, when an exemption is claimed under a statute, it is to be construed strictly against the taxpayer and in favor of the public as represented by the state.

2 Cooley on Taxation (4th Ed.), Sec. 672;

Trustees of the Methodist Episcopal Church v. Ellis
et al. (1871), 38 Ind. 3;

The City of Madison *et al.* v. Fitch *et al.* (1862), 18
Ind. 33;

The Common Council of Indianapolis and Another v.
McLean (1856), 8 Ind. 328;

Orr v. Baker (1853), 4 Ind. 86.

Bearing in mind the foregoing rule of statutory construction applicable generally to exemptions, Section 6 (d) and Section 6 (g) of the Gross Income Tax Act, as amended, will be discussed in the order in which they appear in that Act.

Section 6 (d). This Section excepts from liability for Gross Income Tax all amounts received by reason of the fact of death or personal injury, whether such amounts be payable as the result of contract liability or on account of statutory provisions. The exception from gross income tax liability of amounts paid under “other *similar* statutes” must necessarily apply only to such statutes other than wrongful death or workmen’s compensation statutes as provide for the payment of amounts by reason of the fact of death or personal injury in order for such other statutes to be “similar” to wrongful death or workmen’s compensation statutes.

Unemployment compensation benefits are paid pursuant to the provisions of the Indiana Employment Security Act, being the Acts of 1947, Ch. 208, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 52-1525 *et seq.*, and for the following reasons are not amounts payable by reason of the fact of death or personal injury. The title of the Indiana Employment Security Act is:

“An Act concerning unemployment compensation, stabilization of employment, employment service, employment security, providing for contributions in connection therewith, repealing all laws in conflict therewith and declaring an emergency.”

Further, the Acts of 1947, Ch. 208, Sec. 101, as found in Burns' Indiana Statutes (1951 Repl.), Section 52-1525, *supra*, contains a declaration of public policy with respect to the Employment Security Act and states in substance that its purpose is to afford protection against economic insecurity due to unemployment.

Generally speaking, the benefit eligibility conditions of the Employment Security Act are that the individual be unemployed; that he make claim for benefits payable under the Act; that he be registered for work at an employment agency and that he be physically and mentally able to work and be available for work. See the Acts of 1947, Ch. 208, Secs. 1401, 1402 and 1403, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Sections 52-1538, 52-1538a (1955 Supp.), and 52-1538b (1955 Supp.). Therefore, by way of contrast with wrongful death and workmen's compensation statutes which provide for payments by reason of the fact of death or personal injury, benefits payable under the Employment Security Act are to those persons who are able-bodied and mentally able to work, who are available for work but are unemployed. Consequently, the Employment Security Act is not a statute similar to wrongful death and workmen's compensation statutes, and amounts paid under the provisions of the Employment Security Act are not exempt from Gross Income Tax liability by reason of the provisions of Section 6 (d) of the Gross Income Tax Act.

Section 6 (g). This subsection of the Gross Income Tax Act exempts from tax liability pensions paid from funds created

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wholly or in part by deductions, assessments or contributions paid into such funds by the taxpayer or his employer or amounts received under the Federal Social Security Act, such exemption being confined only to amounts not in excess of \$3,000.00 per annum. Amounts payable under the provisions of the Indiana Employment Security Act are not pensions such as retirement or disability pensions which are paid by reason of long service or service-connected disability, but such unemployment compensation benefits are in the nature of unemployment insurance. In a very real sense, unemployment compensation benefits are in lieu of wages—wages being clearly taxable under the provisions of the Gross Income Tax Act. Nor are unemployment compensation benefits “amounts received under the Federal Social Security Act.” Unemployment compensation benefits payable by virtue of the Indiana Employment Security Act are paid from a special fund in the State Treasury known as the Employment Security Administration Fund as provided by the Acts of 1947, Ch. 208, Sec. 2501, as found in Burns’ Indiana Statutes (1951 Repl., 1955 Supp.), Section 52-1549. Further, the levy of the tax upon the employer is by virtue of the Indiana Employment Security Act as provided in the Acts of 1947, Ch. 208, Sec. 1003, as found in Burns’ Indiana Statutes (1951 Repl.), Section 52-1534b. Moreover, it is the Indiana Employment Security Act which specifies the amount of unemployment compensation benefits payable under the Act as provided in the Acts of 1947, Ch. 208, Sec. 1202, as amended, as found in Burns’ Indiana Statutes (1951 Repl., 1955 Supp.), Section 52-1536a. Therefore, unemployment compensation payments are not pensions within the meaning of subsection 6 (g) of the Gross Income Tax Act, *supra*, nor are they amounts received under the Federal Social Security Act. Consequently, unemployment compensation benefits are not exempted by reason of subsection 6 (g) of the Gross Income Tax Act, *supra*.

It is, therefore, my opinion that unemployment compensation benefits payable by reason of the Indiana Employment Security Act are not exempt from Gross Income Tax liability by reason of the provisions of subsections 6 (d) or 6 (g) of the Gross Income Tax Act, *supra*, nor are such benefits exempt from such tax liability by reason of any other statutory provision.