

OPINION 38

Similar language may be found in the following cases:

Gentry v. State of Indiana (1945), 223 Ind. 459, 61 N. E. (2d) 641;

Evans v. State *ex rel.* Freeman (1905), 165 Ind. 369, 75 N. E. 651.

In 26 I. L. E. Statutes § 162, the rule is stated as follows:

“The re-enactment in a revising act of provisions substantially the same as those contained in the former statutes is a legislative adoption of their known judicial construction unless an intent to the contrary is clearly manifest.”

In view of the foregoing rules of statutory construction and also in consideration of the language in the *Wilson v. Bagaloff* case, *supra*, indicating that another construction of the statute in question might well raise serious constitutional questions, I am of the opinion that the provisions of Burns' 64-2277, *supra*, do not require the owner or redemptioner to pay the percentages set out upon a surplus received by the county at the sale of the property.

OFFICIAL OPINION NO. 38

July 17, 1964

Mr. James C. Courtney, Commissioner
Department of State Revenue
202 State Office Building
Indianapolis 4, Indiana

Dear Mr. Courtney:

I am replying to your letter of June 29, 1964, wherein you request my Official Opinion concerning the construction of Sections 302 and 704 of the “Adjusted Gross Income Tax Act of 1963” and more particularly the manner of calculating the amount of revenue to be placed in the “Property Tax Relief Fund” as provided for in Section 704. As recognized in your

“In addition to the above, the amount required for redemption shall include all taxes and special assessments charged to the real property subsequent to those for which it was sold which have been paid by the purchaser, together with six per cent [6%] interest on such taxes and special assessment. At any time after redemption, upon presentation and surrender of the certificate of sale to the county auditor, said auditor shall issue a warrant on the county treasurer to pay the person surrendering the certificate the amount received by the treasurer for redemption. The county auditor shall endorse the certificate and preserve it as a public record. In case a certificate of sale is lost, payment may be made to the proper person in the manner herein provided upon the county auditor being fully satisfied, by due proof, of the existence of such certificate.”

The two statutes are virtually the same. The first paragraph of the repealed statute is contained in the Acts of 1963, Ch. 280, Sec. 701, as found in Burns' (1964 Supp.), Section 64-2276. The repealed act stated that the amount required for redemption was based upon the “full sum of the purchase-money named in the certificate.” The amount necessary for redemption in Burns' 64-2277, *supra*, is “the purchase price named in the certificate of sale.” The purchase price named in the certificate of sale is stated as “the amount for which the real property was sold.” (Acts of 1963, Ch. 280, Sec. 610, as found in Burns' (1964 Supp.), Section 64-2264.)

The facts bring us within the rule stated in *Department of Treasury v. City of Linton* (1945), 223 Ind. 363, 367, 60 N. E. (2d) 948, in which the court held as follows:

“This line of cases above referred to existed when the 1937 amendment to the income tax law was being considered and was enacted by the legislature, and under a well established rule of statutory construction when a legislature uses language which has been given judicial interpretation, it will be presumed that the legislature intended the words to have the meaning given them by the court * * *”

letter, corporations, as referred to in said Section 704 and as defined in Section 110 of said 1963 Act are subject to both the "Adjusted Gross Income Tax Act of 1963," the same being the Acts of 1963 (1963 Spec. Sess.), Ch. 32, as found in Burns' (1964 Supp.), Section 64-3201 *et seq.* and the "Gross Income Tax Act of 1933," the same being the Acts of 1933, Ch. 50, as amended and found in Burns' (1964 Supp.), Section 64-2601 *et seq.*

In reference to your question, you cite the following example and use the word "overage" to describe the amount by which a corporation's liability under the "Adjusted Gross Income Tax Act of 1963" exceeds its liability under the "Gross Income Tax Act of 1933":

"A corporation in computing the Adjusted Gross Income Tax is thus entitled to credit the amount of *Gross Income Tax* it would have owed for the same period of time, and if the amount of *Gross Income Tax* is less than the amount of *Adjusted Gross Income Tax*, to subtract the amount of *Gross Income Tax* from the amount of the *Adjusted Gross Income Tax*. For example, if the computation of the *Adjusted Gross Income Tax* amounted to \$1,000, and the computation of the *Gross Income Tax* amounted to \$900, the taxpayer is to subtract the \$900 from the \$1,000 leaving \$100, which is the amount of 'overage.' In other words, the amount of *Adjusted Gross Income Tax* exceeds the amount of *Gross Income Tax* by \$100, and accordingly, the taxpayer is required to file an *Adjusted Gross Income Tax Return*."

Specifically you ask:

"Is the amount of revenue above-described as the 'overage' the correct amount to be deposited in the general fund of the state in the special fund to be known as the 'Property Tax Relief Fund', pursuant to Section 704 of the *Adjusted Gross Income Tax Act*; or should the *total Adjusted Gross Income Tax* of a corporation liable under the new act constitute the correct amount of money to be deposited in said 'Property Tax Relief Fund'?"

OPINION 38

Inasmuch as you advise me in your letter that:

“The Department has taken the position that the correct amount of money to be deposited in the Property Tax Relief Fund is the amount by which the Adjusted Gross Income Tax *exceeds* the Gross Income Tax, or as above-described, the ‘overage’. Inasmuch as we shall very soon be required to furnish the Auditor with the amount of money which is to be deposited in the ‘Property Tax Relief Fund’ above-described, we would appreciate it very much if you could provide us with an Official Opinion answering the above question at your very earliest convenience.”

I must point out the Indiana Supreme Court ruling in the case of Gross Income Tax Division v. Colpaert Realty Corp. (1952), 231 Ind. 463, 478, 109 N. E. (2d) 415, wherein the court stated:

“While not controlling, the contemporaneous construction of a statute by those charged with the administration of it is entitled to great weight, and should not be interfered with unless there are very cogent and persuasive reasons for departing from it * * *”

In addition to the foregoing authority, well-accepted rules of statutory construction further support your position. In my 1961 O. A. G., pages 360, 363, No. 58, I cited the following statement taken from the case of Poyser v. Stangland (1952), 230 Ind. 685, 689, 106 N. E. (2d) 390, wherein the court said:

“The general rule is that nothing may be read into a statute which is not within the manifest intention of the legislature as gathered from the act itself, and that a statute should not be construed any more broadly or given any greater effect than its terms require. Where the language of the statute is clear in limiting its application to a particular class of cases and leaves no room for doubt as to the intention of the legislature, there is no authority to transcend or add to the statute which may not be enlarged, stretched, or expanded, or extended to cognate or related cases not falling within its provisions.’ 50 Am. Jur. Statutes, § 229, pp. 214, 215,

216. See also 59 C. J. Statutes, § 569, pp. 953 to 958. *Bettenbrock v. Miller* (1916), 185 Ind. 600, 606, 112 N. E. 771."

As heretofore noted, "corporations," as defined in Section 110 of the 1963 Act, Burns' 64-3210, *supra*, are subject to both the "Adjusted Gross Income Tax Act of 1963" and the "Gross Income Tax Act of 1933" and are not exempt by Section 701 of the 1963 Act, Burns' 64-3249, *supra*, which provides, in part:

"Any person who is liable for tax under this act and any corporation which is exempt from federal income tax under section 1372(b) (1) of the Internal Revenue Code and if all stockholders of such corporation are residents of this state, shall not be liable for any tax on gross income received subsequent to June 30, 1963, as imposed by sections 2 and 3 of the Gross Income Tax Act of 1933 as amended (chapter 50 of the Acts of 1933, as amended) * * *"

However, Section 302 of the "Adjusted Gross Income Tax Act of 1963," Burns' 64-3221, *supra*, provides in part:

"Corporations shall be entitled to a credit, not to exceed the amount of the tax imposed by this act, against the tax imposed by this act for any taxable year in an amount equal to any tax imposed on gross income by sections 2 and 3 of the Gross Income Tax Act of 1933, as amended (the same being sections 2 and 3 of chapter 50 of the Acts of 1933, as amended), for the same taxable year * * *"

The effect of Section 302, *supra*, is to allow certain corporations a tax credit against their Adjusted Gross Income Tax liability in an amount equal to their Gross Income Tax liability, thereby reducing the amount of their liability under the "Adjusted Gross Income Tax Act of 1963," and consequently, reducing the amount of tax collected from such corporations under the 1963 Act.

Mindful of the effect of Burns' 64-3221, *supra*, the answer to your question turns on the construction of the first sentence

OPINION 39

of Section 704, referred to in your letter and found in Burns' 64-3251, *supra*, which is:

"All revenue derived from the imposition and collection of the tax on corporations imposed by this act shall be deposited in the general fund of the state in a special fund to be known as the 'property tax relief fund.'" (Our emphasis)

In my 1961 O. A. G., pages 225, 230, No. 38, I quoted from the case of Board of Commissioners of County of Marion v. Board of School Commissioners of City of Indianapolis (1960), 130 Ind. App. 506, 515, 166 N. E. (2d) 880, 884, which reads, in part, as follows:

*"There are many principles of statutory interpretation stated in the opinions of our courts. The one principle which we believe should be considered before any others may be resorted to, however, is that a statute which is clear and unambiguous must be given its apparent or obvious meaning * * *"*

The language employed by the Legislature in Burns' 64-3251, *supra*, is clear and unambiguous. The only revenue that could be "derived from the imposition and collection of the tax on corporations imposed" by the "Adjusted Gross Income Tax Act of 1963" must necessarily be the "overage" referred to in your letter. Therefore, I conclude that the position taken by your department concerning the manner of calculating the amount of revenue to be placed in the "Property Tax Relief Fund" is correct.

OFFICIAL OPINION NO. 39

July 20, 1964

Hon. Lawrin Prentice Dagley
State Representative
323 South Main Street
Clinton, Indiana

Dear Representative Dagley:

This is in answer to your letter of July 8, 1964, wherein you request an Official Opinion relative to certain definitions con-