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

Dear Mr. Courtney:

This is in response to your request for my Official Opinion in answer to two questions concerning the "Adjusted Gross Income Tax Act of 1963," and particularly concerning Sections 111 and 117 of that act. After quoting said Section 117, your request, referring thereto, reads:

"The last sentence states, we are to follow the law as in effect January 1, 1963, unless rules or regulations are promulgated to change it. The 1964 Revenue Act, passed by Congress this year, amends the Acts which were in effect January 1, 1963. We are now planning the preparation of the individual and corporation income tax returns for the year 1964.

"The questions now before us are:

"1. Should we make our own regulations to conform with the Internal Revenue Code now in effect? If not, can such regulations be prepared by your Office?

"2. Are we bound by the January 1, 1963 date?"

The two sections of the act to which your letter refers are the Acts of 1963 (Spec. Sess.), Ch. 32, Secs. 111 and 117, which, as found in Burns' (1963 Spec. Supp.), Sections 64-3211 and 64-3217, read as follows:

64-3211 "The term 'Internal Revenue Code' means the Internal Revenue Code of 1954 of the United States as amended and in effect on January 1, 1963." (Our emphasis)
64-3217 "Whenever the Internal Revenue Code is mentioned in this act, the particular provisions which are referred to, together with all other provisions thereof, in effect on January 1, 1963, not specifically mentioned but which are necessary to give full effect and implementation to the provisions specifically referred to, shall be regarded as incorporated in this act by such reference and shall have the same force and effect as though fully set forth herein. Insofar as pertinent to this act, rules or regulations promulgated pursuant to section 7805(a) of the Internal Revenue Code [F. C. A., tit. 26, § 7805(a)] and in effect on January 1, 1963, shall be regarded as rules and regulations promulgated by the department under and in accord with the provisions of this act, unless and until the department promulgates specific rules or regulations in lieu thereof." (Our emphasis)

I have emphasized in the two above-quoted sections the crucial language "in effect on January 1, 1963" and am taking the liberty of proceeding first with the answer to and discussion of your question No. 2 as to whether you are bound by the January 1, 1963 date.

Because of the reasons hereinafter appearing, for answer to your question No. 2, it can be stated unequivocally that you are bound by the January 1, 1963 date, in that the 1963 Legislature incorporated in the "Adjusted Gross Income Tax Act of 1963" the particular provisions of the "Internal Revenue Code," as defined in Section 111, supra, as stated in Section 117, supra:

"* * * which are referred to, together with all other provisions thereof, in effect on January 1, 1963, not specifically mentioned but which are necessary to give full effect and implementation to the provisions specifically referred to * * *" (Our emphasis)

together with

"* * * rules or regulations promulgated pursuant to section 7805(a) of the Internal Revenue Code and
in effect on January 1, 1963 * * * unless and until the Department [Indiana Department of State Revenue] promulgates specific rules or regulations in lieu thereof.” (Our emphasis)

The basic reason requiring the above answer to your question No. 2 is the firmly-established principle that a state legislature has no power to delegate any of its legislative powers to any outside agency such as the Congress of the United States or the United States Internal Revenue Service. Under the Indiana Constitution, Art. 4, Sec. 1, the legislative authority of this state shall be vested in the General Assembly. For the General Assembly to enact a statute which adopts, by reference, from another sovereignty (such as the United States or another state) such other sovereignty’s statute as the same may be amended from time to time, would constitute an abdication by our state Legislature of its exclusive power in the field of legislative authority, thereby subjecting the citizens of this state, in matters of purely Indiana state legislation, to the law-making power of such sovereignty. This is the reason, in the adoption of legislation by reference from another sovereignty, for the absolute necessity of identifying with precision what act or parts of an act are incorporated by reference. Of course, the most explicit manner of effecting such an identification is to refer not only to the act incorporated by reference but also to the specific sections, and by making such references to those sections which were in effect on a given date. As stated in 11 Am. Jur., Constitutional Law, C. Delegation of Powers, § 219, p. 930:

“§ 219. State Legislatures to Congress.—The principle is firmly established that a state legislature has no power to delegate any of its legislative powers to any outside agency such as the Congress of the United States. Hence, a state act appropriating a fund to be expended under the terms and conditions of an act of Congress to be passed in the future is unconstitutional.

“A state legislature does not invalidly delegate its legislative authority by adopting the law or rule of Congress, if such law is already in existence or operative. For this reason a state income tax law which
adopts as a basis of arriving at the net taxable income of a taxpayer the features of a similar Federal law does not vest in Congress and Federal bureaus the legislative power of the state in violation of the state Constitution. On the other hand, a state statute adopting as a part of it the definition of intoxicating liquor to be found in a Federal statute to be subsequently enacted is an unconstitutional attempt to delegate legislative power.” (Our emphasis)

In the case of Featherstone v. Norman (1930), 170 Ga. 370, 153 S. E. 58, 70 A. L. R. 449, the Georgia Supreme Court stated, in part, on pp. 465 and 466 of 70 A. L. R.:

"4. It is next urged that the law violates art. 3, § 1, par. 1, of the Constitution of Georgia, which provides that ‘the legislative power of the State shall be vested in a General Assembly.’ The specific ground of this attack is that this act undertakes to vest in Congress, and administrative bureaus and boards of the United States, the power to fix and determine the rates of taxation, exemptions therefrom, the subjects thereof, the classifications of incomes for purposes of taxation, and to promulgate rules and regulations touching features of the administration of this legislation * * * This act in no way undertakes to make future federal legislation a part of the law of this state upon that subject. When a statute adopts a part or all of another statute, domestic or foreign, general or local, by specific and descriptive reference thereto, the adoption takes the statute as it exists at that time. The subsequent amendment or repeal of the adopted statute or any part thereof has no effect upon the adopting statute. 25 R. C. L. 875, 907, §§120, 160; 36 Cyc. 1152; 26 Am. & Eng. Enc. Law (2d ed.) 714; Kendall v. U. S., 12 Pet. 524, 9 L. ed. 1181. Prior acts may be incorporated in a subsequent one by terms or by relation; and, when this is done, the repeal of the former leaves the latter in force, unless also repealed expressly or by necessary implication. The adoption of a general law does not carry with it the adoption of the changes afterwards made in such law. In re Heath, 144 U. S. 92, 12 S. Ct.
An act adopting by reference all or a part of another statute means the law as existing at the time of the adoption, and does not adopt any subsequent addition thereto or modification thereof. Endlich, Interpretation of Statutes, 115, § 85.

"So it follows that there is no delegation of legislative power to Congress in these respects * * *" (Our emphasis)

Moreover, in the case of Brock v. Superior Court in and for Los Angeles County et al. (1937), 9 Cal. (2d) 291, 71 P. (2d) 209, 114 A. L. R. 127, the California Supreme Court stated, on p. 134 of 114 A. L. R.:

"* * * It is of course, perfectly valid to adopt existing statutes, rules, or regulations of Congress or another state, by reference; but the attempt to make future regulations of another jurisdiction part of the state law is generally held to be an unconstitutional delegation of legislative power. See In Re Burke, 190 Cal. 326, 212 P. 193; Santee Mills v. Query, 122 S. C. 158, 115 S. E. 202; and note, 34 Colum. L. Rev. 1077, 1084." (Our emphasis)

Thus, it is clear that the Indiana Legislature by the enactment of the "Adjusted Gross Income Tax Act of 1963," being the Acts of 1963 (Spec. Sess.), Ch. 32, approved on April 20, 1963, adopted the particular, "referred to" provisions from the "Internal Revenue Code" as defined in Section 111, supra, as stated in Section 117, supra, together with all other provisions from that code in effect on January 1, 1963 "which are necessary to give full effect and implementation to the provisions specifically referred to," but did not adopt, and could not have constitutionally adopted, the amendments to the "Internal Revenue Code" which were passed by the Congress of the United States in 1964, nor other future amendments thereto. Moreover, the same answer is required with respect to rules and regulations promulgated pursuant to Section 7805(a) of the "Internal Revenue Code" and in effect on January 1, 1963, in that amendments to such rules and regulations were not adopted by the enactment of the Acts of 1963 (Spec. Sess.), Ch. 32, supra.
Reference is now made to your first question as to whether the Indiana Department of State Revenue should make its "own regulations to conform with the Internal Revenue Code now in effect?" (Our emphasis) In addition to what has heretofore been stated, the answer to this question is clear from the Acts of 1963 (Spec. Sess.), Ch. 32, Sec. 613, as found in Burns' (1963 Spec. Supp.), Section 64-3247, which provides, in part, as follows:

“(a) The department shall from time to time promulgate in the manner provided by law such rules and regulations not inconsistent with this act, for making returns and for the ascertainment, assessment and collection of the tax imposed hereunder, as it may deem necessary and desirable.” (Our emphasis)

Thus, there is no requirement, nor could there constitutionally be such a requirement, that the Indiana Department of State Revenue promulgate rules and regulations in conformity with the provisions of the “Internal Revenue Code” as the same may be amended in 1964, or at any future time, and, in fact, to do so would render such rules and regulations invalid if they, to conform with the 1964 amendments to the “Internal Revenue Code,” were inconsistent with the “Adjusted Gross Income Tax Act of 1963” as enacted by our state Legislature.

This would not mean, however, that the Indiana Department of State Revenue could not promulgate, in the manner provided by the rule-making procedure prescribed by the Acts of 1945, Ch. 120, as found in Burns’ (1961 Repl.), Section 60-1501 et seq., such rules and regulations “as it may deem necessary and desirable” for making returns and for the ascertainment, assessment and collection of the tax imposed by the “Adjusted Gross Income Tax Act of 1963.” In addition to the applicable standards of both the Federal and State Constitutions, the standard for determining the validity of any such rules and regulations would be whether they are consistent with said 1963 Act as passed by the Indiana Legislature and not whether they conform to the 1964 amendments to the “Internal Revenue Code” as enacted by the Congress of the United States. Moreover, the same standard would necessarily apply in the adoption of tax return forms
which may be necessary “for the ascertainment, assessment and collection of the tax imposed” by the “Adjusted Gross Income Tax Act of 1963.”

As stated in the Acts of 1963 (Spec. Sess.), Ch. 32, Sec. 613, *supra*, the determination of the necessity and desirability of such rules and regulations and the promulgation of the same is a function of the Indiana Department of State Revenue. It could be that the department would deem it necessary and desirable to formally adopt as its own the applicable rules and regulations, verbatim, which were promulgated pursuant to Section 7805(a) of the “Internal Revenue Code” which were in effect on January 1, 1963, even though such federal rules and regulations are, by reason of Section 117, *supra*, fully effective without the formal adoption thereof by your department. This could be an accommodation to the many persons affected by the “Adjusted Gross Income Tax Act of 1963” who do not have easy access to such rules as promulgated by the Internal Revenue Service of the United States. Moreover, if changes were desired in such rules and regulations as adopted by the Internal Revenue Service of the United States and in effect on January 1, 1963, such changes could be made so that the new rules and regulations promulgated by the Indiana Department of State Revenue would thereby constitute “specific rules or regulations in lieu” of the federal rules as contemplated by the Acts of 1963 (Spec. Sess.), Ch. 32, Sec. 117, *supra*.

In closing, and for answer to the remainder of said question, it should be stated that the function of the office of the Attorney General with respect to the adoption and promulgation of rules and regulations by agencies of the State of Indiana is that prescribed by the Acts of 1945, Ch. 120, Sec. 5, as found in Burns’ (1961 Repl.), Section 60-1505, which provides, in part, as follows:

“It shall be the duty of every agency which may have been or hereafter may be clothed with or given any power or authority to make, adopt, promulgate or enforce rules to submit the same to the attorney-general for approval as to legality and when so approved to submit the same to the governor for approval * * *”

(Our emphasis)