

these provisos the legislature intended to confer upon Township School Trustees, Board of School Trustees and Boards of School Commissioners authority to provide transportation for school children, when in the discretion of such school authorities, the conditions, such as distance, roads, and other transportation facilities, made the transportation of the pupils advisable
* * *"

I am therefore of the opinion the Metropolitan School District of Troy Township may provide transportation for students attending the elementary public schools of Tell City School Corporation although such children are attending such public schools on a private transfer tuition agreement.

OFFICIAL OPINION NO. 45

September 20, 1963

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

Dear Mr. Courtney:

This is in response to your requests for my Official Opinion in answer to several questions all related to the tax liability for the calendar year 1963 of natural persons under the "Gross Income Tax Act of 1933" and the "Adjusted Gross Income Tax Act of 1963." Although your questions are contained in two separate letters, because they are so inter-related and/or arise from the midyear transition from the 1933 Act to the 1963 Act, it is deemed advisable that these questions be considered together and that the answers there-to be consolidated into one Opinion.

The "Gross Income Tax Act of 1933," with which this Opinion is concerned, is the Acts of 1933, Ch. 50, Secs. 1 to 35, inclusive, as amended, as found in Burns' (1961 Repl.), Sections 64-2601 to 64-2632. The "Adjusted Gross Income Tax

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Act of 1963" is the Acts of 1963 (Spec. Sess.), Ch. 32, as found in Burns' (1963 Spec. Supp.), Sections 64-3201 to 64-3251.

The question first to be considered herein relates to each of the above-mentioned acts and reads as follows:

"What is the correct amount of annual exemption allowed to individuals for the calendar year beginning January 1, 1963 and ending December 31, 1963, under the Gross Income Tax Act and the Adjusted Gross Income Tax Act?"

An analysis of the foregoing question reveals that it is comprised of more than one inquiry, making it necessary to divide the same into separate, although related, questions. Thus, this Opinion will consider first the following:

1. For that part of 1963 for which natural persons are liable for taxes imposed by the "Gross Income Tax Act of 1933," what is the amount of exemption to which such persons are entitled under said act?

This question arises because of a provision in the "Adjusted Gross Income Tax Act of 1963," specific reference being made to the Acts of 1963 (Spec. Sess.), Ch. 32, Sec. 701, as found in Burns' (1963 Spec. Supp.), Section 64-3249, which reads as follows:

"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 acts of 1933 as amended*): Provided, however, In the event the tax imposed by this act is held inapplicable or invalid with respect to any person or the stockholders of any such corporation, then such person or such corporation shall be liable for the tax on gross income received after June 30, 1963, as imposed by

said Sections 2 and 3 of the Gross Income Tax Act of 1933, as amended” (Our emphasis)

Natural persons are clearly liable for the tax imposed by the “Adjusted Gross Income Tax Act of 1963,” so that, as stated above, they “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) * * *” Thus, because natural persons are not liable for the tax imposed by Sections 2 and 3 of the “Gross Income Tax Act of 1933” upon gross income “received” subsequent to June 30, 1963, they cannot be required to report for gross income tax purposes the total gross receipts received for the entire calendar year of 1963, but under the 1933 Act are required to report only those receipts received from January 1, 1963, to and including June 30, 1963.

Since the liability of natural persons upon the former gross income tax basis does not extend to the entire calendar year, it is important to determine what the “Gross Income Tax Act of 1933” provides with respect to the exemption accorded a taxpayer who is taxable under that act for only a fractional part of the tax year. The Acts of 1933, Ch. 50, Sec. 5, as amended, as found in Burns’ (1961 Repl.), Section 64-2605, provides as follows:

“In computing the amount of tax imposed under the provisions of this act for any year, there shall be deducted from the gross income of any taxpayer an amount of one thousand dollars [\$1,000.00]. Each such taxpayer who is taxable hereunder upon gross income for any fractional part of the tax year shall be entitled to a deduction of that part of one thousand dollars [\$1,000.00] which bears the same proportion to that amount *which the period of time during which the taxpayer is subject to tax bears to an entire year*. Where quarterly returns are filed, as provided in this act, a proportionate part of the deduction provided for in this section may be claimed and allowed on each quarterly return.” (Our emphasis)

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From the language in the above section the legislative intent is crystal clear and unambiguous so as not to require nor warrant the application of any rules of statutory construction. Pursuant to Section 701 of the "Adjusted Gross Income Tax Act of 1963," *supra*, it is clear that natural persons "shall not be liable" for the gross income tax which would otherwise be imposed upon gross income received subsequent to June 30, 1963, so that they, likewise, are not "subject to" said tax for the period from July 1, 1963 to and including December 31, 1963.

By reason of being subject to the gross income tax imposed by Sections 2 and 3 of the "Gross Income Tax Act of 1933" for only one-half of the entire calendar year, it follows that, in computing the tax liability of natural persons pursuant to the provisions of said act for 1963, they are entitled to only one-half of the annual exemption of \$1,000.00. Therefore, the exemption accorded such persons under the "Gross Income Tax Act of 1933" under such circumstances for said period is \$500.00.

2. The remainder of the first above-quoted inquiry concerns the "Adjusted Gross Income Tax Act of 1963" and requires a determination of the correct amount of annual exemption to which taxpayers, who are natural persons are entitled for the calendar year 1963 pursuant to the 1963 Act.

Inseparably related to No. 2 above and, therefore, considered together therewith, is the supplementary question concerning the status of a wife, which reads as follows:

"Could a wife be construed as a dependent under the Adjusted Gross Income Tax Act?"

The answer to these questions is controlled by the interpretation to be given to the Acts of 1963 (Spec. Sess.), Ch. 32, Sec. 103a, as found in Burns' (1963 Spec. Supp.), Section 64-3203a, which provides as follows:

"SEC. 103. When used in this act the term 'adjusted gross income' shall mean:

"a. In the case of *all persons*, 'adjusted gross income' as defined for individuals in section 62 of the Internal Revenue Code, modified as follows:

“(1) Subtract income that is exempt from taxation under this act by the constitution and statutes of the United States;

“(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to section 62 of the Internal Revenue Code for taxes levied by any state or any subdivision thereof;

“(3) Subtract one thousand dollars (\$1,000), or in the case of a *joint return filed by a husband and wife*, subtract for *each spouse* the lesser of one thousand dollars (\$1,000) or the adjusted gross income of such spouse computed without regard to subsection a(4) of this section, *Provided that in no event shall less than five hundred dollars (\$500) be subtracted for each spouse*;

“(4) Subtract five hundred dollars (\$500) for each dependent of the taxpayer *as defined in section 152 of the Internal Revenue Code* and five hundred dollars (\$500) for each additional exemption allowed or allowable *pursuant to sections 151(c) and 151(d) of the Internal Revenue Code*;

“(5) Subtract an amount equal to any deduction or deductions allowed or allowable pursuant to sections 651 and 661 of the Internal Revenue Code: *Provided, That amounts allowed or allowable pursuant to said sections shall be subtracted only to the extent that such amounts shall be taxable under this act to the beneficiaries of the trust or estate.*” (Our emphasis)

Only paragraph “a” is quoted above for the reason that paragraph “b” of Section 103 concerns the meaning of the term “adjusted gross income” in the case of corporations only, whereas paragraph “a,” *supra*, applies in the case of “all persons.”

Section 114 of the Act, as found in Burns’ (1963 Spec. Supp.), Section 64-3214, defines “person” to mean:

“The term ‘person’ means an individual, trust or estate: *Provided, That no corporation shall be considered to be a person.*”

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Also, Section 109 of the Act, as found in Burns' (1963 Spec. Supp.), Section 64-3209, defines "individual" to mean:

"The term 'individual' means a natural person, whether married or unmarried, adult or minor."

Because your question inquires as to the correct amount of "annual" exemption allowed to individuals under the "Adjusted Gross Income Tax Act" for the calendar year 1963, it is assumed that the exemptions to which you refer are those of a specific amount fixed by statutory law and that your question does not relate to what income may be exempt from taxation by the Constitution and statutes of the United States. Upon this assumption, your inquiry is reduced to a determination of the meaning of Section 103a(3) and Section 103a(4).

Consideration will first be directed to Section 103a(3). Although this subsection does not use the term "exemption," an examination thereof reveals that it is not couched in terms of defining or classifying certain income as being nontaxable and thereby deductible because of the nature and source of the income. Rather, it is couched in terms providing for the subtraction of fixed amounts which are neither dependent upon the Internal Revenue Code, except as hereinafter stated, nor upon the classification of the income involved, nor upon the dependency status of any person therein mentioned. Thus, Section 103a(3) should be construed as the section which provides those exemptions to which the taxpayer himself is entitled, irrespective of other exemptions which may be provided elsewhere in the act.

Furthermore, in considering Section 103a(3), it should be noted that Section 402(d), as found in Burns' (1963 Spec. Supp.), Section 64-3224(d), provides as follows:

"(d) Where a joint return is made by husband and wife pursuant to the Internal Revenue Code, a joint return *shall* be made pursuant to this act." (Our emphasis)

Section 103a(3), although susceptible of varying interpretations, is believed to be intended to provide as follows:

An alternative method of filing returns by persons under the "Adjusted Gross Income Tax Act of 1963" whereby, except in the case of a joint return filed by a husband and wife, the taxpayer may subtract \$1,000.00 for himself or herself upon the individual return of such person. Thus, an unmarried person, or in the case of married persons either the husband or wife, or each of them if a joint return has not been made pursuant to the Internal Revenue Code, may file an individual return and subtract the sum of \$1,000.00 as an exemption to which the taxpayer himself or herself is entitled.

The alternative to this method is "in the case of a joint return filed by a husband and wife."

If an election is made to file such joint return, or if a joint return is required pursuant to Section 402(d), *supra*, then the exemption to which "each spouse" is entitled in such joint return is the lesser of \$1,000.00 or the adjusted gross income of such spouse, but in no event, in the case of such joint return, shall the amount of exemption allowed each spouse be less than \$500.00. Thus, in the case of a joint return, the husband and wife are each entitled to a minimum exemption of \$500.00, the maximum exemption to which each spouse is entitled being the lesser of \$1,000.00 or the adjusted gross income of such spouse.

It should be noted that we are discussing exemptions and that the universal rule of statutory construction is that provisions concerning exemptions are to be strictly construed so as not to enlarge the scope of the exemption beyond that clearly intended by the Legislature. If the "\$500.00 minimum proviso" were construed as applicable to the case of individual returns, such might have the effect of increasing the \$1,000.00 exemption to \$1,500, and, if this were claimed by each spouse filing an individual return, the cumulative exemptions under such interpretation would amount to \$3,000.00. However, because the office of a proviso is to limit that which *immediately* precedes the same, this proviso should be applied only to that part immediately preceding, which part concerns the manner of determining the amount of exemption to which each spouse is entitled "in the case of a joint return filed by a husband and wife."

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If a joint return is voluntarily made or where a joint return has been filed pursuant to the Internal Revenue Code of the United States, thereby requiring that a joint return be filed under the "Adjusted Gross Income Tax Act of 1963," in such cases, the exemptions to which the husband and wife are entitled are those provided "in the case of a joint return filed by husband and wife," the "\$500.00 minimum proviso" being applicable only in such cases.

Before proceeding to the consideration of Section 103a(4), *supra*, and the further exemptions provided thereby, it is important to note Section 117 of the Act, as found in Burns' (1963 Spec. Supp.), Section 64-3217, which provides as follows:

"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 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)

Therefore, because the dependency exemptions and additional exemptions provided by Section 103a(4) of the Act, each in the amount of \$500.00, are made to depend upon the sections of the Internal Revenue Code of the United States therein specified, said sections from the Federal Act are to be regarded as incorporated into the Indiana act with the same force and effect as though fully set forth therein.

Referring to Section 103a(4), as found in Burns' (1963 Spec. Supp.), Section 64-3203a(4), *supra*, it will be seen that

provision is made for a \$500.00 exemption "for each *dependent* of the taxpayer as defined in section 152 of the Internal Revenue Code" (Our emphasis) and also a \$500.00 exemption "for each additional exemption allowed or allowable pursuant to sections 151(c) and 151(d) of the Internal Revenue Code." Section 152 of the Internal Revenue Code, in defining the term "dependent," provides as follows:

"(a) General Definition.—For purposes of this subtitle, the term 'dependent' means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) as received from the taxpayer):

"(1) A son or daughter of the taxpayer or a descendant of either,

"(2) A stepson or stepdaughter of the taxpayer,

"(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

"(4) The father or mother of the taxpayer, or an ancestor of either,

"(5) A stepfather or stepmother of the taxpayer,

"(6) A son or daughter of a brother or sister of the taxpayer,

"(7) A brother or sister of the father or mother of the taxpayer,

"(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

"(9) An individual (*other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer*) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, or

"(10) An individual who—

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“(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

“(B) for the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and

“(C) before receiving such institutional care, was a member of the same household as the taxpayer.

“(b) Rules relating to general definition.—* * *

“(c) Multiple support agreements.—* * *

“(d) Special support test in case of students.—
* * *” (Our emphasis)

26 U. S. C. A. § 152.

From the foregoing definition of “dependent” in the Federal Act and upon which section the “Adjusted Gross Income Tax Act of 1963” is made to depend, it will be seen that a wife has, under the Federal Act, been excluded from the definition of the term “dependent,” particular reference being directed to Section 152(a)(9), as amended on September 23, 1959 [26 U.S.C.A., 1962 Cumulative Annual Pocket Part, § 152(a)(9)]. Therefore, because the dependency exemptions provided by Section 103a(4) of the “Adjusted Gross Income Tax Act of 1963” are made to depend wholly upon the Federal Act, a wife is not to be considered as a dependent in construing the Indiana act.

However, the taxpayer is entitled to an exemption in the amount of \$500.00 for each person who is a dependent of the taxpayer, as defined by Section 152 of the Internal Revenue Code, *supra*; and pursuant to Section 117 of the “Adjusted Gross Income Tax Act of 1963,” *supra*, other provisions of the Internal Revenue Code (“not specifically mentioned”) which are necessary to give full effect and implementation to the specifically referred to provisions of the Federal Act shall apply in determining exemptions based upon dependency, together with rules and regulations promulgated pursuant to Section 7805(a) of the Internal Revenue Code in effect on January 1, 1963, unless and until the Indiana Revenue Board promulgates specific rules and regulations in lieu thereof.

Section 103a(4) of the "Adjusted Gross Income Tax Act of 1963" provides for the subtraction of \$500.00 "for each additional exemption allowed or allowable pursuant to sections 151(c) and 151(d) of the Internal Revenue Code." These sections, as found in 26 U.S.C.A. § 151(c) and (d) (omitting the amount of the exemption allowable under the Federal Act), provide, in part, as follows:

"(c) Additional exemption for taxpayer or spouse aged 65 or more.—

"(1) *For taxpayer.*—An additional exemption of * * * *for the taxpayer* if he has attained the age of 65 before the close of his taxable year.

"(2) *For spouse.*—An additional exemption of * * * *for the spouse* of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of 65 before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

"(d) Additional exemption for blindness of taxpayer or spouse.—

"(1) *For taxpayer.*—An additional exemption of * * * *for the taxpayer* if he is blind at the close of his taxable year.

"(2) *For spouse.*—An additional exemption of * * * *for the spouse* of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such de-

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termination shall be made as of the time of such death.

“(3) Blindness defined.—For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.”
(Our emphasis)

These sections provide for additional exemptions (which under the state law amount to \$500.00) if the taxpayer has attained the age of sixty-five before the close of the taxable year and if his spouse has attained the age of sixty-five before the close of the taxable year, and for the calendar year in which the taxable year of the taxpayer begins has no gross income and is not the dependent of another taxpayer. These sections further provide for an additional exemption (which under state law amounts to \$500.00) if the taxpayer is blind at the close of the taxable year and if the taxpayer's spouse is blind for the calendar year in which the taxable year of the taxpayer begins and has no gross income and is not dependent upon another taxpayer.

3. The remaining question which you have presented reads as follows:

“Inasmuch as the rate is stated in the Act to be 1% for the full calendar year of 1963, would deductions and exemptions also be available to the taxpayer for the full calendar year 1963?”

The fact that your question refers to the rate of tax for the calendar year 1963 as being one per cent, arises from Section 202 of the “Adjusted Gross Income Tax Act of 1963,” as found in the Compiler's Note following Burns' (1963 Spec. Supp.), Section 64-3218, said Section 202 providing as follows:

“SEC. 202. In the case of a taxable year beginning on January 1, 1963, and ending on December 31, 1963,

a tax of one-half ($\frac{1}{2}$) of the rate set forth in section 201 upon adjusted gross income is hereby imposed upon the adjusted gross income of every resident person and on that part of the adjusted gross income derived from sources within the State of Indiana of every corporation and non-resident person." (Our emphasis)

Because the tax imposed by Section 201 of the act, as found in Burns' (1963 Spec. Supp.), Section 64-3218, is "at the rate of two per cent [2%] of the adjusted gross income," it follows that the rate at which the tax is imposed for the calendar year 1963 is one per cent. Section 202, *supra*, is designed so as not to be applicable merely to adjusted gross income received after June 30, 1963, the date upon which liability under Sections 2 and 3 of "Gross Income Tax Act of 1933" ceases, but is precisely worded so as to impose the tax upon adjusted gross income received for the entire taxable year beginning on January 1, 1963 and ending on December 31, 1963.

Apparently, the reason for making the tax applicable for such year at a rate of only one-half of the regular rate prescribed by Section 201, *supra*, is that tax liability under Sections 2 and 3 of the "Gross Income Tax Act of 1933" continues during the first six months of the calendar year 1963 during the same first six-months' interim included in the calendar year provided by Section 202, *supra*.

Although the rate for the 1963 calendar year, as imposed by the 1963 Act, is at only one-half of the rate set forth in Section 201, *supra*, of that act, each of these sections imposes the rate therein provided "upon the adjusted gross income." "Adjusted gross income," with respect to all persons other than corporations, is defined in Section 103a, *supra*, and since this section has heretofore been quoted in full in this Opinion, it is unnecessary, at this time, to repeat the same. For answer to your question, it is necessary only to state that there is no provision in the "Adjusted Gross Income Tax Act of 1963" for prorating the amounts which are to be subtracted as provided in said section. Thus, there is no authority for prorating deductions or exemptions provided by the 1963 Act, as

