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Montana's Adoption of the Federal Definition of Income

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INTRODUCTION

The Thirty-fourth Session of the Montana Legislature, by Chapter 260, Laws of 1955, hitched the Montana income tax wagon to one of the most complex revenue laws in the world, the federal income tax law as contained in the Internal Revenue Code of 1954.

Chapter 260 became effective as to all taxable years ending after June 30, 1955. We thus have a history of approximately five taxable years under the Montana act with its incorporation of federal income tax provisions. During these five years many problems have arisen under Chapter 260 for taxpayers and tax collectors alike, and it is evident that confusion has been created.

Clearly it was the intent of the Legislature to adopt the federal definition of income, but since there are several, the question arises as to which definition Montana intended to adopt and in what manner? The Legislature also expressed an intent to simplify the preparation and filing of state returns and to ease the task of the State Income Tax Department in auditing and correcting returns; but has this been the result?

The following discussion illustrates some of the problems, some of the changes, and some of the weaknesses existing in the Montana income tax law brought about and caused by Chapter 260. While many of the problems are more apparent than real, there are areas in which hazards exist for both the taxpayer and the tax collector. If nothing else, this discussion will serve as a "red flag" in this area for the tax practitioner and interested taxpayers.

WHAT DEFINITION OF INCOME WAS ADOPTED FROM THE FEDERAL INTERNAL REVENUE CODE?

Prior to the amendment of the Montana income tax law by Chapter 260, in the computation of income tax liability the taxpayer was concerned with two concepts, to-wit: gross income and net income. On the other hand, under the federal Internal Revenue Code the taxpayer was concerned with three concepts or definitions of income: gross income, adjusted gross income, and taxable income.

After the amendment of the Montana statute in 1955, the Montana taxpayer had three concepts of income to deal with: gross income, adjusted gross income, and net income. For 1960, and by reason of Chapters 253 and 265, Laws of 1959, the Montana taxpayer has yet another term to deal with, and that is taxable income, which is defined by section 84-4901(11) as gross income less the deductions and exemptions allowed by the act in question.

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It should be noted that since its inception in 1933, the Montana income tax has been levied against *net* income. Thus, in 1960, the tax was levied against *taxable* income for the first time.

Adjusted Gross Income

Revised Codes of Montana, 1947, section 84-4905 now defines adjusted gross income as being adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, or as that section may be labeled or amended, with the addition of interest on state, county and municipal bonds (a type of income which had been excluded from the federal definition of *gross income* by section 103), and excludes interest on United States obligations and dividends on national bank stock when the bank has a situs in Montana. In this connection it should be noted that interest on United States obligations and dividends paid on national bank stocks would be excluded from net income by reason of section 84-4932, even if section 84-4905 made no such provision.

As you know, the concept of adjusted gross income, with a few exceptions, is gross income less expenses incurred in business and profit-seeking activities, and was developed in 1944 in connection with the allowance of the so-called standard deduction in the federal income tax law.

Section 62 of the Internal Revenue Code does not create new deductions in computing adjusted gross income, but simply allows the deductions already set out in the income tax portion of the Internal Revenue Code. Under neither the federal nor the Montana law is the tax levied against adjusted gross income. Under the federal law, the tax is levied against taxable income; under the Montana statute for years prior to 1960, it is levied against *net* income, but for the year 1960 and for subsequent years, it is levied against *taxable* income as defined in the Montana statute.

The concept of adjusted gross income is important only in computing the standard deduction, in calculating the maximum amount allowable for charitable contributions, and in computing the minimum floor for medical expenses which can be deducted if the standard deduction is not taken.

Section 84-4906 does not use or refer to adjusted gross in computing net income.

By section 84-4908, enacted by Chapter 260, Laws of 1955, a standard deduction was allowed for the first time in the Montana statute, but it is allowed only to "a resident individual" as the term "resident" is defined in section 84-4901(6). The standard deduction under Montana law and federal law is 10% of adjusted gross income. However, unlike the federal act after the technical amendments of 1948, the upper limit under the Montana law is $500.00, except that in the case of a joint return of husband and wife the upper limit is $1,000.

The standard deduction under section 84-4908 is allowed in lieu of the deductions provided for in section 84-4906. However, section 84-4906 allows not only the so-called personal expenses of section 211, Internal Revenue Code of 1954, but also the business expenses referred to in section 161, and this seems to indicate that the Montana Legislature was somewhat confused as to the real nature of the standard deduction and the concept of adjusted gross income.

Also, since the standard deduction is in lieu of the deductions allowed by section 84-4906, it would in any event be in lieu of the deduction for federal income tax paid. Since the federal tax, except in rare instances, is more than 10% of adjusted gross income (or $500.00) for a given taxpayer, the standard deduction will rarely be used, leaving the concept of adjusted gross income important only in connection with the deduction for medical expenses and charitable contributions.

Thus, although the Legislature adopted the federal definition of adjusted gross income, this definition has only limited application under Montana law.

Net Income — Taxable Income

Since the tax is levied against net income by section 84-4902 and against taxable income by that section for 1960 and following years, it is this definition which plays the most important part in the tax computation.

Net income is defined by section 84-4901(10) as gross income, less the deduction allowed by the statute.

Revised Codes of Montana, 1947, section 84-4906 states that in computing net income there shall be allowed as deductions the items referred to in sections 161 and 211 of the Internal Revenue Code, plus federal income tax paid within the taxable year. Thus, it would appear that the deduction for long-term capital gains allowed by section 1202, while clearly allowed in computing adjusted gross income, is not incorporated in section 84-4906. However, as a practical matter the Income Tax Department has allowed this deduction.

Gross Income

Prior to the adoption of Chapter 260, the Montana income tax statute contained in section 84-4907 a definition of gross income. This section provided that such items were to be included in gross income for the taxable year in which *received* by the taxpayer, unless under the methods of accounting permitted in the act the amounts were to be properly accounted for in a different period. Section 84-4907 also excluded certain items from gross income.

Section 84-4933 of the old law set forth the method for computing gain or loss upon sales or disposition of property. Section 84-4934 specified that the gain or loss on sales or exchanges of property was to be recognized, except in the instances set forth in that section.

Section 84-4935 of the pre-1955 Montana law provided that where gain or loss was not recognized upon sales or exchanges of property, the property received in such sale or exchange was to be treated as taking the place of the property given up.

All of these provisions were repealed or amended by Chapter 260 and no replacement provisions were enacted, nor is there in the Montana statute at present any specific reference to any provisions in the Internal Revenue Code which define gross income, prescribe the methods for computing gain or loss on sales or exchanges of property, prescribe when such gain or loss is to be recognized, or prescribe how and when items of income are to be accounted for. In short, the whole question of what constitutes gross income and how and when it is to be reported and accounted for has been completely omitted from the present Montana act, except to the extent that the provisions of the Internal Revenue Code can be said to have been incorporated.

As you know, no one provision in the Internal Revenue Code attempts to define gross income. Section 61 contains a very general definition of gross income, but specifically states that this definition is not all-inclusive and is subject to the other provisions of Sub-Title A, which, of course, is the entire federal income tax law.

Sections 71 through 77 of the Internal Revenue Code specifically include certain items in gross income. Sections 101 through 119 specifically exclude certain items from gross income. Even these sections, however, do not give us the true definition of gross income as respects a given taxpayer for a given taxable period. What constitutes gross income for a taxpayer depends to some degree upon elections made by that taxpayer.

Under the Internal Revenue Code a taxpayer's gross income for a given period may be affected by such elections as the following:

(1) Fiscal year or calendar year reporting under section 441.

(2) Cash or accrual accounting under section 446.

(3) Installment method of reporting income under section 453.

(4) Discharge of indebtedness excluded from gross income under section 108 with comparable adjustment in basis of certain properties under section 1017.

(5) Carrying charges charged to capital account with respect to property, upon election of taxpayer under section 266.

(6) The income with respect to obligations issued at discount may be reported as the taxpayer elects under section 454.

(7) Recognition of gain may be "postponed" under certain so-called non-recognition provisions such as sections 1031, 1032, 1033, 1034.

(8) Upon election of the shareholders of the so-called "Sub-Chapter S, small business corporation" the tax upon the corporation's undistributed taxable income (or loss) may be shifted from the corporate level to the individual level, pursuant to sections 1371-1377.

The above are some examples of the elective provisions which will affect gross income and do not represent an attempt at an exhaustive list. However, the foregoing provisions raise several questions concerning the Montana concept of income. First, as noted previously, the Montana statute does not contain a definition of gross income, nor any provisions dealing with the methods of accounting for or reporting such income. One may ask whether the Montana Legislature has attempted, by Chapter 260, Laws of 1955, to incorporate in the Montana law the federal definition of gross income as contained in the Internal Revenue Codes of 1954 (or as that act may be amended) and if so, how is this definition affected by the various elections or choices allowed to the taxpayer as to the reporting of income?

There is a theory held by many that the Legislature intended that the adjusted gross income reported for Montana purposes be the same as the adjusted gross income reported for federal purposes, subject only to the exceptions specifically set forth in the Montana statute. These exceptions, of course, relate to items which are not taxable under the federal statute, but taxable under the Montana statute and vice versa, and items of income not from Montana sources received by nonresidents. Under this theory elections made by the taxpayer for federal purposes would be automatically binding for state purposes.

It would seem, however, that the Montana Legislature, had it intended this result, could simply have stated by Chapter 260, Laws of 1955, that adjusted gross income for Montana purposes was to be the adjusted gross income *reported* by the taxpayer in the return filed for federal purposes, subject to the exceptions specifically set forth in the Montana statute. That the Legislature did not do this is abundantly clear.

The Legislature deleted from the old Montana statute references to gross income, methods of accounting for income, methods for computing gain or loss, and the time for recognition or non-recognition of such gain or loss. It would not seem that the Legislature would leave the statute completely without such essential provisions or definitions. The Legislature was well aware of the many provisions in the Internal Revenue Code which affect the definition of gross income. Therefore, it is this writer's opinion that the Legislature adopted by reference, and by incorporation, in the Montana statute, all of the provisions of the Internal Revenue Code which deal with taxpayers subject to the Montana statute and relating to gross income, and the method of reporting and accounting for such income, including the installment sale provisions and the non-recognition provisions. However, it also appears that the Legislature left to the individual taxpayer all of the elections contained within the Internal Revenue Code, subject to regulations which are within the province of the State Board of Equalization and not in conflict with the law and intent of the Legislature. The taxpayer thus may make all of the elections allowed to him under the federal code for Montana purposes, and is not bound to make the same elections for state and federal purposes.

MAJOR CHANGES EFFECTED BY CHAPTER 260

It is important to note here some of the major changes brought about by the incorporation of federal definitions of income.

Capital Gains and Losses

Under the old Montana statute no distinction was drawn between capital gains and losses and ordinary gains and losses, and there was in the old statute no definition of a capital asset. Under the present Montana statute the taxpayer is allowed the capital gains deduction which for the most part eliminates one-half of that gain from taxable income. Capital losses, on the other hand, cannot be taken in full as they were under the old Montana act but are limited to gains, plus a thousand dollars, and the further allowance of capital loss carryover. The resulting annual revenue loss was estimated by the Department at roughly $250,000 by reason of the allowance of the deduction against capital gains.

In determining what constitutes a capital gain or loss, reference must be made to the Internal Revenue Code as applicable to the Montana taxpayer, and this reference would appear to include section 1231.

Installment Sales

The federal provisions dealing with installment sales enlarged upon the scope of the provisions of the Montana statute prior to Chapter 260. Section 84-4906(e), as contained in the old statute, allowed the taxpayer who "regularly sells or otherwise disposes of personal property or makes casual sales of real estate where not more than 30% is reported in the year of the sale" to report on the installment method. The limitation of the installment method to regular sales of personal property (essentially dealers) seems to have been a legislative oversight which caused a serious tax trap for many taxpayers who used this method for federal purposes and assumed that they could use the same method for state purposes.

Loss Carry-over and/or Carried Back

Prior to Chapter 260, losses were required to be taken entirely in the year in which they occurred or accrued. Under present Montana law, net operating losses may be carried back and carried forward. This is also true under the federal law.

Internal Revenue Code of 1954, section 172, was amended in 1958. Prior to this amendment loss carrybacks were for two years rather than for the present three years. In applying section 172 the State Board of Equalization early ruled that it had no application to the years prior to the effective date of Chapter 260. Thus, losses prior to that date could not be carried forward and losses after that date could not be carried back to years before the effective date for the purposes of reducing tax, but were required to be carried back and exhausted before being carried forward.

Also, in connection with net operating losses, section 6511(d)(2)(a) provides a special rule for filing claims for refund or credit of tax where there has been an overpayment attributable to a net operating loss carryback. The effect of this provision is to extend the period of limitation with respect to the filing of such claim. However, the Montana statute contains a provision, section 84-4956, which provides provides that no credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim for refund or credit is filed by the taxpayer. Since section 84-4956 contains no exception similar to that contained in section 6511(d)(2) of the Internal Revenue Code, situations will arise where a taxpayer will be allowed a refund or credit for federal purposes in connection with a loss carryback, but will be prevented from obtaining a refund for state purposes by reason of section 84-4956. In this connection it should be noted that the same situation will exist with regard to bad debts and worthless securities if a claim for refund is based upon an overpayment of tax in connection therewith.

Capital losses for Montana purposes may also be carried forward as provided in section 1212.

Final Return of a Decedent

Under section 84-4905 before the enactment of Chapter 260, Laws of Montana, 1955, the final return of a decedent was required to be made on an "inventory basis" regardless of the method previously used in accounting for income.

Also, under section 84-4906(e) of the old statute, the State Board ruled that upon the death of the owner of an installment obligation the gain on the remaining balance was to be reported in the decedent's last return.

After the effective date of Chapter 260, the inventory basis of computing income on a decedent's last return, and the inclusion in such return of the remaining balance upon installment obligations, were no longer required and those persons to whom the property was transmitted upon death acquired the property with a date of death valuation as their basis. The revenue loss to Montana was considerable by reason of these changes.

Depreciation

The old Montana statute had simply allowed a deduction for "exhaustion, wear and tear of property . . . [and] . . . for obsolescence." There was no method prescribed for computing depreciation or obsolescence. By the incorporation of the federal law all of the various methods of computing depreciation are now available to the taxpayer, *i.e.,* sum of the years' digits, declining balance, as well as straight-line.

Annuity Payments

Under the old Montana statute, annuity or similar payments were received tax-free until a taxpayer had recovered his cost or other basis, and then the remaining payments were entirely taxable. Now the taxability of annuity payments must be computed under rather complicated federal rules. In connection with profit-sharing and pension plans under the old statute the employer was allowed a deduction for contributions and the employee was taxed upon such contributions as compensation.

Also, it would seem that since the Montana Legislature intended to adopt the federal definition of gross income, the various provisions dealing with profit-sharing plans and deferred compensation must also be referred to in determining what constitutes gross income under such deferred compensation plans and also in determining when a deduction may be taken for constributions to such plans.

Federal Income Taxes as a Deduction

Section 84-4903(3) of the old law allowed as a deduction in computing net income certain specified taxes "paid or accrued within the taxable year." Section 84-4906(b) now allows "federal income tax *paid* within the taxable year" to be taken as a deduction. It should be noted that federal income tax *accrued* within the taxable year is not mentioned and, therefore, is not allowed as a deduction.

Because most, if not all, taxpayers are now required to estimate and pay their taxes in advance or their taxes are withheld by their employers, federal taxes are, by payment of estimate or withholding, being "paid" during the current taxable year. Thus at the end of 1959, a taxpayer will know how much federal income tax he has paid by way of withholding or estimate. In computing his Montana tax the taxpayer will use the amount of tax withheld or estimated and paid as the amount of his deduction for federal tax whether this is his actual federal liability or not. If this method were not used, the taxpayer would become involved with an algebraic formula similar to that used in computing the marital deduction for estate tax purposes. This is true because the federal tax is a deduction in computing the state tax and the state tax is a deduction in computing the federal, and before one tax is computed the other must be known.

If the taxpayer's actual federal tax liability is greater or less than the amount which has been paid by withholding or estimate, then in the year following the taxable year the taxpayer will pay more tax or be granted a credit or refund. If a taxpayer pays more tax he will be allowed a deduction for that taxable year for state purposes. If on the other hand, he is granted a credit or refund this amount must be returned to income for Montana purposes and by reason of section 111 of the Internal Revenue Code, which requires the return to gross income of amounts recovered in connection with a bad debt, prior tax, or delinquency amount, where there has been a previous deduction and tax benefit. If no tax benefit was derived from the deduction of the federal tax in the prior year, the federal refund or credit would not be required to be included in Montana gross income.

The allowance of the federal income tax paid as a deduction for Montana tax purposes has some interesting ramifications and this problem will be discussed later. However, one interesting aspect is that since the federal tax rates are higher and more progressive than the state, a single individual with $12,000 of taxable income pays less tax than a married taxpayer with the same amount of taxable income and less than a married individual with four dependents at the $24,000 taxable income level.

CONSTITUTIONALITY OF CHAPTER 260

We should pause at this stage to consider a problem raised by Chapter 260, and that is the possibility that it is unconstitutional, or would be unconstitutional in some of its application.

The problem in this area is that sections 84-4905 and 84-4906, by incorporating in the Montana law certain sections of the Internal Revenue Code of 1954, or as those sections may be labeled or amended, has subjected the law or the particular provisions in question, to the possible charge that this constitutes an attempt to delegate legislative and judicial authority and as such is unconstitutional.

Without elaboration, it is this writer's opinion that the Legislature can and could very properly incorporate in the Montana act existing federal law, *i.e.*, the provisions of the Internal Revenue Code in effect on July 1, 1955. This is not the first time that the Legislature of this state has so incorporated existing law. For example, the common law of England as it existed at a certain date was incorporated by reference in our law where it did not conflict with express provisions thereof. Also, where we have adopted statutes from other states they are deemed to have been adopted with the judicial interpretations of the courts of those states rendered prior to adoption, and this is not subject to a charge of thereby usurping the judicial function of our state courts or denying to such courts the right to construe our laws.

A serious question is whether the Legislature could properly incorporate prospective legislation, *i.e.*, changes in the Internal Revenue Code after July 1, 1955. It appears that only where the Montana Income Tax Department is seeking to apply a provision or provisions of the Internal Revenue Code enacted by Congress after July 1, 1955, to a particular taxpayer, would the question of constitutionality be properly raised, and only by that taxpayer, and only as to the application of prospective federal changes to the computation of his tax liability.

In other words, the Montana statute is not, in my opinion, unconstitutional in whole, and the only question which can be raised on constitutional grounds is whether the Legislature could provide that prospective changes in the federal law are automatically to become part of the Montana law. There seem to be well reasoned authorities on both sides of the issue.

In the event our courts should hold that the statute is defective in this respect, could not the State Income Tax Department raise a similar question and attempt to deny to a taxpayer the use of a provision of the Internal Revenue Code of 1954, enacted by Congress after 1955, which was favorable to the taxpayer, on the ground that the Montana Legislature had no power to incorporate future change in the federal law?

SUB-CHAPTER S, SMALL BUSINESS CORPORATION, AND THE MONTANA INCOME TAX ACT

Many of the problems previously discussed can be illustrated in connection with the problem of the Sub-Chapter S, small business corporation.

By Chapter 263, Laws of 1959, the Montana Legislature removed from the deductions allowable in computing the corporation license tax the federal tax on corporate income, thus eliminating one of the major deductions allowable in computing that tax. Thus, for the shareholders of a so-called Sub-Chapter S, small business corporation, the election to have the corporation's undistributed taxable income treated as if received and included in the shareholders' income, and the tax paid at the individual rather than the corporate level, would allow the individual shareholders to take a deduction for the tax under section 84-4906, where if the corporation had paid the tax it would not have been an allowable deduction under the corporation license tax.

However, some questions immediately come to mind in connection with Sub-Chapter S and the shareholders' election. When the Montana Legislature by Chapter 122, Laws of 1959, amended the corporation license tax statute by adding sections 18-1501.1 and 84-1501.2 dealing with small business corporations, it was expressly provided by section 84-1501.2(g) that election to be so taxed was not effective unless the corporate net income or loss of the electing corporation was included in the shareholders' *adjusted gross income* as defined in section 84-4905. Thus, the election under the corporation license tax law is clearly not effective unless the shareholders include this corporate income or loss in their adjusted gross under the Montana income tax law.

Of course, it could immediately be pointed out that section 84-1501.2(g) requires the inclusion of such corporate income or loss in adjusted gross, but not in net income, and since adjusted gross has only limited use and significance the net effect is that there is no specific requirement that the shareholders pay a tax on this corporate income. However, section 1373 specifically requires that the undistributed taxable income of an electing small business corporation shall be included in the *gross* income of the shareholder.

The second problem is that Sub-Chapter S, as contained in sections 1371 through 1377 of the Internal Revenue Code, having been enacted in 1958, were not a part of the Internal Revenue Code on July 1, 1955, when the Legislature made Chapter 260 effective. Consequently, the attempt of the Legislature to incorporate future or prospective changes in the Internal Revenue Code is perhaps abortive as an unconstitutional delegation of legislative authority. If this is true, Sub-Chapter S cannot be considered in any way to be a part of the Montana income tax law.

Another problem is in connection with the shareholders of a qualifying small business corporation, who desire to elect the special tax treatment accorded by Sub-Chapter S for state purposes only and not for federal purposes, or for federal purposes and not for state purposes.

For example, if the shareholders elect to use Sub-Chapter S for state purposes only, and do not make the election with the federal taxing authorities, the undistributed corporate earnings or loss would not be included in their adjusted gross incomes for federal purposes and under the theory of those who say that adjusted gross income for federal purposes is and must be adjusted gross income for state purposes, there could be no single election.

On the other hand, suppose the shareholders elect to use Sub-Chapter S for federal purposes and not for state purposes. In this case, if the shareholders are allowed to elect in this manner, the corporate income or loss would be included in the shareholders' gross incomes for federal purposes, but not for state purposes. The shareholders would pay a federal tax but not a state tax and *apparently* would be allowed a deduction under section 84-4906 for a federal tax paid upon income which was not taxable to the State of Montana.

In the illustrations given above, we have assumed that the corporation was subject to corporation license tax and that the shareholders were Montana residents. Where this is not the situation our problems are increased. The corporation license tax is a tax upon the privilege of doing business in Montana in the corporate form and is measured by income from Montana sources only. Thus, there might be a corporation not doing business in Montana and thus not subject to corporation license tax but which has shareholders resident in this state. If the shareholders of such a corporation elect to be taxed under Sub-Chapter S for federal purposes they could not in any event elect to be so taxed under the Montana corporation license tax act for the reason that the corporation is not subject to that tax. But may such a shareholder take a deduction for the federal tax paid by reason of the inclusion of this corporate income in his gross income for federal purposes? What about basis adjustments with respect to the shareholder's stock?

A similar problem is that of the nonresident shareholder of a small business corporation. Let us assume for this purpose that the corporation derives all of its income from Montana sources, and the shareholder is a nonresident of the State of Montana. Under section 84-4907 nonresidents are not (with one exception) required to include in income, dividends received from corporations doing business in Montana. Even if the corporation should make an actual distribution by way of dividend, the distribution would not be taxable to the nonresident except in situations not here relevant. Thus, Sub-Chapter S, if it has application, makes the undistributed corporate income taxable to such nonresident, whereas had the income actually been distributed it would not have been taxable. In other words, if a nonresident is not taxable upon actual dividends, should he be taxed upon undistributed taxable income of the corporation?

CONCLUSION

Many of the problems raised above suggest their own solution. If the taxpayer refrains from taking extreme positions and the State Income Tax Department exercises sound judgment and logic in administering the law, perhaps many of the problems will disappear or, if they do not disappear, then both the taxpayer and the tax collector can pretend they do not exist. However, the careful lawyer, accountant, or tax practitioner will, if in doubt, be well advised to obtain a ruling from the Income Tax Department on his particular problem in advance of the filing of returns or prior to the exercise of elections allowed for reporting or accounting for income.

ADDENDUM:

AUTHORITIES ON THE CONSTITUTIONAL QUESTIONS RAISED BY CHAPTER 260, LAWS OF MONTANA, 1955

Many of the cases dealing with the question of the right of the legislature to incorporate by reference future or prospective federal legislation are collected in 133 A.L.R. 403; 166 A.L.R. 518, and the supplement to the last cited in 42 A.L.R. 2d 797.

Alaska has imposed an income tax which specifically incorporates by reference the federal Internal Revenue Code, "as now in effect, or as hereafter amended" and the tax is a percentage of the *tax paid* to the federal government, as contrasted to Montana adoption of federal definitions of income with the Montana act retaining its own rate structure, exemptions, and other essential provisions.

The Alaska act has been contested on these grounds and discussed by Judge Pope in the case of the *Alaska Steamship Co. v. Mullaney,* 84 F. Supp. 561, *affd.,* 180 F.2d 805 (9th Cir. 1950).

See also *Santee Mills v. Query,* 122 S.C. 158, 115 S.E. 202 (1922); *Featherstone v. Norman,* 170 Ga. 370, 153 S.E. 58 (1930); *Had v. McKenney,* 61 Ga. App. 552, 6 S.E.2d 405 (1939); *First Federal Savings and Loan Association v. Connelly,* 142 Conn. 483, 115 A.2d 455 (1955); *Tawes v. Strouse,* 182 Md. 508, 35 A.2d 233 (1943); *In Re Lasswell,* 1 Cal. App. 2d 183, 36 P.2d 678 (1934).

There is also an article by Mr. Tom Hendricks in 17 Mont. Law Review 203 (1956) entitled "Constitutional Questions Raised by Montana's New Income Tax Law."