**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-203** |

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| **Tax Type:** | **Individual Income Tax** |
| **Brief Description:** | **Taxation of German nationals on temporary assignment in Kansas.** |
| **Keywords:** |  |
| **Approval Date:** | **09/20/1999** |

**Body:**

Office of Policy & Research

September 20, 1999

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Re: Kansas Income Tax

Dear XXXXX:

Your correspondence of July 30, 1999, has been referred to me for response. Thank you for your inquiry. Your letter states, in pertinent part, as follows:

XXXXX XXXXX XXXXX XXXXX located in XXXXXX, Germany at the XXXXXX XXXXXX is an aviation firm involved in aviation maintenance on military aircraft. XXXXX has on-going contracts with XXX XXXX XXXXX and in the very near future will be sending management and technical personnel to the XXXXX XXXXX XXXXX for industrial purposes. Regarding this matter, XXXX has a taxation concern and requests that you provide all related information on the following criterion:

U.S. & Kansas State Taxes:
XXXXX employees, all German nationals, shall visit XXXXX XXXXX for periods between 4 and 6 months for business reasons. They possess German Passports and are cleared for NATO SECRET. The members will be paid normal wages during these time frames in German currency, Deutsche Mark (DM), and will not receive any income/wages from Boeing or any other U.S. source. In view of this, will the XXXXX employees be liable for any U.S and/or Kansas state taxes?

Kansas law requires the use of federal adjusted gross income (FAGI) as the starting point for computing the Kansas income tax. If the income in question is subject to federal income tax and is included as part of the FAGI, it could be subject to Kansas income tax.

The question of whether the income will be taxable by the United States or by Germany must be answered by reference to any treaty agreements between the two countries. If there is a treaty, the income would most likely be taxed by Germany. Specific information about a treaty is not available from this office, but can be obtained from the Internal Revenue Service, or perhaps from the United States or German Embassy.

Although the state of Kansas is without authority to determine whether income is or is not subject to federal taxation, and whether or not it is included in FAGI, for purposes of this response we will assume the income in question is subject to federal tax and that it will be included in FAGI. The particular statute which imposes the Kansas income tax is K.S.A. 79-32,110. The statute provides, in pertinent part:

(a) *Resident Individuals*. Except as otherwise provided by subsection (a) of K.S.A. 79-3220, and amendments thereto, a tax is hereby imposed upon the Kansas taxable income of every resident individual, which tax shall be computed in accordance with the following tax schedules: [Rate table omitted.]
(b) *Nonresident Individuals*. A tax is hereby imposed upon the Kansas taxable income of every nonresident individual, which tax shall be an amount equal to the tax computed under subsection (a) as if the nonresident were a resident multiplied by the ratio of modified Kansas source income to Kansas adjusted gross income.

The term "Kansas taxable income" is defined by K.S.A. 79-32,116. This statute provides, (in its entirety), that:

The Kansas taxable income of an individual shall be his or her Kansas adjusted gross income less his or her Kansas deductions and Kansas personal exemptions.

The term "Kansas adjusted gross income" is defined by K.S.A. 79-32,117. This statute provides, in part, that:

(a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, [after certain modifications]. (Specific addition and subtraction modifications deleted.)

As you can see from the statutes quoted above, tax due from individuals filing as nonresidents is computed as if the individual taxpayer were a resident of the state of Kansas. Then, after the tax has been computed, the amount of the tax is prorated based on whether the income was from Kansas or non-Kansas sources.

In light of the fact Kansas begins with FAGI for all state income tax computations, the treatment of nonresident aliens of the United States is much like the treatment of any non-Kansas resident. Any treaties between the United States and foreign countries are, in effect, recognized indirectly. The forms to be filed are the same. The primary differences occur with regard to such things as the credit for taxes paid to another state; this credit is not available for income tax paid to a foreign country.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 09/22/1999 Date Modified: 10/10/2001**