Corporations—Taxation—License Tax—Income—Interstate Earnings—Intrastate Earnings.

A railway company engaged in both inter and intrastate business should include in its report of net income earnings received from its cafes, lunch rooms and restaurants operated within the state.

State Board of Equalization, December 5th, 1925.
Helena, Montana.

Gentlemen:

You have requested my opinion upon the following question:

> "Should railroad companies engaged in interstate and intrastate business, in reporting gross income received from within the state on their Montana corporations license tax returns, report all income received from within the state secured from the operation of their lunch rooms, cafes and restaurants?"

The solution of this question depends upon whether income from lunch rooms, cafes and restaurants operated within the state constitute income from intrastate business. If so, the whole of it must be reported.

You state that at present the railroad companies include as income from restaurants, cafes and lunch rooms, only that percentage of the total business transacted within the state that the interstate passenger revenue bears to the intrastate passenger revenue. You state that the companies base their claim upon an opinion of the United States supreme court, which had relation to the feeding of livestock shipped interstate.

I presume the case relied upon is that of Stafford vs. Wallace, 66 L. Ed. 735. In that case the court held that stockyards are an interstate commerce agency. During the course of the opinion the court said:

> "The stockyards are not a place of rest or final destination. Thousands of head of live stock arrive daily by carloads and

trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the west to the east, and from one state to another. Such transactions cannot be separated from the movement to which they contribute, and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not, in this aspect, merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to, its continuity. The origin of the live stock is in the west; its ultimate destination, known to, and intended by, all engaged in the business, is in the middle west and east, either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce.

"The act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the west to the consumers in the east. It issumes that they conduct a business affected by a public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion. That has been settled since the case of Munn vs. Illinois, 94 U. S. 113, 24 L. Ed. 77. Nor is there any doubt that, in the receipt of live stock by rail, and in their delivery by rail, the stockyards are an interstate commerce agency. United States vs. Union Stock Yards & Transit Co., 226 U. S. 286, 57 L. Ed. 226, 33 Sup. Ct. Rep. 83."

The court in that case referred to the former decision in the case of Swift & Co. vs. United States, 49 L. Ed. 518, and quoted the following from the opinion in that case:

"When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce."

I do not regard this case as decisive of the question you have submitted. In the first place, the Stafford case was decided under a statute known as the packers and stockyards act, which contained the following provision:

> "For the purpose of this act a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the livestock and meat-packing industries whereby live stock and its products are sent from one state with the expectation that they will end their transit after purchase in another, including, in addition to cases within the general description, all cases whose purchase or sale is either for shipment to another state, or for slaughter of the live stock within the state and the shipment outside of the state of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or devise intended to remove transactions in respect thereto from the provisions of the act."

In the second place, if this statutory provision may be regarded only as declaratory of the law as existing theretofore and as pronounced in the Swift case, still I do not believe that the conclusion reached in either of said cases, nor the reasoning by which the conclusion was reached, is applicable to the facts submitted in your inquiry.

Stockyards, as properly held by the court, are a part and parcel of the equipment necessary to care for the constant flow of livestock from the west to the east. When the livestock are shipped it is expected and known that they will be placed in the stockyards as a part of the shipment.

The stockyards are a necessary agency for carrying on this class of interstate commerce. But, can it be said that lunch rooms, cafes and restaurants operated by carriers are for the same reason, or at all, interstate agencies? I believe not. They are not a necessary agency for the carrying on of this class of interstate commerce. Interstate trains are generally equipped with dining cars, while in the case of livestock it is known that they are to be placed in the stockyards, interstate passengers generally seek refreshments in the dining car. The current of such commerce does not flow through or into the restaurants, cafes or lunchrooms operated by the carriers, hence, they are not a part of such interstate commerce.

It is, therefore, my opinion that all income received by carriers engaged in interstate and intrastate business from lunch rooms, cafes and restaurants operated within the state must be reported and considered in the computation of such corporation's license tax.

Very truly yours,

L. A. FOOT,
Attorney General.