

## Opinion No. 258.

**Income Tax—Taxes—Non-Resident  
Income Tax—State Tax.**

Held: A non-resident of Montana is liable for the payment to this state of an income tax on his Montana income in accordance with Montana income tax law.

November 18, 1944.

Mr. Sam D. Goza, Chairman  
State Board of Equalization  
State Capitol  
Helena, Montana

Dear Mr. Goza:

My opinion has been requested upon the following matter:

During a portion of the year 1942 a firm of engineers of St. Paul, Minnesota, employed a civil engineer, for the performance of certain work at the Gore and Great Falls airfields near Great Falls, Montana, and paid him \$3,286.80 for said services.

Said civil engineer, I am informed, is and was a legal resident of Minnesota during the time that his salary was earned, but said salary was received by him for work performed in Montana. The civil engineer has refused to report and pay the Montana income tax on this income, insisting that he is not liable to pay the same because he is a non-resident of Montana and he has requested my opinion as to his liability.

Section 2295.2, Revised Codes of Montana, 1935, imposes an income tax at specified rates (1% on the first \$2,000 and 2% on the second \$2,000) upon the net income of every individual subject to the tax. Section 2295.3 of said code reads as follows:

“A like tax is imposed upon every person **not resident** of this state, which tax shall be levied, collected and paid annually at the rates specified in Section 2295.2 with respect to his entire net income, as herein defined except as hereinafter provided, from all property owned and from **every business, trade, profession or occupation carried on in this state by such a person.**” (Emphasis mine.)

Subdivision 3 of Section 2295.7, Revised Codes, 1935, provides that:

"In the case of taxpayers **other than residents** gross income includes only the gross income from sources within this state." (Emphasis mine.)

These two sections must be read together in determining the tax liability of non-residents. The words "incomes from sources within this state" used in Subdivision 3 of Section 2295.7, as amended by Chapter 7, Laws of 1939, must be construed in harmony with the language of Section 2295.3 which imposes a tax on the income of non-residents from all property owned and from every business, trade, profession or occupation carried on in this state. The two sections are entirely harmonious and they clearly impose a tax on all income of a non-resident received from sources within Montana, including income from every business, trade, profession or occupation carried on in Montana by a non-resident.

When such person was employed as a civil engineer (or at any other employment) in Montana and received income from such employment, it is perfectly clear that this was income received from Montana sources and which is plainly taxable under the above statutes.

While the civil engineer's letter submitted does not indicate on what **ground** he claims exemption from the tax as a non-resident, it is possible he may have in mind some constitutional objection to Montana taxing a non-resident. If such is the case, I may say that the constitutional power of a state to levy a non-discriminatory income tax upon income of non-residents arising within its borders is too well settled to be any longer open to question.

I quote the following statement of the law from Prentice-Hall State and Local Tax Service (Montana volume), page 91128, paragraph 91.136:

"The states may tax incomes accruing to non-residents from their property, business, occupations or services within the taxing state, enforcing payment as far as they can, by the exercise of a just control over persons and property within their borders. This fundamental is so well established as to require no extensive citation." (Citing numerous authorities.)

It is my opinion that on the facts presented, the said civil engineer is liable for the payment to this state of an income tax on his Montana income in accordance with your computation thereof on the basis of the figures submitted to you by his employer.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General