

Corporations. Shares of Stock. Taxation Of.

Shares of stock in corporations, the capital stock or property of which is situated outside the State of Montana, if owned by residents of this state, are subject to taxation herein. Where the capital stock of a foreign corporation consists of shares of stock of other corporations, the shares of stock of the foreign corporation owned by residents of this state are subject to taxation herein, notwithstanding the fact that the shares of stock which constituted the capital stock of such foreign corporation represent tangible property in Montana which has been taxed.

Helena, Montana, July 31st, 1906.

Hon. William D. Clark, Chairman Board of County Commissioners, Butte, Montana.

Dear Sir:—Your letter of July 5th, in which you submit the following question, received.

“Where residents of Silver Bow County own mining stocks and the properties representing the value of such stock are outside of the state, can such residents be assessed with such stock?”

Also your letter of July 16th received, in which you enclose a copy of opinion from the county attorney to the county assessor, and submit the following question, to-wit:

“Can resident holders of Amalgamated and United Copper Stocks be legally assessed with such stocks?”

In answering these questions we shall first consider several principles of law relating to the taxation of corporations and shares of stock which have been firmly settled by the decisions of the State Courts and the Supreme Court of the United States.

1. “The capital stock of a corporation and the shares into which such stock may be divided and held by individual shareholders, are two distinct pieces of property. The capital stock and the shares of stock in the hands of the shareholders may both be taxed, and it is not double taxation. This statement has been reiterated many times in various decisions by this court, and is not now disputed by anyone.”

See—

- Bank of Commerce v. Tennessee, 161 U. S. p. 146.
- Farrington v. Tennessee, 95 U. S. 687 and 691.
- Sturges v. Carter, 114 U. S. 521.
- Bradley v. Bender, 38 Am. Rep. (Ohio) 547.
- Greenleaf v. Board of Review, 184 Ills. 226.
- Commonwealth v. Charlottesville, 44 Am. St. Repts. (Va.) 950.
- Owensboro National Bank v. Owensboro, 173 U. S. 664.

2. As a necessary result of the above principle of law it has also been repeatedly held;

“That the exemption of the capital stock or property of the corporation from taxation does not necessarily exempt the shares in the hands of the individual shareholders.”

- Owensboro National Bank v. Owensboro, 173 U. S. 664.
- Am. & Eng. Ency. of Law, Vol. 12, p. 357, Note 1.
- Cooley on Taxation, 3rd Ed. p. 371.

3. In nearly every state and by repeated decisions of the supreme court of the United States it has been held that shares of stock in a foreign corporation owned by persons residing in a state may be lawfully taxed to them in such state, although the capital and property of such corporation is taxed in the state where the corporation is located, or in the foreign state where the property is situated.

- Sturges v. Carter, 114 U. S. 519 to 522.
- Bardley v. Bander, 38 Am. Repts. 547.
- Greenleaf v. Board of Review, 184 Ills. 226.
- Wright v. Louisville & Nashville R. R. Co., 195 U. S. 219.

San Francisco v. Fry, 63 Cal. 470.

San Francisco v. Flood, 64 Cal. 504.

Mackay v. San Francisco, 45 Pac. (Cal.) 696.

Mackay v. San Francisco, 61 Pac. (Cal.) 382.

In re Fair's Estate, 61 Pac. (Cal.) 184.

Cooley on Taxation, 3rd Ed. pp. 86 and 87, and cases cited in Note 1.

Buck v. Miller, 62 Am. St. Repts. (Ind.) 436, and note at p. 458.

In accordance with the principle of law above announced, you are advised, in answer to the first question, that where the capital stock or property of a mining company or other corporation, is situated outside of the State of Montana, that shares of stock of such corporation owned by residents or corporations in the State of Montana, are taxable to such residents or corporations.

San Francisco v. Fry, above.

San Francisco v. Flood, above.

This brings us to the second question submitted, namely, as to whether shares of stock of the Amalgamated Copper Company and other companies of the same class, owned by residents of this state are taxable herein.

The principles of law stated above to the effect that capital stock and shares of stock are separate and distinct classes of property and may both be taxed, have been modified by Sec. 17 of Art. 12 of the State Constitution to this extent; that when the property of a corporation is situated in the State of Montana and has been taxed in this state, that the shares of stock representing the property of such company and owned in this state, cannot also be taxed in this state; in other words, under such section of the constitution, the shares of stock are exempted from taxation in this state when the property in this state which they represent has been taxed, therefore, in order to determine whether shares of stock of the Amalgamated Copper Company or other corporations of like kind, owned in this state are subject to taxation, it is necessary to first determine what the property of the Amalgamated Copper Company consists of and where it is situated. While we specifically refer to the Amalgamated Copper Company, it is intended that anything said in relation thereto applies with equal force to all other corporations of the same kind.

The Amalgamated Copper Company in the first place is a foreign corporation incorporated under the laws of New Jersey. It does not carry on business in the State of Montana, in fact has never filed a certified copy of its articles of incorporation with the Secretary of State, as is required by law before carrying on business in this state, therefore, we must presume that it owns no property in the State of Montana. The articles of incorporation provide, however, that the company may carry on the business of mining, milling, concentrating, buying, selling, and otherwise producing and dealing in all kinds of metals and minerals, also that of buying, selling, exchanging, leasing, dealing, etc., in lands, mines, mineral rights, etc., and may also purchase, subscribe for, or otherwise acquire and hold shares of stock of any company organized under the

laws of the State of New Jersey, or of any other state or territory or foreign country, and to sell and exchange the same, etc.

Under the principles of law announced in the first part of this opinion, there can be no question but what shares of stock of the Amalgamated Copper Company owned in this state should be assessed herein in proportion to the valuation of the property they represent, which is situated outside of the State of Montana, whether that property be mining claims or other tangible property, real or personal, or shares of stock in corporations whose property is situated outside of the State of Montana. In other words, if fifty per cent of the capital stock of the Amalgamated Copper Company consists of tangible property, both real and personal situated outside the State of Montana, and of shares of stock in other corporations whose property is situated outside the State of Montana, then fifty per cent of the true valuation of the stock of the Amalgamated Copper Company owned in the State should be assessed in this state.

However, we are informed that the Amalgamated Copper Company has acquired a large part of the shares of stock of the Washoe Company, the Big Blackfoot Milling Company, the Anaconda Copper Company, the Parrot Silver and Copper Mining Company and the Hennessy Mercantile Company, all Montana Corporations, all the property of which is situated in the State of Montana. If the property of these corporations in Montana has been taxed, the question then arises whether a person in this state, owning shares of stock in the Amalgamated Copper Company, which company's assets consist chiefly of shares of stock in these different Montana Corporations, is subject to taxation on such shares of stock in this state, or are they exempt in such a case from taxation, pursuant to the provisions of said Section 17 of Article 12 of the State Constitution. As stated above in this opinion, the capital stock of a corporation and shares of stock are separate and distinct classes of property. The Anaconda Copper Company and the other corporations of this state above mentioned, never sold any of their capital stock, mining claims, etc., to the Amalgamated Copper Company. The only property the Amalgamated Copper Company ever purchased from such companies were the shares of stock of individual shareholders living in the State of Montana and elsewhere. Therefore, the capital stock of the Amalgamated Copper Company is not the property of the various mining and other corporations which are situated in the State of Montana, but is a wholly separate and distinct class of property, to-wit: shares of stock. The exemption in the constitution is to the effect that shares of stock of any company, when the property of such company, represented by such stock, is within the state, and has been taxed, cannot be taxed in this state. Is the property of the Amalgamated Copper Company and which is represented by the shares of stock issued by the Amalgamated Copper Company, situated in the State of Montana and taxed therein? In our opinion such property is not in Montana and, of course, has not been taxed here, for, as already shown, the property of the Amalgamated Copper Company is the shares of stock in other companies, and the situs of shares of stock follow the domicile of their owner, therefore, when shares of stock in the

various mining and other corporations were purchased by the Amalgamated Copper Company, a resident of the State of New Jersey, the domicile of the stock was fixed in that state.

It may be urged that shares of stock of the Amalgamated Copper Company represent the value of the mining claims and other property owned by the Anaconda Copper Company and other corporations in this state, but when we consider the fact that the mining claims and other property of such corporations have never been sold or transferred to the Amalgamated Copper Company and that the only property the Amalgamated Copper Company has purchased, is an entirely separate and distinct class of property, to-wit: shares of stock, we cannot get away from the conclusion that the property of the Amalgamated Copper Company is not situated in the State of Montana and has not been taxed in this state, and that, therefore, shares of stock in such company owned by residents of this state are subject to taxation herein.

Of course, if the Amalgamated Copper Company has purchased mining claims or other tangible property situated in the State of Montana and which has been taxed in this state, then shares of stock of the Amalgamated Copper Company owned in this state would be entitled to have a deduction from their true valuation in the same proportion as such property of the Amalgamated Copper Company situated in this state bore to the total value of the capital stock of such corporation.

Where claim of exemption from taxation is made, the rule has been stated by the Supreme Court of the United States as follows:

"There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that well founded doubt is fatal to a claim; no implication will be indulged in for the purpose of construing the language used as giving the claim for exemption where such claim is not founded upon a plain and clearly expressed intention of the taxing power."

Bank of Commerce v. Tennessee, 161 U. S. 146.

Cooley on Taxation, 3rd Ed. p. 357 and cases cited.

Under this rule of construction of exemptions from taxation, we must hold, subject to the limitation last above stated; that shares of stock in the Amalgamated Copper Company owned in this state are not within the exemptions contained in said Section 17, Article 12, of the Constitution and are, therefore, subject to taxation.

Very truly,

ALBERT J. GALEN,
Attorney General.