

**Corporations—License Tax—Statutes Construed, Chap. 79 of the 1917 Session Laws.**

Certain provisions of Chapter 79 of the 1917 Session Law construed.

June 25, 1918.

Hon. H. L. Hart,  
State Treasurer,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 19th inst. relative to the construction to be placed on certain provisions of the corporation license tax law, Chapter 79, Session Laws 1917, the facts in connection therewith being stated in your letter as follows:

"In the return for the Three Forks Portland Cement Company they have included a portion, if not all, of the income taxes paid to the Federal Government, Section 3 of the Montana Corporation Tax Law provides that corporations doing business partly within the state and partly outside of the state shall deduct from their gross income received within the State of Montana \* \* \* taxes paid within the year imposed by the State of Montana, or by any county, school district or municipality or other taxing subdivision of the State of Montana, etc. Following article fifth of this section, however, there is a provision reading 'and the deduction of taxes shall be such portion of all taxes paid by such corporation in Montana as the gross intrastate earnings of such corporation from all sources within the state, and otherwise the foregoing provisions with reference to deductions shall apply.'

"The Three Forks Portland Cement Company is a corporation organized under the laws of the State of Montana, and doing business partly within the State of Montana and partly within other states, that is to say their product is sold in other states than Montana. In view of this fact are they permitted to deduct any part of their taxes paid to the Federal Government, or must their deduction for taxes be confined to taxes paid within the year imposed by the State of Montana or any taxing subdivision thereof?

"As relating to the Great Western Sugar Company, Billings, Montana, unless we are misinformed, it is a corporation organized under the laws of the state of New Jersey. Their product is manufactured at Billings and is sold both within the State of Montana and in surrounding states. The question arises as to whether or not receipts from goods shipped from their factory at Billings to points outside the State of Montana, whether on direct orders received at their Billings office or at the direction of their home office at Denver, as such constitutes income received from sources within the State of Montana. This same question may also apply to the Three Forks Portland Cement Company."

By Section 1 of Chapter 79, Session Laws 1917, corporations are divided into three classes: One, corporations organized and existing under the laws of this state and engaged in business in this state; two, corporations organized under the laws of any other state, country or the United States, and engaged in business in this state, and, three, corporations engaged in interstate business. This section also provides that the basis for determining the amount of license fees to be paid by corporations of the first and second classes shall be the total net income received in the preceding fiscal year from all sources within the State of Montana, while the basis for determining the amount of license fees to be paid by corporations of the third class shall be the net earnings derived from intrastate business in the State of Montana only.

Section 2 prescribes the method or mode to be followed in determining the total net income of corporations of both the first and second classes, that is, both domestic and foreign corporations, engaged in business wholly within this state. The fourth subdivision of such section authorizes such corporations to deduct from their gross income, "Taxes and licenses paid within the year imposed by authority of the United States, or its territories or possessions, or any foreign country, or under the authority of this state, or any county, school district, or municipality or other taxing subdivision of this state, not including those assessed against local benefits."

Section 3 prescribes the method or mode to be followed in determining the total net income of corporations, of both the first and second classes, that is, both domestic and foreign corporations, engaged in business partly within this state and partly within any other state, or territory, or foreign country. The fourth subdivision of this section authorizes such corporations, that is, domestic and foreign cor-

porations, engaged in business partly in this state and partly in any other state, or territory, or foreign country, to deduct from their gross income, "Taxes paid within the year imposed by the State of Montana, or by any county, school district, or municipality, or other taxing subdivision of the State of Montana, not including those assessed against local benefits."

The fifth subdivision of Section 3 provides, with reference to the deduction of taxes paid by corporations of the third class, that is, corporations engaged in interstate commerce, that "the deduction for taxes shall be such proportion of all taxes paid by such corporation in Montana as the gross intrastate earnings of such corporation in Montana are of the gross earnings of such corporation from all sources within the state," etc.

I do not believe that the legislature ever intended that the words "from all sources within the State of Montana," should be given their literal meaning, but did intend that they should be given a particular and broader meaning. It seems clear from the provisions of this chapter that it was the intention to place all corporations, except those exempted from the payment of license taxes under such law, in three divisions; the first division to consist of those corporations, both domestic and foreign, having their offices, store rooms and places for the transaction of business, factories, mines and smelters in this state, and confining their producing and manufacturing activities entirely within this state, and not having offices, store rooms, places for the transaction of business, factories, mines or smelters in, or carrying on producing or manufacturing operations in any other state or territory or in any foreign country; the second division to consist of those corporations having offices, store rooms, places for the transaction of business, factories, mines and smelters in this state, and actively engaged in producing and manufacturing within this state, and also having offices, store rooms, places for the transaction of business, factories, mines and smelters, and actively engaged in producing or manufacturing in any other state or territory, or in a foreign country; and the third division consisting of those corporations engaged in interstate commerce and commonly designated as common carriers, such as railroad, express, telegraph and telephone companies. And it seems equally clear from the provisions of said chapter that it was the intention of the legislature that the words "from all sources within the State of Montana," should mean, when used with reference to corporations belonging to the first division, the income derived by such corporations from the business transacted through their offices, store rooms and places of business maintained and conducted in this state, and from the sales of products, articles, commodities and minerals raised, produced, manufactured and mined within this state, without regard to where the same should be sold by the corporation raising, producing, manufacturing or mining the same; that said words, when used with reference to corporations of the second division, should mean the income derived by such corporations from the business transacted through their offices, store rooms and places of business maintained and conducted in this state,

and from the sales of products, articles, commodities and minerals raised, produced, manufactured and mined within this state, without regard to where the same should be sold by such corporations, but should not mean any income derived by such corporations from business transacted through their offices, store rooms, and places of business maintained and conducted in any other state or territory or in any foreign country, or income derived from sales of products, articles, commodities and minerals raised, produced, manufactured or mined in any other state, or territory, or foreign country, and which are not brought into and sold within this state by such corporations; and that said words, when used with reference to corporations of the third division, should mean the income or earnings derived by such corporations from their operations wholly within this state, and should not include any portion of the income derived from business originating in this state and terminating in any other state or in any territory or foreign country, or any portion of the income derived from business originating in any other state, or in any territory or foreign country and terminating in this state.

While the corporation tax law of New York is worded entirely differently from Chapter 79, Session Laws 1917, the purpose and object is the same, and such construction has been given that law by the supreme court of New York in the case of *People ex rel. vs. Roberts*, 48 N. Y. S. 1028.

Giving such meaning to these words it follows that a corporation, such as the Three Forks Portland Cement Company, is a corporation doing business wholly within this state and that all of its income is derived from sources within this state, and that, therefore, it must include in its return all income derived by it from sales of its product manufactured within this state and sold outside of this state, and that it is entitled to deduct from its gross income all taxes and license fees paid by it during the preceding year, including taxes paid to the United States, or to any other state or taxing subdivision thereof, as well as taxes paid in this state. The income which such corporation receives is derived from sources within this state and constitutes its only resource available to answer all such demands, and when such demands have been paid they have been paid from the income derived from sources within this state and the corporation is entitled to deduct the same.

And giving this meaning to these words it follows that a corporation, such as the Great Western Sugar Company of Billings, is a corporation doing business partly within this state and partly outside of this state, and that income derived by such a corporation from the sales of its product manufactured within this state and sold outside of this state is income derived from sources within this state, and that, therefore, it must include in its return all income derived by it from sales of its product manufactured within this state and sold outside of this state, and is only entitled to deduct from its gross income taxes paid by it during the preceding fiscal year to this state or its taxing subdivisions, and is not entitled to deduct from its gross

income taxes paid to the United States or to any other state, or its taxing subdivisions. Equitable Life Ins. Society et al, vs. Hart, et al, 54 Mont. ———. (Decided June 15, 1918.)

Yours very truly,

S. C. FORD,

Attorney General.