

Corporations—License Tax—Income, What Can be Deducted for Purposes of Taxation.

On making the income returns for the purpose of determining the amount of license tax to be paid by a corporation under the provisions of House Bill No. 345, Chap. 79, Session Laws 1917, corporations are not entitled to deduct from their income the amount of any income represented by interest on bonds, warrants or other securities issued by the United States, state, counties, school districts, or municipal corporations, but all such interests must be included in their incomes.

April 26, 1917.

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

Dear Sir:

You have requested my opinion on the question of whether a corporation, liable for the payment of the license tax imposed by House Bill No. 345, Chapter 79, Sess. Laws 1917, can deduct from the amount of income the interest on bonds, warrants, or other securities issued by the United States, the state, counties, school districts or municipal corporations, which bonds, warrants or other securities are owned by such corporation.

The tax provided for by this act is not an income tax, that is a direct tax on the income of corporations, but is a tax, in the nature

of an excise, upon the franchise or privilege of doing business in a corporate capacity, the amount of net income being used solely for the purpose of determining the amount of tax upon the franchise or privilege.

In the case of *Home Ins. Co. v. New York*, 134 U. S. 594, where the tax was upon the right or privilege of the Home Insurance Company to be a corporation, and to do business in a corporate capacity, the tax being measured by the extent of the dividends of the corporation upon its capital stock, although a very large amount, two or three million of its capital stock was invested in bonds of the United States, expressly exempted by a statute of the United States from taxation, the tax was sustained as a mode of measurement of a privilege tax which it was within the lawful authority of the state to impose, Mr. Justice Field, who delivered the opinion, saying:

"It is not a tax in terms upon the capital stock of the company, nor upon the bonds of the United States composing a part of that stock. The statute designates it a tax upon the 'corporate franchise or business' of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year."

The Supreme Court of the United States has passed upon this question presented in many different forms, always holding that where the tax was not a direct tax on incomes but an excise tax on franchises and privileges, the amount of the tax being determined by the amount of the income, the income on bonds and securities should not be deducted from the income, even though the bonds and securities were exempt from taxation.

In the *Coite* case, a privilege tax upon the amount of deposits in a savings bank was sustained, although a portion of the deposits was invested in securities of the United States expressly exempt from taxation, the court saying:

"Nothing can be more certain in legal decisions than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a State for the support of the state government. Authority to that effect resides in the State independently of the Federal Government, and is wholly unaffected by the fact that the corporation or individual has or has not made investment in Federal securities."

Society for Savings v. Coite, 6 Wall (U. S.) 594.

And in the case of *Flint v. Stone Tracy Co.*, 220 U. S. 107, in construing the last Federal Income Tax law, the court, speaking through Mr. Justice Day, said, after citing a number of decisions of the Supreme Court:

"It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measurement of taxation is found in the income produced in part from property which of itself considered is non-taxable. Applying that

doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part at least, property which as such could not be directly taxed."

You are therefore advised that in making their returns of income for the purpose of determining the amount of license tax to be paid by a corporation under the provisions of House Bill No. 345, Chap. 79, Sess. Laws 1917, corporations are not entitled to deduct from their income the amount of any income represented by interest on bonds, warrants or other securities issued by the United States, state, counties, school districts, or municipal corporations, but all such interest must be included in their incomes.

Respectfully,

S. C. FORD,

Attorney General.