

Corporations — Stock, Corporate—Assessment Of—Railroad Companies, Taxation Of.

Construing Section 17 of Article 12 of the Constitution relating to taxation, and providing a method for ascertaining the taxable value of stock of intrastate railroad companies.

May 24th, 1919.

State Board of Equalization,
Helena, Mont.

Gentlemen:

Receipt is acknowledged from your board of a letter, dated May 22, 1919, from Mr. C. H. Martien, County Assessor of Lewis and Clark County, to your board, regarding the assessment of the shares of stock of Northern Pacific Railway Company, Great Northern Railway Company, Anaconda Copper Mining Company, Yellowstone Park Transportation Company, and other corporations.

Mr. Martien states in his letter that each of these corporations has some part of its property represented by such stock within this state which will be taxed herein, while some part of its property, and in some cases by far the greater part, is situated outside of the state and will not be taxed herein, and that in former years he has assessed the shares of stock in these corporations, construing Section 2501, Revised Codes, to mean that shares of stock are not taxable only when all of the property represented by the stock is within the state and taxed, and that if any part of the property is without the state then the shares of stock are taxable at their full value.

The first subdivision of Section 2501 of the codes is identical with Sec. 17 of Art. 12 of the Constitution, and there is apparently no reason for such a provision to be placed in the codes, the constitutional provision being mandatory and prohibitory, and requiring no statutory provision to give it effect. The purpose of this constitutional provision is to prevent double taxation. The stock of a corporation takes its value largely from the property of the corporation, and if the property of a corporation is within the state and taxed and the shares of stock of the corporation should also be taxed within the state, the result would be double taxation at least to the extent of the value of the property taxed.

If Mr. Martien's construction of the statute, which must also be the construction of the constitutional provision, is correct, it is somewhat difficult to see where the line would be drawn. If ninety-five per cent of the property of a corporation is within the state and taxed, and five per cent is without the state and not taxable in the state, then, according to such construction, the shares of stock of such corporation would be taxable at their full value, and this would result in a double taxation to the extent of the value of the property within the state, the very object which the constitutional provision is intended to prohibit and prevent. I cannot, therefore, agree with the construction placed on the statute and constitutional provision by Mr. Martien.

But, on the other hand, if five per cent of the property of the corporation is within the state and taxed, and ninety-five per cent is without the state and not taxable within the state, to construe the constitutional provision as exempting wholly the stock from taxation would result in permitting property to escape taxation, yet our constitution requires all property to be taxed, except that specifically exempted.

The situs of the stock for taxation is, of course, that of the domicile of the owner, and there are two propositions in regard to which there can be no question. First, if a resident of the state owns shares of stock in a corporation, either domestic or foreign, none of the property of the corporation being within this state and taxed herein, then such stock is taxable in this state. Second, if a resident of this state owns shares of stock in a corporation, either domestic or foreign, all of the property of such corporation being situated within this state and taxed herein, then the shares of stock are not taxable in this state. Here, however, we have a third proposition, a resident of the state owning shares of stock in a corporation, either domestic or foreign, a portion of the property of such corporation represented by such stock being situated within this state and taxable herein, and a portion of such property being situated without the state and not taxable herein. In such a case the shares of stock represent, and the value of the stock depends upon and is fixed not solely by the property within this state but by all of the property owned by the corporation, both that within this state and that without the state. For instance if a corporation owns property to the value of \$100,000.00, of which \$50,000.00 in value is situated within the state and taxed, and the remaining \$50,000.00 is without the state and not taxable herein, then only one-half of the property which the stock represents is within the state and taxable herein, while the stock, up to one-half of its value, represents property outside of the state and not taxed herein. If the stock in such a corporation, owned by a resident of the state, cannot be taxed for that portion of its value which it receives from the property outside of the state then we will have, not a case of double taxation, but a case of the owner of the stock escaping taxation to the extent of one-half of the value of the property owned by him.

In the case of *Thall vs. Guiney*, 104 NW. 646, the supreme court of Michigan held, under statutory provisions designed to prevent double taxation, that shares of stock in a corporation owned by a resident of the state, when the corporation owned property within the state and also property outside of the state, all of which was taxed according to the laws of

the states in which it was situated, were taxable in Michigan at their value diminished by the proportion which the value of the property in Michigan bears to the value of the whole property wherever situated. And I am of the opinion that such a construction should be given to the provision contained in Sec. 17, Art. 12 of our Constitution, as it is reasonable and, while preventing double taxation, will also prevent property escaping taxation. It may, in some instances, be somewhat difficult for the assessor to determine the value for taxation of shares of stock in such a corporation, and no hard and fast rule may be laid down for the assessor to follow. Ordinarily, however, the assessor should have no difficulty in ascertaining the actual market value of the shares of stock, and the total value of the property taxable in this state, and by dividing such value by the total number of shares of stock of such corporation issued and outstanding can obtain the amount to be deducted from the value of each share in order to ascertain the taxable value thereof in this state.

Respectfully,

S. C. FORD,

Attorney General.