

Corporations—Gross Income Of—Deductions From—Doing Inter and Intrastate business.

The manner to determine the expense to be deducted from the gross income of a corporation doing an inter and intrastate business is to take from such gross income such a percentage of the total gross income received from business within and without the state, as to the total income from business within the state bears to the total gross income.

June 2nd, 1919.

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

Dear Sir:

I am in receipt of your letter of recent date relative to deductions from gross income to be made by corporations engaged in business partly within and partly without this state, and which do not keep accounts showing the expenses applicable to this state alone.

As I have heretofore advised you it is my opinion that the provision following subdivision 5 of Section 3 of Chapter 79, Session Laws 1917 (being all of said subdivision 5 of Section 3 as amended by Chapter 208, Session Laws 1919), applies only to interstate commerce corporations, that is such corporations as telephone, telegraph, railway, express, and other companies doing an interstate business, and not to mercantile, insurance, mortgage loan companies and manufacturers engaged in doing business in this state and also in one or more other states.

The deductions from gross income which corporations engaged in business partly within and partly without the state, other than corporations engaged in interstate commerce, are specified in subdivisions 1, 2 and 3 of Section 3 of Chapter 79, Session Laws 1917. Examining the provisions of these three subdivisions it seems to have been contemplated that every such corporation would keep its books and records so as to show the gross income received from the business done in this state and the necessary expenses, losses and interest paid, in connection with such business, separate and distinct from the business done in any other state or states, so that it would be possible for such a corporation to tell from its books and records its net income from business done wholly within this state. It appears, however, that many of these corporations, while keeping their books and records so as to show the gross income received from business done wholly within the state, do not so keep them so as to show the total expenses of doing such business, and it therefore becomes necessary to specify some method or mode to be followed by such corporations in order to ascertain and determine the amount of such expenses which may be deducted from their gross income received from business done wholly within this state.

Unquestionably a corporation doing business in this state and also in one or more other states, and maintaining its head office without the state incurs certain expense in maintaining such head office, a portion of which at least are incurred in carrying on its business in this state, and this portion of such expense should be allowed as a deduction from its gross income from the business done wholly within this state.

It is my opinion that the most equitable way of determining the amount of such expense which should be deducted from the gross income from business done wholly within this state, is to take from such gross income such a percentage of the total gross income received from business transacted both within and without the state, as the total income from business done wholly within this state bears to the total gross income received from business both within and without the state.

Respectfully,

S. C. FORD,

Attorney General.