

**Corporations—Income, Taxable—Donations to Charity—
Deductions, Dues to Clubs Not Proper Deduction.**

Donations to Red Cross organizations and other charitable institutions, are not proper deductions to be made in computing the taxable income of corporations.

Dues and fees to commercial clubs are not proper deductions as part of necessary expense, though dues paid to credit associations rendering a service may be deducted.

August 18, 1919.

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

Dear Sir:

I am in receipt of your letter of the 15th instant, requesting my opinion as to whether, under the provisions of subdivision 1 of Section 2 and subdivision 1 of Section 3, of Chapter 79, Session Laws of 1917, a corporation is entitled to deduct from its gross income amounts donated or contributed to charity, the Red Cross, Salvation Army, War Chest, Y. M. C. A., and other similar organizations, donations and contributions to local entertainments in the shape of purchase of tickets, etc., and dues to various clubs, chambers of commerce, business men's associations, local and state retail merchants' associations, credit men's associations and employers' associations.

The language used in subdivision 1 of Section 2 and in subdivision 1 of Section 3 of such chapter is: "All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties," etc. This language is almost identical with that contained in the Federal income tax laws, and in connection with those laws, it is stated in Holmes on Federal Income Taxes (1917 Ed.), pg. 427:

"Business expenses include all items entering into what is ordinarily known as the cost of goods sold, together with selling and management expenses. Among the items to be treated as business expenses are material, labor, supplies and repairs, in the case of a manufacturer, while a merchant would include his purchases of goods bought for resale. In either case the amount to be taken as a deduction in any year should be determined by taking into consideration the inventory at the beginning and end of the year. Other items that may be included as business expenses are reasonable compensation for the services of officers and employes, advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident or other similar losses in the case of a business, and rental for the use of business property."

See also Black on Income Taxes (4th Ed.) Sec. 136.

In Holmes on Federal Income Taxes it is said, on page 443, with reference to donations, contributions to charity, etc.:

"Donations by business concerns may or may not be held to be proper deductions as expense. There must be a consideration in some form to take the donation out of the class of gratuities. When a donation legitimately represents a consideration for a benefit flowing, directly or indirectly, to the donor, as an incident of its business, it is an allowable deduction. It has been held that a corporation engaged in the agricultural business cannot be allowed to make deductions on account of donations to fairs, churches and associations; such donations, although made for the purpose of obtaining and preserving the goodwill of the farmers, being mere gratuities * * * A donation to a hospital, under agreement that employes of the donor are to have a ward for their use in case of accident or illness, is a proper deduction. Donations in case of accident or illness, is a proper deduction. Donations made for purposes connected with the operation of the business when limited to charitable institutions, hospitals or educational institutions, conducted for the benefit of employes of the donor or their dependents, are within this class, but such donations should be reduced by any amount repaid to the corporation by the employes. *Red Cross donations are not within the class.*

See also Black on Income Taxes (4th Ed.) Secs. 151-152.

I am, therefore, of the opinion that donations or gifts to the Red Cross, Salvation Army, War Chest, Y. M. C. A., relief organizations, and similar organizations and institutions, donations to local entertainments in the shape of purchase of tickets, etc., are mere gratuities, and cannot be classed as ordinary and necessary expenses paid in the maintenance and operation of a business or property, and cannot, therefore, be allowed as deductions.

With reference to payment of dues or fees to clubs, chambers of commerce, business men's associations, local and state retail merchants' associations, credit men's associations and employers' associations, I am of the opinion that it depends entirely on the character of the club or association to which the dues or fees are paid, whether the same can be considered as ordinary and necessary expenses of the business. For instance, an association may have for its purpose the furnishing of statements, at regular intervals, concerning the financial standing and condition of persons, firms and corporations for the purpose of enabling its members to determine whether goods shall be sold, and credit extended to, or payment of accounts enforced against persons desiring to or dealing with such members, or an association may have for its purpose the collection of debts due to its members, all of such services being rendered to members of the association by reason of the payment of the dues or fees by the members of the association, and such services being rendered to none but members of the association. In such cases undoubtedly the dues or fees paid are to be considered as a part of the ordinary and necessary expenses in conducting a business, but unless, in return for such dues or fees, some such service is rendered, dues and fees cannot be considered as a part of such expenses. Chambers of commerce, clubs, employers' associations and most, if not all, local and retail merchants' associations

render no such services in return for such dues or fees, either rendering no such services whatever, or else charging additional fees when such services are rendered, and dues and fees to such associations and organizations cannot be considered as ordinary and necessary expenses.

Respectfully,

S. C. FORD,

Attorney General.

