

Insurance Company—Net Income, Method to Ascertain.

An insurance company cannot deduct from its gross income any amount which it has set aside as "additions to reserves" in determining its net income.

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

March 15, 1920.

Dear Sir:

I have your letter requesting my opinion as to whether or not, for the purpose of ascertaining the net income to be used as a basis for determining the amount of the corporation license tax under Chap. 79 Sess. Laws 1917, as amended by Chaps. 69 and 208, Sess. Laws 1919, an insurance company, whether life or fire may deduct from gross income "net additions to reserves" required by law.

Said Chap. 79, Sess. Laws 1917, as amended, requires the payment of license taxes by two classes of corporations, viz; corporations doing business wholly within this state, and those doing business partly within and partly without the state, the rate or percentage for determining the amount of the tax being the same for both classes.

Section 2 prescribes the method for ascertaining the net income of corporations doing business wholly within the state, while Section 3 prescribes the method for ascertaining the net income of corporations doing business partly within and partly without the state, the method prescribed for each being practically the same, except with reference to deductions for interest paid (subdivision 3,) deductions for taxes paid (subdivision 4,) and the amount of arbitrary deduction (subdivision 5).

Under these sections a corporation is entitled to deduct from its gross income:

1. All the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of its business, including rentals or other payments required to be made as a condition to the continued use of possession of property;
2. All losses actually sustained and not compensated by insurance, or otherwise, including a reasonable allowance for the wear and tear of property;
3. Amount of interest paid on its indebtedness in the business to a certain amount;
4. Taxes paid, except for local benefits;
5. An arbitrary deduction of \$2,500. by corporations doing business wholly within the state, no arbitrary deduction being permitted corporations doing business within and partly without the State.

By reason of the decision of the Supreme Court of the United States in the case of Maryland Casualty Co. v. United States, reported in Sup. Ct. Adv. Sheets (Co-Op.) No. 6, Feb. 1, 1920, page 177, construing certain provisions of the Corporation Excise Law of 1909 (Act of Aug. 5, 1909, 36 St. L. Ch. 6, pp. 11-118), and certain provisions of the Income Tax Law of 1913 (Act of October 3rd, 1913), 38 St. L. Ch. 16, pp. 114-166), which held that "net additions to reserves" made by in-

insurance companies, should be deducted from gross income in order to ascertain the amount of net income subject to the federal tax, it is contended that such additions should also be allowed as a deduction by insurance companies under said Chap. 79 Sess. Laws 1917.

While it is true that Chap. 79 Sess. Laws 1917, was drafted very largely from the Corporation Excise Tax Law of 1909, (*Equitable Life Assur. Co. v. Hart*, 55 Mont. 76, 173 Pac. 1062), still there are numerous provisions contained in that act which were not embodied in said Chap. 79. Examining the provisions of the Excise Tax Law, (Chap. 6, 36 St. L.) it will be found that the tax was determined by taking 1% of the net income received by the corporation from all sources during such year, Sec. 38 prescribing the method of ascertaining such net income, being to deduct from the gross income;

1. All the ordinary and necessary expenses actually paid out of income for the maintenance and operation of the business and property including all charges such as rentals or franchise payments required to be made as a condition of the corporation's use or occupation of property;

2. All losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, *and in the case of insurance companies the sums, other than dividends, paid within the year on policy and annuity contracts, and the net addition, if any, required by law to be made within the year to reserve funds;*

3. Interest actually paid within the year to a certain amount;

4. Taxes paid;

5. All sums received as dividends upon the stock of other corporations subject to the tax imposed by such act;

The Federal Income Tax Law of 1913 (Ch. 16, 38 St. L.), also contained a provision with reference to deductions by insurance companies, very similar to that found in Sec. 38 of the Excise Tax Law of 1909, it being provided in Sec. 11, subdivision G. par. (a) of such Income Tax Law, that an insurance company may deduct from its gross income "the net additions, if any, required by law to be made within the year to reserve funds" etc. And the act of Feb. 24th, 1919, (Ch. 18, 40 St. L.) in Part III., Sec. 234, subdivision (a), par. 10, authorizes insurance companies to deduct from gross income "the net addition required by law to be made within the year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as funds to guarantee or reserve funds."

However, no such provision with reference to deduction of "additions to reserve" as are found in these federal acts can be found in Chap. 79 Sess. Laws 1917, or any of the amendments thereof, and such chapter being drafted from the Corporation Excise Tax Law of 1909, which contained such a provision, it is clear that if the legislature had intended that the same should be permitted or allowed as a deduction, it would have followed such Excise Tax Law in this respect and inserted such a provision in said Chap. 79.

Chap. 79 specifying particularly in Sections 2 and 3 thereof just exactly what deductions may be made from gross income, nothing can be read into such sections, but they must be taken as intending to cover and include every allowable deduction.

I am, therefore, of the opinion, that under said Chap. 79, Sess. Laws 1917, and its amendments, an insurance company, for the purpose of ascertaining its net income during any year, cannot deduct from its gross income for such year, any amount which has been set aside or deposited as "additions to reserves."

Respectfully,

S. C. FORD,

Attorney General.