

**Corporations—License Tax—Computing and Assessing
State Treasurer—Duties.**

In computing and assessing a corporate license tax, the State Treasurer is controlled by Sections 2 and 3 of Chapter 79, Laws of 1917, as amended by House Bill No. 250 and Senate Bill No. 190.

The total net income, after deducting the arbitrary amount, is the basis for the computation of the tax for a domestic company, and for computing the tax of a corporation

doing business partly within and partly without the state, the total net income as shown by the report filed, without any deduction, is the basis upon which it is computed.

Helena, Montana, March 17, 1919.

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

Dear Sir:

I am in receipt of your letter of the 12th instant, asking that I advise you relative to the bearing which two measures, viz., House Bill No. 250 and Senate Bill No. 190, passed by the last legislature, have upon Chapter 79, Session Laws of 1917, commonly known as the Corporation License Tax Law.

Chapter 79, Session Laws of 1917, provides for the payment of a license tax by each corporation doing business in this state, whether the business of the corporation be transacted wholly within the state or partly within and partly without the state.

Section 2 of such chapter applies only to corporations doing business wholly within this state and has no application to corporations doing business partly within and partly without this state.

Subdivisions 1 to 4, inclusive, of Section 2, provide for certain deductions from the total gross income of a corporation doing business wholly within this state for the purpose of arriving at the total net income of such corporation, while Subdivision 5 of such section authorizes an arbitrary deduction of \$10,000 to be made from such net income for the purpose of ascertaining the amount to be used as a basis for determining the amount of the tax.

Section 3 of such chapter applies only to corporations engaged in business partly within and partly without this state, and has no application to corporations engaged in business wholly within this state.

Subdivisions 1 to 4, inclusive, of Section 3, provide for certain deductions from the total gross income received from business done wholly within this state by a corporation engaged in business partly within and partly without this state, for the purpose of ascertaining the total net income received by such a corporation from the business done wholly within the state, while Subdivision 5 of such section authorizes an arbitrary deduction of \$10,000 to be made from such net income for the purpose of ascertaining the amount to be used as a basis for determining the amount of the tax.

By House Bill No. 250, approved March 1st, 1919, both Subdivision 5 of Section 2 and Subdivision 5 of Section 3 are amended so that every corporation, whether engaged in business wholly within this state, or partly within and partly without this state, is allowed to make an arbitrary deduction from its net income of only \$2,500 instead of \$10,000.

By Senate Bill No. 190, approved March 12, 1919, only Subdivision 5 of Section 3 of such chapter was amended, and this amendment in effect simply strikes out that portion of such subdivision allowing a

corporation engaged in business partly within and partly without this state to deduct an arbitrary amount from its net income received from business transacted within this state in order to ascertain the amount to be used as a basis for determining the amount of the tax. In other words, by House Bill No. 250, Subdivision 5 of Section 3 was amended so as to reduce from \$10,000 to \$2,500 the amount which a corporation doing business partly within and partly without this state might deduct from its net income from such business in order to ascertain the amount to be used as a basis for determining the amount of the tax, while Senate Bill No. 190 further amended such subdivision by requiring the total net income to be used as the basis for determining the tax without any deduction whatever from such net income.

The result of the two amendments made by these bills is that such chapter now provides that a corporation engaged in business wholly within this state may deduct from its net income the sum of \$2,500 for the purpose of ascertaining the amount to be used as a basis for determining the amount of the license tax, while a corporation engaged in business partly within and partly without the state is not allowed or permitted any deduction whatever from its net income from its business done within this state, but the total of such net income is the amount to be used as a basis for determining the amount of the license tax.

The license tax required to be paid by Chapter 79, Session Laws of 1917, is not a license tax for the privilege of having engaged in business as a corporation during the preceding year, but it is a license tax for the privilege of engaging in business as a corporation during the current year, the net income for the preceding calendar year, or preceding fiscal year if a corporation so elects, being used solely as a basis for determining the amount of the license tax for the year immediately following, that is the current year.

Under the provisions of such chapter each corporation is required to file a report of its net income on or before the first day of March, and the State Treasurer is required to determine and assess the amount of the license tax and notify the corporation of the amount thereof not later than June first, and such license tax must then be paid not later than June 15th. No definite date is fixed for the assessment of the tax by the State Treasurer, but it is apparent that he cannot assess the tax until after the returns have been filed, that is after March 1st, and that he must assess the tax before June 1st, as he is required to notify each corporation of the amount of the tax on or before that date.

It is clear from the language found in this chapter that a return filed by a corporation does not of itself, and without any action by the State Treasurer, fix and determine the amount of the license tax to be paid, but that it is in fact intended simply to furnish the State Treasurer with the information which will enable him to determine and assess the tax, for we find certain provisions whereby a return may be corrected or changed by the State Treasurer if the amount of income be understated therein, or if the return be erroneous or false in any respect.

Section 4 of such chapter requires each corporation to make a true and accurate return of its **annual net income** "in the manner and form to be prescribed by the State Treasurer with the approval of the State Board of Equalization and containing such facts, data and information as are appropriate and in the opinion of the State Treasurer necessary to determine the correctness of the **net income returned** and to carry out the provisions of this act."

I take it from this provision that any arbitrary amount which the statute may authorize to be deducted from the net income is no part of the return, and that the same is not required to be shown in the return, but that the return is required to show only the **total gross income**, all deductions made for the purpose of ascertaining the **total net income**, and the **total net income** after the deductions allowed by Subdivisions 1 to 4, inclusive, have been made from the total gross income, and it then becomes the duty of the State Treasurer to compute and assess the amount of the license tax and in making such computation and assessment he must use as a basis the **total net income** less any amount allowed by law as an arbitrary deduction therefrom.

It is, therefore, my opinion that the State Treasurer, in computing and assessing the license tax to be paid by each corporation for the current year, must be controlled by the provisions of Sections 2 and 3 of such chapter as the same have been amended by House Bill No. 250 and Senate Bill No. 190, and that in computing and assessing the tax to be paid by a corporation doing business wholly within this state he must use as a basis the total net income, as shown by the report filed, after deducting therefrom the arbitrary amount of \$2,500, while in computing and assessing the tax to be paid by a corporation doing business partly within and partly without this state he must use as a basis the total net income, as shown by the report filed, without any deduction whatever therefrom.

Truly yours,

S. C. FORD,
Attorney General.