

**Foreign Corporations—Corporations—Residence — Taxes —  
Income Tax—License Tax—Interest—Bonds.**

Interest received on bonds of a foreign corporation may not be considered in computing the income of a corporation for the purpose of ascertaining the corporation license tax.

A corporation is a resident of the state of its creation.

State Board of Equalization,  
Helena, Montana.

February 11, 1925.

Gentlemen :

You have requested my opinion whether in computing the corporation license tax there should be included in the gross income interest on bonds of the Montana Power Company.

Section 2296, R. C. M., 1921, providing for the corporation license tax bases it upon the income "received by such corporation in the preceding fiscal year from all sources within the state of Montana, including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise."

The answer to your question, therefore, depends upon whether the Montana Power Company is a resident of the State of Montana. It appears that it was incorporated under the laws of the state of New Jersey, but has all of its property situated in this state. That it is not a resident of the state of Montana has been decided in the recent case of *Allen v. Montana Refining Co.*, 71 Mont. 105, where the court said:

"We cannot grant the plaintiffs' contention that the Montana Refining Company is domiciled in this state and should be regarded substantially as a domestic corporation. Nearly a century ago the supreme court of the United States announced the rule, adhered to ever since, that a corporation 'must dwell in the place of its creation, and cannot migrate to another sovereignty.' *Bank of Augusta v. Earle*, 13 Pet. 519, 588 (10 L. Ed. 274). The doctrine of that case was reaffirmed in *Cream of Wheat Co. v. Grand Forks*, 253 U. S. 325, 40 Sup. Ct. 558, 64 L. Ed. 931, decided in 1920, wherein it was said:

"The company was confessedly domiciled in North Dakota; for it was incorporated under the laws of that state."

"In 1 *Fletcher's Cyclopaedia Corporations*, Sec. 387, the rule is stated as follows:

"Not only is the fact of the citizenship, habitancy, and residence of a corporation settled beyond the point of refutation, but the courts with few dissenting voices assent to the proposition only occasionally attempted to be qualified, that such citizenship, domicile, residence, or habitance, as the case may be, can be only of or in the state or country by which the corporation was created."

It is, therefore, my opinion that interest received by a corporation on bonds of the Montana Power Company may not be included as a part of the gross income in computing the corporation license tax.

Very truly yours,

L. A. FOOT,

Attorney General.