

Corporations—License Tax—Taxation—Patronage Dividends—Co-operative Associations.

Patronage dividends of a cooperative association should be deducted in determining the corporation license tax.

State Board of Equalization,
Helena, Montana.

July 13, 1925.

Gentlemen :

You have requested my opinion whether "patronage dividends" should be deducted from the income of co-operative elevator companies organized under section 6375 et seq., R. C. M. 1921, in determining the amount of their corporation license tax.

By section 6387, R. C. M. 1921, it is provided :

"The directors of a co-operative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding eight per cent. per annum on the par value thereof, from the remaining funds, if any, accessible for dividend purposes, not less than five per cent. of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to thirty per cent. of the paid-up capital stock, and from the balance, if any, five per cent. for an educational fund to be used for teaching co-operation, and the remainder of said net profits, if any, by uniform dividends upon the amount of purchases of shareholders and upon the wages and salaries of employees, and one-half of such

uniform dividend to non-shareholders on the amount of their purchases, which may be credited to the account of such non-shareholders on account of capital stock of the association; but in productive associations, such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons."

Section 2296, R. C. M. 1921, provides in part:

"There shall not be taxed under this title any income received by any * * * Eleventh. Farmers,' fruit growers,' or like associations, organized and operated as a sales agent for the purpose of marketing the products of its members, and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them."

You have submitted with your inquiry a copy of the by-laws of a certain association organized under section 6375, supra, and from it I conclude that the association in question does not fall within the provisions of subdivision 11 of section 2296, supra, for the reason that it is not organized as a sales agent for the purpose of marketing the products of its members. It handles products of non-members as well as members. However, it does not follow that the so-called "patronage dividends" may not be deducted in determining the net income of such associations. The corporation license tax is computed on the net income of corporations. (Section 2296 et seq., R. C. M. 1921.)

The amount paid as "patronage dividends" is an obligation of the association that must be paid under the law the same as its other obligations.

It is, therefore, my opinion that "patronage dividends" should be deducted as expenses paid in the maintenance and operation of the business of cooperative associations in computing the corporation license tax.

Very truly yours,

L. A. FOOT,
Attorney General.