

**Corporations—License Taxes—Depletion—Oil Leases.**

Depletion of ore is not an allowable deduction in computing corporation license taxes.

Investments in oil leases that prove valueless must be deducted during the year when the loss is discovered and may not be extended over a period of years by the amortization scheme.

April 13, 1928.

State Board of Equalization,  
Helena, Montana.

Gentlemen:

You have requested my opinion on the following questions:

"1. Is the depletion of the ore of a mine (considering also that an oil well is a mine, as of your opinion of July 18th, 1928) an allowable deduction in computing the corporation license tax of a corporation, under chapter 79, laws of 1917, as amended?"

"2. With the same inference as to a mine, is a corporation permitted to capitalize and amortize an investment and charge it off as a loss over a period of years where the investment has proved valueless, such as where a specified sum of money has been paid for an oil lease and where the lease has proved to be valueless, under chapter 79, laws of 1917, as amended?"

"3. If question number 2 is answered in the negative, is there any provision of the law which would permit a corporation to charge this investment off as depreciation, or as an allowable deduction, under chapter 79, of the laws of 1917, as amended?"

In answering question number 1, and in perusing the records, I find that when the bill for this act was before the house of representatives paragraph 2 of section 2 provided that a reasonable allowance for the "exhaustion, wear and tear" of the property might be deducted, but the house amended the bill by striking out the word "exhaustion."

If the word "exhaustion" had remained in the bill it might, with some reason, be said that the mining company could deduct from its income a certain amount of "exhaustion", such amount being the value of the ore which was extracted as the same was in place before extraction as the extraction of the ore exhausted the mine to the extent of the ore extracted, but the word "exhaustion" being stricken out of the bill, it was evidently the intention of the legislature to restrict the deduction which might be made to actual depreciation by "wear and tear" caused by age and use of the buildings, structures, machinery, appliances, apparatus, etc.

It is, therefore, my opinion that a mining company may make a deduction for depreciation caused by "wear and tear" of its buildings,

structures, machinery, apparatus, and appliances, etc. where such depreciation has not been made good by repairs or replacement, but that such company cannot make any deduction for depletion of its ore bodies by reason of ore extracted therefrom.

In answering question number 2, it is my opinion that a company is not permitted, under the law, to capitalize and amortize an investment where said investment has proved to be a loss, but that said company must sustain and charge off said loss in the fiscal year in which the same was discovered to be a loss under chapter 79, laws of 1917, as amended.

Having answered your second question in the negative, with reference to question number 3 I would refer you to Montgomery on Income Tax Procedure, volume 1, page 947, and to paragraph entitled "Property Which May Be Depreciated", and which reads as follows:

"The necessity for a depreciation allowance arises from the fact that certain property used in the business gradually approaches a point where its usefulness is exhausted. The allowance should be confined to property of this nature. In the case of tangible property which applies to that which is subject to wear or tear, or decay or declines from natural causes, to exhaustion and to obsolescence due to the normal progress of the art, as where machinery or other property must be replaced by a new invention, or due to the inadequacy of the property to the growing needs of the business. It does not apply to inventories, or to stock in trade, nor to land apart from the improvements or physical developments added to it. It does not apply to bodies of minerals which, through the process of removal, suffer depletion; other provisions for this being made in the statute."

The above regulation was written and has reference to the federal statutes. In my opinion, the Montana law, chapter 79, laws of 1917, as amended, does not make other provisions for exhaustion or depletion, or as stated in the answer to number 1, the legislature deliberately eliminated the word "exhaustion" and nowhere includes the word "depletion."

It is therefore my opinion that corporations engaged in operating mines are not authorized to charge off as depreciation any depletion or exhaustion of the minerals or oils owned by said companies as an allowable deduction under chapter 79, laws of 1917, as amended nor may they amortize investments in property proving to be valueless and charge the same off over a period of years, but must make the charge during the year in which the investment was found to be valueless.

Very truly yours,

L. A. FOOT,  
Attorney General.