

Taxes—Income—Corporations—License Taxes.

It is proper to consider interest on liberty bonds in arriving at the net income of a corporation subject to the corporation license tax.

May 9, 1928.

State Board of Equalization,
Helena, Montana.

Gentlemen:

You have requested my opinion whether in view of the recent decision of the supreme court of the United States in *N. W. Mutual Life Insurance Co. vs. State of Wisconsin*, 72 L. Ed. 65 (Advance Opinions Sup. Ct. Dec. 1, 1927) interest received by a corporation on United States bonds should be considered in computing the corporation license tax.

The case to which you refer relates to a tax on gross income. It holds that in such a case interest on United States bonds may not be included in computing the tax. The court, however, expressly declared that a distinction exists between a tax on the gross income and one on net income.

In the case of a tax upon the net income the supreme court of the United States has sustained the right to include income from tax exempt securities. This was so held in the case of *Flint v. Stone Tracy Co.* 55 L. Ed. 389, where the court said:

“It is further contended that some of the corporations, notably insurance companies have large investments in municipal bonds and other nontaxable securities, and in real estate and personal property not used in the business; that therefore the selection of the measure of the income from all sources is void, because it reaches property which is not the subject of taxation,—upon the authority of the *Pollock Case*, supra. But this argument confuses the measure of the tax upon the privilege with direct taxation of the state or thing taxed. In the *Pollock Case*, as we have seen, the tax was held unconstitutional because it was in effect a direct tax on the property solely because of its ownership.”

In the *Wisconsin case*, supra, the supreme court of the United States referred to the *Flint case* with apparent approbation of the rule there stated.

It is therefore my opinion that it is proper insofar as the *Wisconsin case* above referred to is concerned to consider interest on United States bonds in imposing a corporation license tax based on net income.

Very truly yours,

L. A. FOOT,
Attorney General.