

Opinion No. 135**Corporations—Taxation—Income Tax
—Constitutional Law.**

HELD: Chapter 166, Laws of 1933, which was signed by the Governor on March 16, 1933, and which provides that it shall take effect from and after its passage and approval, increases the taxable rate from one to two per centum upon the net income of corporations based upon their returns for the calendar year 1932, and the provision of the act providing for a minimum tax of not less than \$5.00 upon any such corporation applies to returns filed prior to the approval of the act but covering the calendar year 1932.

March 31, 1933.

We have received your communication as follows, to-wit: "Will you kindly

advise this department as to whether or not House Bill No. 161 (now Chapter 166), which was signed by the Governor on March 16, 1933, and which provides that it shall take effect from and after its passage and approval, will increase the taxable rate from one to two per cent upon the net income of corporations based upon their returns for the calendar year 1932, and if so, does the provision of said Act providing for a minimum tax of not less than \$5.00 upon any such corporation, apply to returns filed in this department prior to the approval of said Act but covering the calendar year 1932?"

The Act in question contains eighteen sections altogether. It repeals Section 2298 and amends Sections 2296 and 2297 of the Revised Codes of 1921. It also amends Section 2303 of the Revised Codes of 1921, as amended by Section 4 of Chapter 146, Laws of 1923.

Section 1 thereof requires every corporation, with certain exceptions, to pay annually to the State Treasurer as a license fee for carrying on business in the State of Montana, two per centum upon its total net income for the preceding year, and in the event that it had no net income or that the amount thereof was less than \$250.00, then to pay a minimum tax of \$5.00.

Under the provisions of Section 2299 of the Revised Codes of 1921, as amended by Section 1 of Chapter 146, Laws of 1923, every corporation affected by the Act shall on or before the first day of March in each year, make a sworn return of its net income for the preceding calendar year to the State Board of Equalization, and the license fee to be exacted from such corporation for any year shall be by said board computed upon the total net income received by it during the preceding calendar year. When, however, the fiscal year of a corporation does not correspond with the calendar year, it has the privilege of having the license fee computed on its total net income during such fiscal year.

Under the provisions of Section 2300 of the Revised Codes of 1921, as amended by Section 2 of Chapter 146, Laws of 1923, the State Board of Equalization shall assess the license fee due from each corporation and shall on or before the first day of June of each year,

notify it of the amount thereof, and the corporation must on or before the fifteenth day of June, remit such amount to the State Treasurer. If the license fee assessed is not paid on or before the fifteenth day of June, it shall bear interest at the rate of one per cent per month until paid and shall have added to it a penalty of ten per cent. In the case of a corporation whose fiscal year does not correspond with the calendar year, the license fee must be paid "within thirty days after the date upon which it is required to file its list or return of income for assessment," and if not so paid interest at the rate of one per cent per month and a penalty of ten per cent shall be added to it.

It is provided in Section 15, Chap. 166, supra, "that the repeal or amendment of the sections as amended by this act shall not be construed to relieve or release any corporation from the payment of any license fee which such corporation should have paid under the provisions of such sections before the repeal or amendment thereof by this act, or of any penalty or interest which has heretofore or may hereafter attach to or become due thereon, but all such license fees, penalties and interest shall be fixed and determined under the provisions of such sections as amended, and shall be paid and collected as though such sections had not been amended by this Act."

Clearly, then, this law requires every corporation within its scope to pay a license fee for the year 1933 equal to two per cent of its total net income during the year 1932, or during its own fiscal year, as the case may be, and if it had no net income or if the amount thereof fell below \$250.00, then to pay a minimum license fee of \$5.00. More than that, it appears that corporations which have failed to pay their license fees for any year prior to this are made subject to its provisions.

Can it be said to be invalid as to license taxes for this year and as to delinquent license taxes for any previous year because it was not approved by the Governor until March 16, 1933? We do not think so. Retrospective legislation, assuming this to be partly such, is not prohibited by the Constitution. (*Sullivan v. City of Butte*, 65 Mont. 495). Moreover, our Supreme

Court has repeatedly held that the legislature has plenary power to pass any law not prohibited by the Constitution of the United States, the treaties made and statutes enacted pursuant thereto, or the Constitution of this state. (State ex rel. Sam Toi v. French, 17 Mont. 54; Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287; State ex rel Hillis v. Sullivan, 48 Mont. 320; In re Pomeroy, 51 Mont. 119; State ex rel. Evans v. Stewart, 53 Mont. 18; Hilger v. Moore, 56 Mont. 146; The Veto Case, 69 Mont. 325; State ex rel. Corry v. Cooney, 70 Mont. 355; Butte & Superior Min. Co., v. McIntyre, 71 Mont. 254).

Generally speaking, the amount of a license fee or tax may ordinarily be increased or decreased at any time in the discretion of the body imposing it. Where a city has full power to tax an occupation, it may increase the rate on a particular class of persons engaged therein at any time before the expiration of the period for the enforcement of the tax, even though such increase is made after the tax first levied has been paid. (Bankers Trust Co. v. Blodgett, 260 U. S. 647, 67 L. Ed. 439; Gels Thorpe v. Furnell, 20 Mont. 299; State ex rel. Rankin v. District Court, 70 Mont. 322; Los Angeles & West Side T. Co. v. Superior Court, 295 Pac. 837; Alaska Consol. Canneries v. Territory of Alaska, 16 Fed. (2d) 256; Williams v. Mayor, etc., 111 S. E. 47; American Tobacco Co. v. Danville, 99 S. E. 733; 37 C. J. 189, 190; 61 C. J. 1483; note to case of Smith v. Direkx, 11 A. L. R. 510.)

A careful consideration of all the authorities we could find, impels us to answer both parts of your query in the affirmative.