

and foreign corporations on income derived from sources within the State of Montana from interest on bonds, notes and other interest bearing obligations of residents, corporate or otherwise.

But such license tax is not levied on like securities of non-residents, corporate or otherwise, since it is the source of income, not the situs of the evidence of the indebtedness or of the security which governs the levy.

May 8, 1934.

Your letter to us of the 24th ult., gives such a clear and concise statement of the facts that we take pleasure in reproducing it as follows:

"The Montana Life Insurance Company is a corporation organized under the laws of the State of Montana with its principal place of business in Helena, Montana. It also has qualified and is permitted to and does transact business in several western states including the states of California, Idaho, Minnesota, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

"Its income is derived from the following sources, to-wit:

"1. Interest on U. S. Government securities.

"2. Interest on bonds and warrants of the State of Montana and its political subdivisions and Montana corporations, and interest on notes secured by mortgages upon Montana real estate.

"3. Interest on bonds of other states and foreign municipalities and bonds of foreign corporations, including railway, industrial and public utility bonds.

"4. Interest on premium notes and policy loans made to:

(a) Resident policy holders.

(b) Nonresident policy holders.

"All of such securities are in the possession of said Insurance company at their main office in Helena.

"In computing the Montana corporation license tax, which is administered by this Board, are we entitled to include as income of this domestic corporation:

"1. Interest on government securities?

"2. Interest on bonds of other states

Opinion No. 530

**Taxation—Corporation License Tax
—Securities, Taxation of Income
from—Intangible Property
—Situs.**

HELD: The corporation license tax, levied under Chapter 106, Laws of 1933, is assessable on both domestic

and their political subdivisions and bonds of foreign corporations where the maker of such bonds is domiciled:

(a) In a state other than a state in which the taxpayer is engaged in business,

(b) In a state in which the taxpayer is engaged in business?

"3. Interest on premium notes and policy loans executed by nonresident policy holders?"

Section 1 of Chapter 166, Laws of 1933, is in part as follows:

"The term corporation includes associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided, organized and existing under the laws of the State of Montana and engaged in business therein, shall annually pay to the State Treasurer, as a license fee for carrying on business in said State of Montana, two (2) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the State of Montana, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations whose net income is taxable under this title; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the State of Montana, shall annually pay for the exclusive use and benefit of the State of Montana a license fee for carrying on its business in the State of Montana of two (2) per centum upon the total net 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, and including the income derived from dividends on capital stock, or from net earnings of resident corporations, joint stock companies or associations whose net income is taxable under this title."

The law as its terms disclose exacts a license fee from both domestic and foreign corporations for the privilege of carrying on business in the state of Montana.

The situs of the intangibles mentioned in the letter is in this state and it governs so far as the imposition of general taxes is concerned (*Monidah Trust v. Sheehan*, 45 Mont. 424; *State ex rel. Walker v. Jones*, 80 Mont. 574; *State v. Gehner*, 8 S. W. (2d) 1057, 59 A. L. R. 1026), but is such situs the test in determining whether or not the income from such intangibles should be included in the gross receipts of the corporation for the purpose of fixing the license fee which it must pay?

The statute places domestic and foreign corporations practically on a par. The corporation, whether it be domestic or foreign, shall annually pay as a license fee "two per centum upon the total net income received by it in the preceding fiscal year from all sources within the State of Montana, including interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise." The language employed is highly significant. The income must come from sources within the State of Montana. Interest on bonds, notes or other obligations of persons or corporations residing in the State of Montana is included in such income. If the legislature of Montana wanted domestic corporations to account for income from bonds and notes or similar obligations, whether such income be from sources within or without the state, it could easily have said so. Nor was it entirely without precedent of a related kind. The Income Tax Law passed by the legislature of Wisconsin in 1911 provided, among other things, that "so much of the income of any person residing within the state as is derived from rentals, stocks, bonds, securities or evidences of indebtedness shall be assessed and taxed, whether such income is derived from sources within or without the state." (*State v. Eberhardt*, 147 N. W. 1016.)

The word "source," according to Webster, means "that from which anything comes forth, regarded as its cause or origin; the first cause." An interesting and instructive application of the words "income from sources within the United States" is found in *Ingram v. Bowers*, 47 Fed. (2d) 925.

It is our view, then, that it is not the situs of the thing but the source of the income which comes through ownership of the thing that controls under the statute. Accordingly, we answer the three questions propounded in the negative.