

Section 2296 of the Revised Codes of 1921, after providing the corporations upon which the tax was to be imposed and the income upon which the tax was to be computed, contained this proviso:

“Provided, however, that in the case of a corporation engaged in interstate commerce, the license fee shall be based upon the net earnings of said corporation derived from its intrastate business in the State of Montana, only.”

The Legislature in its amendment in 1933 declared by Section 1 of Chapter 166, now Section 2296, Revised Codes of 1935, that Section 2296 of the Codes of 1921 “be and the same is hereby amended to read as follows.” The section as amended in conformity with the command of the Constitution was then set forth at length. The above proviso was omitted from the amendatory statute. No words of like import or similar meaning or in any way related to this proviso are found in the amendment.

Section 2296 of the Revised Codes, it may be noted in passing, was further amended by Chapters 29 and 92 of the Laws of 1937. Neither of these amendments in any wise affect the subject under discussion.

When the Legislature declares an existing statute “to be amended to read as follows” the Legislature evinces intention to make the new statute a substitute for amended statute exclusively and only those portions of amended statutes repeated in new ones are retained. *State ex rel., Nagle v. Leader Company*, 97 Mont. 586, 37 Pac. 2d 561.

Where the phraseology of a statute is changed it is generally presumed that the Legislature in adopting amendment intended to change existing law. *State v. Wibaux County Bank of Wibaux*, 85 Mont. 532, 281 Pac. 341. *Certiorari denied. American Surety Company of New York v. Mullendore*, 281 U. S. 725.

Clearly by the omission of the above quoted proviso the Legislature clearly intended to include the net income arising from interstate business as well as intrastate business in the determination of the amount of net income subject to the imposition of the corporation license tax.

**Opinion No. 272.**

**Taxation—Corporation License Tax  
Computed on Interstate and  
Intrastate Business—Section 2296.**

HELD: Corporations in making returns to the corporation license tax department of the Board of Equalization must include net income from both interstate and intrastate business.

December 10, 1940.

Mr. Frank A. Malone  
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Dear Mr. Malone:

Judge Ralph J. Anderson, Counsel for the State Board of Equalization, informs me that at a recent conference between you in Chicago you requested an opinion from me as to whether the amendment of the corporation license tax act, enacted by the Montana Legislature in 1933 as Chapter 166 of the Laws of that year, now found as Section 2296, Revised Codes of 1935, has the effect of changing the law theretofore existing, to the end that in determining the net income upon which the corporation license tax is to be computed interstate business is to be included in such net income.

In my opinion under the corporation license tax act as it exists in Montana today and has existed since the amendment of 1933, corporations engaged in business in Montana in making returns to the corporation license tax department of the State Board of Equalization must include the net income from interstate business and that portion of their net income from interstate business as may be properly allocated to the State of Montana.