

Opinion No. 104.

**Taxation—Airlines Subject to Tax as
Express Companies—Express
Company Taxation.**

Held: Airline companies conveying property by express service, and as common carriers, over regular routes and on regular flights are subject to taxation under Sections 2305 to 2313, Revised Codes of Montana, 1935.

August 11, 1943.

Mr. Sam D. Goza, Chairman
State Board of Equalization
State Capitol
Helena, Montana

Dear Mr. Goza:

You request my opinion whether an airline company, engaged in the transportation of property by express, is subject to taxation, under the provisions of Sections 2305 to 2313, Revised Codes of Montana, 1935.

Section 2305 provides:

"That any person or persons, joint stock association or corporation, wherever organized or incorporated, engaged in the business of conveying to, from, or through this state or any part thereof, money packages, gold silver plate, or any articles by express service, as distinguished from the ordinary freight lines of transportation or merchandise and property in this state shall be deemed an express company."

It is to be noted the definition of an "express company" is all inclusive and does not only apply to railroads and companies organized particularly for this class of service, but applies to all persons, joint stock associations and corporations engaged in conveying property by express service, as distinguished from the ordinary freight lines of transportation.

In *Commonwealth vs. People's Express Co.*, 88 N. E. 420, 201 Mass. 564, it is held the term "express business" is not confined to carriers using railroads and railways. . . the term implies the idea of regularity as to route and time of service.

And in *American Ry. Express Co. v. Wright*, 91 So. 342, 128 Miss. 593, it is stated an "express company" is a firm or corporation engaged in the business of transporting parcels or other movable property in the capacity of common carrier.

It is therefore my opinion, those airline companies which convey property by express service, as distinguished from ordinary freight lines, as common carriers and over regular routes and on regular flights, come within the definition of "express company" appearing in Section 2305, Revised Codes of Montana, 1935, and are subject to taxation under the provisions of Sections 2305 to 2313, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY
Attorney General