

Opinion No. 78

**Taxation—Corporation License Tax
Deductions**

HELD: Interest income received by a New York corporation from a New Jersey corporation which does all of its business in Montana may be included in Montana income in determining the gross income of the New York corporation.

June 19, 1956

State Board of Equalization
State Capitol Building
Helena, Montana

Gentlemen:

This will acknowledge your request for an opinion dated January 28, 1956.

Your query is whether the interest income received by a New York corporation doing business in Montana received from a New Jersey corporation may be included in determining Montana's portion of system gross income under an apportionment formula where the New Jersey corporation does practically all of its business in Montana and derives practically all of its income from Montana operations.

On February 11, 1925, my predecessor as Attorney General gave it as his opinion that interest on bonds of a corporation not incorporated in Montana could not be included

as part of Montana gross income in computing the corporation license tax, since such a corporation could not be a resident of Montana. In *Montana Life Ins. Co. vs. Shannon*, 106 Mont. 500, 78 Pac. (2d) 946, our court held that Section 84-1501, R.C.M., 1947, by imposing a tax upon the net income received "from all sources, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise" of the state, under the doctrine of *expressio unius est exclusio alterius*, excluded interest accruing on obligations of non-residents.

Neither of these decisions is decisive of the present problem. Here no attempt is being made to tax interest received from the New Jersey corporation. There would seem to be a substantial difference between taxing income and using it as a yardstick.

The pertinent section imposes a tax upon the net income received "from all sources within the state of Montana, including interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise". (Emphasis Supplied).

The tax is imposed upon net income received from all interest on interest-bearing obligations arising within the State of Montana, whether paid by residents or non-residents of Montana. In addition, the tax is imposed upon net income received from interest on interest-bearing obligations of residents of the State of Montana, **wherever it arises**. It would appear that the legislature could tax such interest income and the law is equally clear that, in order for such income to be taxed, the law would specifically have to do so.

For the above reasons it is my opinion that the interest income received by X, a New York corporation, from Y, a New Jersey corporation doing all its business in Montana, may be included in determining Montana's portion of system gross income of X corporation.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.