

## **Opinion No. 65-90**

June 8, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

**TO:** Rebecca D. Baca, Director, Franchise Tax Department, State Corporation Commission, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Are building and loan associations, other than purely mutual building and loan associations, required to pay the franchise tax levied by Section 51-13-2, N.M.S.A., 1953 Compilation for the year 1965.

#### CONCLUSION

Yes.

### **OPINION**

#### {\*154} ANALYSIS

Section 51-13-2, N.M.S.A., 1953 Compilation imposes a franchise tax on every domestic or foreign corporation for profit engaged in any business in this state except for purely mutual building and loan associations substantially all of the business of which is confined to making loans to its members. This tax must be paid on or before June 1, of each year.

The problem which you have raised comes about because of the fact that the 27th Legislature of the State of New Mexico passed Senate Bill No. 206 which was subsequently signed by the Governor of the State of New Mexico and became Chapter 167 of the Laws of 1965. This enactment contained an amendment to Section 51-13-2 which deleted the reference in the existing section to mutual building and loan associations and made the franchise tax exemption apply to all building and loan associations substantially all of the business of which is confined to making loans to its members.

Chapter 167 did not contain an emergency clause and it did not contain any specific effective date. Chapter 167 therefore, has an effective date of June 18, 1965. That particular date is 90 days subsequent to the date of adjournment of the 27th Legislature and is therefore the date set by Article IV, Section 23 of the Constitution of the State of New Mexico as the effective date for Chapter 167, Laws of 1965.

It therefore becomes apparent that the amendment to Section 51-13-2, which would exempt all building and loan associations rather than just mutual associations from the franchise tax will not be effective until some 18 days after the date when the existing Section 51-13-2, supra requires the franchise tax to be paid. Since the amendment to Section 51-13-2, supra, can have no legal effect whatsoever until June 18, 1965 we have no alternative but to conclude that the 1965 franchise tax for non-exempt building and loan associations must be paid on or before June 1, 1965.

Under the same reasoning the directive in Section 4 of Chapter 167, Laws 1965 that every building and loan association report by April 15, 1965 its net worth as of December 31 of the preceding year can have no effect. It must fall in favor of the existing effective statute. Section 51-13-2, supra however will be effectively changed on June 18, 1965 and thereafter building and loan associations should comply with the requirement of Chapter 167, Laws of 1965 for all ensuing years.