

Opinion No. 67-12

January 24, 1967

BY: OPINION OF BOSTON E. WITT, ATTORNEY GENERAL

TO: Mr. L. A. McCulloch, Jr. Bureau of Revenue Legal Division State Capitol Building
Santa Fe, New Mexico

QUESTION

Facts

A taxpayer reports net operating losses on his federal and New Mexico Income tax returns for the years 1961, 1962, and 1963 and a gain on his federal and New Mexico income tax returns for the year 1964. The taxpayer carries forward and absorbs the losses on his 1964 federal return. He absorbs only a part of the losses attributable to New Mexico activities on his 1964 New Mexico return.

QUESTION

Can the taxpayer carry forward the unabsorbed losses attributable to New Mexico activities in the computation of New Mexico taxable income for years following 1964?

CONCLUSION

No.

OPINION

{*16} ANALYSIS

The New Mexico Income Tax Act, Sections 72-15A-1 through 72-15A-15, N.M.S.A., 1953 Compilation (1965 P.S.), neither specifically allows nor disallows carryforward net operating loss deductions. It is a fundamental principle that a deduction cannot be taken unless there is specific statutory authority for taking the deduction.

Section 72-15A-3, N.M.S.A., 1953 Compilation (1965 P.S.) levies an income tax on net income. Net income is defined as base income with certain adjustments. Section 72-15A-2(P), N.M.S.A., 1953 Compilation (1965 P.S.). Base income is defined as federal taxable income upon which the federal income tax is calculated. Section 72-15A-20(0), N.M.S.A., 1953 Compilation (1965 P.S.).

In Opinion of the Attorney General No. 65-206, dated October 18, 1965, we concluded that because net income is defined by reference to federal taxable income, a net

operating loss is to be accorded the same treatment under the New Mexico Income Tax Act as it is under the Internal Revenue Code. In Opinion No. 65-206, supra, we said:

It is therefore our opinion that New Mexico is bound by any credits, deductions or exemptions that a taxpayer is allowed **on his federal return in the computation of federal taxable income.** (Emphasis added.)

Net operating losses are to be accorded the same treatment under the New Mexico Income Tax Act as they are under the Internal {¹⁷} Revenue Code only because "base income" as defined in Section 72-15A-2(0), supra, is the result of the computation of federal taxable income. Therefore, if under the Internal Revenue Code, a net operating loss carry-forward deduction is allowed in the computation of federal taxable income for a particular year following 1961, it is also allowed as a deduction in the computation of New Mexico taxable income for the same year following 1961.

In answer to your question, the taxpayer cannot carry forward unabsorbed net operating losses attributable to New Mexico activities in the computation of New Mexico taxable income for years following the year in which these same losses are absorbed for federal income tax purposes because the taxpayer cannot carry forward the losses in the computation of federal taxable income for the same years.

By: Edward R. Pearson

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