

Opinion No. 68-36

April 1, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: John E. Uxer, Director Legislative Finance Committee State Capitol Santa Fe, New Mexico

QUESTIONS

1. Are stock brokers located in other states liable for New Mexico gross receipts tax measured by commissions received for handling transactions for New Mexico residents?
2. Are stock brokers located in other states required to report receipts derived from handling transactions for New Mexico residents to the Bureau of Revenue?
3. Does the Bureau of Revenue Audit Division have the authority to audit the records of out-of-state brokers with regard to transactions handled by them for New Mexico residents?

CONCLUSIONS

1. No.
2. No.
3. See analysis.

OPINION

{*66} ANALYSIS

The gross receipts tax, which is equal to three percent (3%) of **gross receipts**, is imposed on any person engaging in business **in New Mexico**. Section 72-16A-4A, N.M.S.A., 1953 Compilation (1967 P.S.). Stock brokers located in other states are engaged in business. Section 72-16A-3D, N.M.S.A., 1953 Compilation (1967 P.S.). They are not, however, engaged in business in New Mexico.

The term "gross receipts" is defined to include total amount of money or the value of other consideration received from performing services **in New Mexico**. Section 72-16A-3E, N.M.S.A., 1953 Compilation (1967 P.S.). The term "service" is defined to include all activities engaged in for other persons for a consideration, which activities involve primarily the performance of a service as distinguished from selling property. Section 72-16A-3J, N.M.S.A., 1953 Compilation (1967 P.S.).

Stock brokers perform a service for their customers within the meaning of Section 72-16A-3J, supra. Stock brokers located in other states, who handle transactions for New Mexico residents, are not, however, performing a service in New Mexico and do not therefore, have "gross receipts".

It is, therefore, our opinion that because stock brokers located in other states are not engaged in business in New Mexico and because they do not have gross receipts, the New Mexico gross receipts tax does not apply to commissions received by them for handling transactions for New Mexico residents.

Because stock brokers located in other states are not subject to the New Mexico gross receipts tax, they are not required to report receipts derived from servicing New Mexico accounts to the Bureau of Revenue.

Because of the answers to the first and second questions, the third question is moot and does not require an answer.

By: Edward R. Pearson

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