

Opinion No. 70-63

July 14, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Edmundo Delgado State Senator 325 East Berger Street Santa Fe, New Mexico

QUESTIONS

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1. Are taxes paid by financial corporations under the Banking and Financial Corporation Tax Act in lieu of municipal occupation taxes?
2. Are financial corporations thus relieved from the obligation of paying such taxes?

ANSWERS

1. Yes.
2. Yes.

OPINION

{*107} ANALYSIS

Section 72-15B-6, N.M.S.A., 1953 Comp. (1969 P.S.) Laws of 1969, Ch. 151, Section provides that:

"The taxes imposed by Sections 3 and 4 of the Banking and Financial Corporations Tax Act [72-15B-3, 72-15B-4] are in lieu of all other taxes imposed by the state and its political subdivisions upon banks and financial corporations for the calendar year 1969 and all subsequent years, except taxes on real property and taxes arising from activities which are not in the course of their regular banking and financial corporation functions."

The language of the statute is clear. A municipal occupation tax is certainly a tax imposed by a political subdivision of the state. Attorney General Opinion No. 69-102, issued October 31, 1969 makes particular reference to the above cited section and notes that the Legislature intended banks and financial corporations {*108} to be subject to, besides income tax, all real property taxes and taxes arising from activities which are not in the course of their regular business. See also **First Nat'l Bank v. Commissioner**, 80 N.M. 699, 460 P.2d 64 (Ct. App. 1969), **cert. denied**, 80 N.M. 707, 460 P.2d 72 (1969), **appeal dismissed**, 25 L. Ed. 2d 643, 90 S. Ct. 1407 (1970).

A municipal occupation tax is a tax imposed on businesses by a municipality for the privilege of doing business within its borders. Section 14-37-3(B)(5) and (6), N.M.S.A., 1953 Comp. specifically includes "banking and financial" occupations in the classification of occupations that a municipality may impose such a tax on. There seems to be a conflict between Section 72-15B-6, supra, and Section 14-37-3(B)(5) and (6), supra. The former statute was enacted into law in Laws 1969, Ch. 151, Section 1 and the latter by Laws 1965, Ch. 300 and Laws 1967, Ch. 146, Section 8. Accordingly, since the two statutes relate to the imposition of taxes on banking and financial corporations, where there is a definite conflict, the latter statute repeals the former by implication. See Attorney General Opinion No. 65-119, issued July 7, 1965 and No. 63-54, issued May 16, 1963. As noted in **State v. Valdez**, 54 N.M. 112, 279 P.2d 868:

"The doctrine that repeals by implication are not favored is firmly bedded in our law, but we are equally committed to the rule that where two statutes have the same object and relate to the same subject, if the later act is repugnant to the former, the former is repealed by implication to the extent of the repugnancy, even in the absence of the repealing clause in the later act."

According to the well recognized doctrine of statutory interpretation we conclude that to the extent of the conflict between Section 14-37-3(B)(5) and (6) and Section 72-15B-6, the latter controls because it is the most recent expression of the Legislature.

It can be concluded then, that the Legislature meant to exempt banking and financial corporations from municipal occupation taxes and that such taxes are included in the exemption provision of the statute by the words "**in lieu of all other taxes.**" (emphasis supplied)

By: Mark B. Thompson, III

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