

Opinion No. 70-30

March 27, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. Albert P. Benavides, Director Corporation and Franchise Tax Departments
State Corporation Commission P.E.R.A. Building Santa Fe, New Mexico 87501

QUESTIONS

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What is the proper interpretation of the terms "financial corporation" and "other financial corporations" as those terms are used in the Corporate Reports Act and The Franchise Tax Act?

CONCLUSION

See analysis.

OPINION

{*51} ANALYSIS

In 1969, the New Mexico State Legislature enacted four separate laws with the purpose of making uniform the taxation of banks and financial corporations. The cornerstone of these laws is the Banking and Financial Corporations Tax Act. Laws 1969, Ch. 151, codified as § 72-15B-1, et seq N.M.S.A., 1953 Compilation (1969 Supp). Section 72-15B-6 provides that the tax imposed by the Banking and Financial Corporations Tax Act is in lieu of all other taxes. But see, Opinion of the Attorney General No. 69-102, dated August 27, 1969, reissued, as amended, October 31, 1969. The term "financial corporation" is defined in Section 72-15B-2(c):

"financial corporation" means any savings and loan association, or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;"

By Laws 1969, Chapter 144, the legislature added the words "financial corporations" to certain exemptions and deductions under the Gross Receipts and Compensating Tax Act. See Sections 72-16A-12.8, -12.9 & 14.16. Laws of 1969, Chapter 144, Section 1 added a new Section 72-16A-3(d) defining the term "financial corporation" as follows:

"financial corporation" means any savings and loan association, or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;"

By Laws of 1969, Chapter 153, Section 1, the legislature added the term "financial corporation" to the list of those domestic corporations for profit which are exempt from the payment of the franchise tax. Section 51-13-1(C), N.M.S.A., 1953 Comp. (1969 Supp.). By that same enactment, the legislature inserted the definition of "financial corporation" which is found {*52} in Section 51-13-1(D), N.M.S.A., 1953 Comp. (1969 Supp.) and which reads as follows:

"financial corporation" means any savings and loan association, or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;"

Finally, the legislature by Laws 1969, Chapter 154, Section 1 added the term "financial corporation" to the list of corporations which are exempt from the filing requirements of the Corporate Reports Act. See Section 51-21-4(A), N.M.S.A., 1953 Comp. (1969 Supp.). Laws 1969, Chapter 154 does not contain a section defining the term "financial corporation."

As indicated by your letter, difficulty has arisen in the administration of these laws due to the inclusion of the term "other financial corporations" within the definition of "financial corporation." The Bureau of Revenue has issued a regulation under its Gross Receipts and Compensating Tax Act to clarify the term "financial corporation." Under Gross Receipts Regulation 3(D)-1 a financial corporation "is any corporation primarily dealing in money capital and in substantial competition with commercial banks." Of course, the mere promulgation of a regulation still does not answer every case, and the Bureau issues rulings on whether or not a taxpayer is a financial corporation. For example, see Bureau of Revenue Rulings Nos. 69-116-1 and 69-116-4, copies of which are attached.

You will note that the State Corporation Commission lacks any specific statutory power to issue rulings or regulations interpreting the Franchise Tax Act. Likewise, the Corporate Reports Act does not specifically give the Corporation Commission power to issue regulations and rulings interpreting that act, although Section 51-21-3 requires the Commission to prepare a list of definitions of corporate and financial terms used in the reports. The reference to definitions of corporate and financial terms in effect incorporates the definitions in the Business Corporation Act found in Section 51-24-2, N.M.S.A., 1953 Comp. (1969 Supp.).

Contrasted with the powers of the Corporation Commission under the Franchise Tax Act and the Corporate Reports Act, is the power of the Bureau of Revenue under the Tax Administration Act. That Act applies to and governs the administration of two of the acts which were the subject of the 1969 legislation, the Gross Receipts and Compensating Tax Act amendments and the Banking and Financial Corporations Tax Act. See Sections 72-13-14A (6 & 9), N.M.S.A., 1953 Compilation (1969 Supp.). Under Section 72-13-23 the Commissioner of Revenue has broad power to determine the status of taxpayers and taxing concepts by regulation or by rulings on a case-by-case basis.

It is our conclusion that the legislature intended that the taxing laws concerning financial corporations would be subject to some uniform and consistent administrative interpretation. That same legislative intent should reasonably be applied to the interpretation of the Corporate Reports Act, although that act does not contain the uniform definition of financial corporations. It is also clear that the Bureau of Revenue has the only administrative procedure for determining the status of an alleged "financial corporation".

Therefore, we conclude that a financial corporation for the purposes of the Franchise Tax Act and the Corporate Reports Act is a corporation treated as a financial corporation for the purposes of the Gross Receipts and Compensating Tax Act and the Banking and Financial Corporations Tax Act. If there is any doubt as to the status of a corporation, the Commission may require the corporation to submit proof that it is being treated as a financial corporation by the Bureau of Revenue.

By: Mark B. Thompson, III

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