

## Opinion No. 35-1009

May 2, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** Bureau of Revenue, Income Tax Department, Santa Fe, New Mexico.

{\*65} Some time ago we received a letter from you asking an opinion from this office as to what taxes may be used as a direct offset against the income tax under our Income Tax Laws.

At that time I wrote an opinion based on Section 39 of Chapter 85 of the Laws of 1933, and overlooked the fact that this Section was repealed by the 1934 Special Session of the legislature. Since this law has now been repealed, the only question involved is as to whether the 1932 property tax may be offset against the 1933 Income Tax.

We call your attention to Section 39 of Chapter 85, of the Laws of 1933, which provides in effect that every tax payer subject to the income tax may receive as an offset against said tax, one-fifth of the amount of ad valorem taxes paid to the State or any political subdivision thereof upon the taxpayer's real and personal property, upon which the net income of the tax payer was earned or accrued during the income year. This section further provides that every resident taxpayer subject to the income tax, may receive an offset against the tax in the amount of ad valorem taxes paid to the State or any political subdivision upon the residence of the taxpayer and upon the furniture and household effects of such residence, providing that no part of the residence property is rented or leased and in no event may the offset be more than \$ 250.00. This section further provides, that the taxpayer claiming such offset shall present the tax receipt evidencing the payment of such property taxes during said income year.

In construing such in Section 39 above mentioned, we must take into consideration the definition under Section 3, paragraph (i) of Chapter 85, Laws of 1933, which defines the word "paid" as used in this act to mean "paid or accrued" or "paid or incurred." The provisions of Section 39 allowing the offset are somewhat ambiguous with respect to the specific question herein involved, but when we consider the same in the light of the definition of the word "paid" as meaning "paid or accrued" we believe that the evident intention of {\*66} the legislature in Section 39 was that the tax payer might offset his 1933 property taxes against his 1933 income tax and that no property tax for any other year might be used as an offset.

To further strengthen this contention, it should be noted that the income tax law of 1933 became effective March 14, 1933, while the property taxes for the year 1932 became due on November 1, 1932. Thus construing the definition of the word "paid" as it is defined in Section 3, to which we have referred above, the property taxes for 1932 accrued in 1932 and not in 1933.

We are therefore of the opinion that the rule heretofore applied in your office with respect to this question is correct, and that the property taxes for the year 1932 cannot be used as a direct offset by a tax payer against his 1933 income taxes.

By J. R. MODRALL,

Asst. Atty. General