

Opinion No. 35-983

April 12, 1935

BY: FRANK H. PATTON, Attorney General

TO: Bureau of Revenue, Income Tax Department, Santa Fe, New Mexico. Attention: W. S. Barnes, Auditor.

{*62} We are in receipt of your letter of April 10th asking for an opinion from this office as to what taxes may be used as a direct offset against the income tax under our New Mexico Income Tax Laws.

For the purpose of answering this question we call your attention to Section 39 of Chapter 85 of the Laws of 1933 which provides in effect that every taxpayer 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 taxpayer 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 offsets shall present the tax receipt evidencing the payment of such property taxes during said income year.

As we understand it, the specific question in which you are interested is whether or not a taxpayer may claim as an offset, ad valorem taxes assessed, say, during the year 1932 but paid during 1933 on his income tax for the year 1933.

In construing 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 here 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 the Legislature in said Section 39 was that the taxpayer might offset his 1933 property taxes against his 1933 income tax but that no property tax for any other year might be used as an offset. Under this construction you can only accept property tax offsets of property taxes levied and assessed in the same year as the income tax accrued. We do not believe, however, that the law is so strict as to have required payment of the whole of the property tax during the year for which it was assessed. For example, the last half of property taxes is not due and payable until May 1st of the succeeding year after the assessment is made. The income tax is due on April 15th of

the year succeeding the year for which the income tax accrued. It is therefore our opinion that if a person making his income tax return for the year 1933 submits property tax receipts showing that he has paid his 1933 property tax prior to April 15, 1934, he would still be entitled to his offset as provided by Section 39 hereinabove mentioned against his 1933 income tax. Following this principal, a taxpayer would not be entitled to claim a direct offset on his 1933 property taxes against his 1934 income tax even though he paid his 1933 property tax during the year 1934.

Hoping that this answers the question which you had in mind, we are

By J. R. MODRALL,

Asst. Atty. General