

Opinion No. 36-1405

July 11, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mr. John D. Bingaman, Commissioner of Revenue, Santa Fe, New Mexico.
Attention: W. S. Barnes, Income Tax Division.

{*129} We have your letter of July 9th asking our opinion as to whether or not dividends received by shareholders from Federal Savings and Loan Associations are subject to the New Mexico Income Tax.

The federal act authorizing the organization of Federal Savings and Loan Associations, being paragraph (h), Section 1464, Title 12, U.S.C.A., does not prohibit state taxation on such dividends, but specifically contemplates such taxation.

The New Mexico income tax law, however, being paragraph (k) of Section 7, Chapter 85, Laws of 1933, provides that dividends received upon stock of associations engaged in the business of using money wherewith to earn money whose shares of stock are by the laws of this state otherwise taxed, shall be exempt.

We are of the opinion that this paragraph covers Federal Savings and Loan Associations in that said associations are corporations engaged in the business of using money to earn money. We are also of the opinion that the shares of stock of said Federal Savings and Loan Associations are subject to taxation by the general laws of this State, which require all property, both real, personal and tangible, to be rendered by the owner for taxation.

It, therefore, follows that dividends received by shareholders of Federal Savings and Loan Associations are not subject to the New Mexico income tax except those individuals who receive income in such amount as would carry a greater tax rate than that applicable to the tax on their shares of stock.

By J. R. MODRALL,

Asst. Atty. General