

Opinion No. 39-3065

March 25, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. J. O. Gallegos, Commissioner of Revenue, Santa Fe, New Mexico. Attention:
Mr. G. S. Carter, Director Emergency School Tax Division

{*26} I have read the letter which you handed me from two taxpayers who claim as a deduction income received by them from stock dividends of certain foreign corporations, {*27} on the ground that such corporations are domesticated or licensed to do business in the State of New Mexico, and that such corporations have paid income in the state.

I do not understand this to be the test of their right to such deduction. Subsection (1) of Section 7 of Chapter 85 of the Laws of 1933, as amended, allows as a deduction "dividends received during the taxable year from stock in any corporation, the income of which was assessable for the preceding year * * *." The purpose of that deduction is to avoid taxing the same income twice, once to the corporation and then again to the stockholder. That being the case it is my opinion that all of the income from the stock of such corporation is deductible only if all of the income of the corporation for the preceding year was taxed under the Act.

The statute does not say that dividends received from stock in any corporation "a portion of the income of which was assessable" shall be subject to deduction. It is my opinion that in such cases none of the dividends would be deductible, since not expressly authorized by the wording of the statute, or else that only such proportion of the total dividends declared by the company as is equivalent to the same proportion that the income assessable in the state bears to the total income of the corporation, would be deductible. That the latter is the correct view was held in *Van Dyke vs. Milwaukee*, 146 N.W. 812, 159 Wisc. 460, the Court saying that the statute, which was almost identical with ours, "must be construed as meaning a proportionate, and not a total, deduction of dividends when only a part of the income of a corporation is paid in this state. Such must be held to be the legislative intent in order to do equity and avoid double taxation or no taxation."

By: A. M. FERNANDEZ,

Asst. Atty. Gen.