

Opinion No. 39-3068

March 27, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. J. O. Gallegos, Commissioner of Revenue, Santa Fe, New Mexico. Attention: Mr. W. S. Barnes, Auditor Income Tax Division

{*28} You say in your letter that "returns from resident taxpayers claiming deduction from income received from trusts or estates situated outside of the state upon that portion of such income as is represented by interest upon obligations of the U. S. and also by beneficiaries of an estate or trust, the income of which, or a portion of which, is represented by dividends from domestic corporation, and which are normally exempt from taxation, where received direct by the taxpayer under the New Mexico income tax Act, and this office would therefore appreciate your opinion as to the proper method of handling such sources of income to the final taxpayer."

The answer to your query is not difficult if we bear in mind that all through Sections 27 and 28 of the Act (in fact all through the Act) is found the underlying principle that income is to be taxed under the Act but once, and that, with particular reference to trusts, the cardinal doctrine is that income received by a trustee must be taxed (a) either to the trust, (b) or to the beneficiary, (c) but not to both.

Under the Act the deductions allowed an individual are allowed a trustee or fiduciary; and those deductions are ordinarily claimed and allowed in that return upon which the tax is paid. If the deductions are claimed and the tax paid in the return of the trustee or fiduciary, the whole amount is then deductible from the return of the beneficiary.

With particular reference to trusts without the state, the beneficiary of course makes the return and pays the tax if a resident and subject to our income tax law. As stated to you in my opinion of December 21, 1937, income received by a beneficiary from securities held by a trustee is still considered as income from the securities themselves and not from the trustee; and, therefore, so much of the beneficiary's income from a foreign trust as is represented by interest from obligations of the United States will be allowed as a deduction. The same thing is true as to income received by foreign trust for a taxpayer and represented by dividends from a domestic corporation which are deductible under our Income Tax Act. Of course, if only a portion of the receipts from such trust are represented by interest from such securities or dividends from such domestic corporations, the deduction allowable is only for that portion so represented. Portion so represented.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.