

Opinion No. 44-4457

February 14, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Earl Kerr, Director, Income Tax Division, Bureau of Revenue, Santa Fe, New Mexico

Recently, in Opinion No. 4451, I was of the opinion that dividends from shares of national bank stock were taxable under our income tax laws. At that time I cited the case of Mississippi State Tax Commission v. Brown, 193 S. 794, 127 A. L. R. 919, which held that when bank shares are taxed according to their value the dividends from such shares were not taxable as income, and stated that since the case did not appear to be well reasoned I held the contrary opinion. Since that time another case has come to my attention, being State Revenue Commission v. Hawkins, 172 S. E. 845, in which the Supreme Court of Georgia, likewise, held that when a tax is imposed upon the value of shares of stock an income tax may not be imposed upon dividends received by the stockholders.

As stated in the previous opinion the whole question rests upon the construction of Section 1 (c) of the federal act, which is Title 12, Section 548 U.S.C.A. This act has a proviso to the effect that when a state imposes a tax on or according to or measured by the net income of financial, mercantile, manufacturing and business corporations, and also imposes an income tax upon dividends received by individuals from the stock of corporations, that dividends from national bank shares may be taxed. At first I considered it sufficient if any financial corporations were taxed under our income tax laws; however, in view of the authorities above mentioned it is apparent that **all** financial corporations and associations must be taxed under the income tax law before dividends on bank shares are taxable.

Since our income tax laws specifically exempt banks and several other financial institutions, I am now of the opinion that if the matter were presented to the New Mexico Supreme Court they would be inclined to hold with the weight of authority and that under our present laws dividends from bank shares are not taxable to the individual recipient. I am, therefore, overruling Opinion No. 4451.

By C. C. McCULLOH,

First Asst. Atty. General