

Opinion No. 45-4698

April 25, 1945

BY: C. C. McCULLOH, Attorney General

TO: Earle Kerr, Director Income Tax Division Bureau of Revenue Santa Fe, New Mexico. Attention: J. Leon Miller, Chief Auditor

{*53} We are in receipt of your letter of April 23, 1945, in which you refer to our Opinions dated February 14, 1944 and February 20, 1945, wherein we held that dividends received from national banks are not taxable to a resident of New Mexico. In view of these Opinions, you ask our opinion as to whether or not dividends received from state banks should be reported as taxable income.

Gross income as defined by Section 76-1204 of the New Mexico 1941 Compilation includes dividends. Nowhere in our present law is exemption or deduction of dividends from state banks allowed, nor are dividends from state banks treated in any different way than dividends from other corporations. In view of the foregoing, it is my opinion that dividends from state banks located in New Mexico should be reported as taxable income.

As to dividends received by residents from state banks located outside New Mexico, it is my opinion that the same should be reported in the same manner that other income of residents from sources without the state is reported.

I see no ground on which it could be contended that state banks or stockholders in such banks are discriminated against in favor of national banks in that the exemption as to dividends from national banks arises out of the fact that national banks are considered federal instrumentalities and as such cannot be taxed, except as authorized by Congress.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General