

## Opinion No. 53-5871

December 15, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** J. Leon Miller, Director Income Tax Division Bureau of Revenue Santa Fe, New Mexico

{\*299} In your letter dated December 8, 1953, you state that certain changes in the accounting system of income tax liability and receipts are being considered. Consideration is being given to the idea of consolidating the income tax liability of each taxpayer irrespective of year, or years, {\*300} upon one large card and to discontinue the issuance of receipts on payments that are made by check or money-order. You inquire whether such proposed changes could legally be made.

It is my understanding that in prior years and at the present time cards are prepared for each taxpayer showing the income tax liability for each year and that the cards constitute the tax roll for the year involved. It is also my understanding that in the past and at the present time your office issues a receipt to the taxpayer showing the amount of income taxes paid upon each year's liability.

§ 76-1241, 1941 Compilation, provides that an income tax roll shall be prepared annually in such form as will disclose the name and address of each person liable to such taxes, together with the amount of the same and based upon such tax roll, the taxes shall be collected as shown thereon and receipts therefor shall be issued. There seems to be no question but that the statute contemplates that income tax rolls shall be prepared for each year and no provision is made for consolidating the income tax liability of taxpayers for several years on one tax roll.

In connection with property taxes, the county assessors in the past have been required to prepare tax rolls annually showing the name of the taxpayer and description of the property and the amount of the taxes levied for that year. It is noted that the Legislature felt a law to be necessary to authorize a different type of tax roll in connection with taxes upon real property as shown by Ch. 153, Laws, 1953, in which the unit tax system is authorized for real property. Tax rolls and record cards for this purpose are authorized to cover a period of not less than ten years. Since the requirement for annual tax rolls previously existed as to real property taxes and the Legislature deemed a change in the law necessary in order to authorize tax rolls which consolidate taxes for more than one year and since the income tax law specifically provides for an annual tax roll as to income tax liability, it is our opinion that the plan under consideration for consolidating taxes for more than one year would not be valid under the existing law.

Concerning the proposition of discontinuing the issuance of receipts on payments that are made by check or money order, the income tax statute above mentioned requires receipts to be issued upon payments of tax liability as shown by each year's tax roll. The

question then seems to be whether merely endorsing or validating a check or money order is sufficient to constitute the same as a receipt. The common definition of a receipt is that: "It is a written admission or acknowledgment by the person signing it or for whom it is signed, that such person has received from another person a sum of money or other thing of value." A check which is endorsed and stamped paid has been held to constitute a receipt, however, the endorsement of a check alone does not constitute a receipt and payment by the bank is a necessary part of the procedure before the check becomes a receipt. The same probably would be true in connection with a money order although the only evidence the taxpayer would have in the case of a money order would be the stub rather than the returned order shown to be paid. The Division, in accepting a check or money order and endorsing the same, does not return such instrument to the taxpayer but forwards the same to the bank for collection and therefore at the time {\*301} of payment the taxpayer would have no receipt whatever for the payment made. It is therefore our opinion that no change in the present system of issuing receipts upon payment for each year's taxes should be made and that the taxpayer could demand and require the Division to issue a receipt to him upon payment of the taxes. This is another matter that will require legislative action to enable the proposed changes being considered.

By: C. C. McCulloh

Assist. Attorney General