

## Opinion No. 42-4116

July 13, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Earle Kerr, Director Income Tax Division Bureau of Revenue Santa Fe, New Mexico. Attention: L. D. Sparks Auditor

{\*216} This is in response to your request for an opinion relative to gains, losses and deductions on property located in a state other than New Mexico.

Section 1, Chapter 176, Laws of 1939, defines gross income as follows:

**"Gross Income.** 'Gross income' as used herein includes gains, profits and income derived from salaries, wages or compensation for personal services of whatever kind and in whatever form paid, **including salaries of all elective or appointive state, county, municipal or other officers or employees**, or from professions, vocations, trades, businesses, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use, or interest in such property; also from rent, interest dividends, securities, or transactions of any business carried on for gain or profit, or gains or profits and income derived from any source whatever, including gains or profits and income derived through estates or trusts by the beneficiaries thereof, whether as distribution or as distributable shares."

By Section 3, Chapter 176, Laws of 1939, certain deductions are allowed the taxpayer in computing net income. These deductions include all the necessary and ordinary expenses paid during the taxable year in carrying on any trade or business: all interest paid within the taxable year on indebtedness; all taxes paid within the taxable year, except New Mexico income tax; all losses sustained during the taxable year and not compensated for by insurance or otherwise, if those losses are incurred in any transaction entered into for profit; all losses sustained during the taxable year on property not connected with the trade or business, which losses are not compensated for by insurance or otherwise, and all debts ascertained to be worthless and charged off during the taxable year.

Section 4, Chapter 189, Laws of 1939, provides:

"Section 4. That Section 24, Chapter 85, New Mexico Session Laws of 1933, be and it hereby is amended to read as follows:

"Section 24. CREDIT FOR TAXES PAID OTHER STATES BY RESIDENT INDIVIDUALS. Whenever a resident individual of this State has become liable to income tax to another state, upon his net income, or any part {\*217} thereof, for the taxable year, derived from sources without this state, and subject to taxation under this Act, the amount of income tax payable by him under this Act shall be credited on his

return with the income tax so paid by him to such other state, upon his producing to the proper assessing officer satisfactory evidence of the facts and of such payment;  
**Provided that in no case shall the credit so allowed exceed one per cent (1%) of the taxable income involved."**

All of the above provisions of the income tax law of the State of New Mexico apply to gains, losses and deductions on property located in a state other than New Mexico when the taxpayer is a resident of this state.

In view of the foregoing, your questions are answered as follows:

1. Taxes, interest, insurance, and upkeep on property located in a state other than New Mexico, which state has an income tax law, are deductible only if the taxpayer produces to the assessing officer satisfactory evidence that he has not reported the same in the foreign state. If the taxpayer has filed a return in the foreign state, it would be presumed that he took allowable deductions and reported all gains and losses, and the taxpayer's recourse in this state on his income tax return would be by a credit, as allowed by Section 4, Chapter 189, Laws of 1937 above.

2. A gain or loss from sale of property located in a state other than New Mexico, which state has an income tax law, should be shown on a resident return filed in this state, unless the taxpayer has reported the same in the foreign state. If a taxpayer has filed in the foreign state, it will be presumed that he included the gain or loss, and his recourse in this state would be by credit under Section 4, Chapter 189, Laws of 1937.

3. Rents received from property located in another state, which state has an income tax law, would be taxable to a resident of the State of New Mexico by Section 3, Chapter 176, Laws of 1939. If, however, the taxpayer produces evidence satisfactory to the assessing officer that he has reported those rents and paid an income tax thereon in the foreign state, then the taxpayer is allowed a credit under Section 4, Chapter 189, Laws of 1937.

4. Gains or losses in partnership property or business in another state must be reported by a resident partner as to his share and the same reasons and procedure would apply, as set out in the answers to questions 1 and 2 above.

5. This question is also answered in the same manner as question 2 above.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By WILLIAM R. FEDERICI,

Asst. Atty. General