

Opinion No. 44-4456

February 10, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Earle Kerr, Director, Income Tax Division, Bureau of Revenue, Santa Fe, New Mexico. Attention: W. S. Barnes, Chief Auditor

We have your letter of January 21, 1944, wherein you request an official opinion of this office concerning the liability of a resident taxpayer of this state claiming credit for income taxes paid to another state upon income received as an executive officer or director of a domestic corporation of such other state, and who has performed no service within such other state other than to possibly attend a director's meeting. You have also placed at our disposal a complete file concerning the particular matter involved, wherein it appears that taxes have been paid to the State of Kansas on the income involved. It further appears that the Kansas corporation performs no functions in the State of New Mexico, nor does it in any way do any business in this state.

Your file fails to disclose that the particular taxpayer performs any functions in the State of New Mexico whatsoever, in connection with this income. The only service disclosed by this file and by your letter which is rendered in connection with this income is attending Board of Director's meetings in Kansas. Therefore, it is my opinion that this income is earned in Kansas and not in New Mexico, and is, therefore, taxable under the Laws of Kansas. Therefore, under the provisions of Section 76-1224 of the N.M. 1941 Compilation, the taxpayer is entitled to the credit provided in this section for the income involved.

Hoping that the foregoing sufficiently answers your inquiry, I am

By HARRY L. BIGBEE,

Asst. Atty. General