

Opinion No. 44-4469

March 2, 1944

BY: EDWARD P. CHASE, Attorney General

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

I have your letter of February 28, 1944, wherein you ask the opinion of this office concerning whether or not losses sustained by a domestic corporation due to business performed outside of the State of New Mexico must be considered in computing the net income earned in New Mexico.

In view of the recent decision of the Supreme Court of this State in the case of New Mexico Glycerin Company v. J. O. Gallegos, N.M., , P. , No. 4781, it is clearly shown that losses incurred outside of the State of New Mexico by a domestic corporation cannot be deducted from the net income due to New Mexico business, subject only to the provisions of Section 76-1231, sub-section (b). I call your attention to the portion of this section which provides "derived from sales wherever made, **or** products" etc. This should be read "of products" etc. See New Mexico Glycerin Company v. J. O. Gallegos, supra. So far as losses which are sustained from business operations outside of the State of New Mexico, which would not be taxable under our laws, such losses cannot be considered any more than profits can be considered in similar activities.

Hoping that the above fully answers your questions, I remain,

By HARRY L. BIGBEE,

Asst. Atty. General