

Opinion No. 45-4663

February 20, 1945

BY: C. C. McCULLOH, Attorney General

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

{*23} We are in receipt of your letter of February 17, 1945, in which you ask whether or not an income tax may be imposed upon the dividends received by residents of the State of New Mexico on stock in National Banks located outside the State of New Mexico.

In your letter you refer to Opinion No. 4457, dated February 14, 1944, in which this office held that dividends received from National Banks are not taxable without making any distinction between banks located within and without the State.

Your attention is directed to 12 U.S.C.A., Section 548, 1 (c), which provides as follows:

"In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: Provided, however, That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also included dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations."

It will be seen from this section that the same condition precedent to the taxing of dividends from National Banks located without the State. This condition is that the State impose a tax on the net income of all financial, mercantile, manufacturing and business corporations. Inasmuch as our income tax laws specifically exempt banks and several other financial institutions, I am of the opinion that the State may not impose an individual income tax on the dividends derived by residents of this State from National Banks located in other states.

{*24} In order to clarify your position, I want to take this occasion to point out that a State may tax National Banks directly or indirectly only if Congress consents, and then

only in the precise manner authorized. (State ex rel Bank of Eagle v. Leonardson, 9 P. 2d 1028, 51 Idaho 646.) This is so, since National Banks are not merely private moneyed institutions, but are agencies of the United States. (First National Bank v. Anderson, 46 S. Ct. 135, 269 U.S. 341.)

In view of this situation, your authority, and your only authority, to impose taxes of any character on National Banks is derived from 12 U.S.C.A. 548.

By ROBERT W. WARD,

Asst. Atty. General