

Opinion No. 66-34

March 22, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Joel M. Carson, Assistant Attorney General

TO: Commissioner Max M. Gonzales, Bureau of Revenue, State of New Mexico, Santa Fe, New Mexico

QUESTION

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Can the retirement income credit allowed by the Internal Revenue Code be applied as a credit against New Mexico Income Tax?

CONCLUSION

No.

OPINION

{*42} ANALYSIS

As stated in Attorney General's Opinion No. 65-206, dated October 18, 1965, it is our opinion that New Mexico is bound by any deductions or exemptions allowed by the Internal Revenue Code in computing federal taxable income. That opinion does not apply to credits against Federal Income Tax.

The retirement income credit allowed by the Internal Revenue Code is a credit applied against the federal tax. It is not a credit used in the computation of federal taxable income. See 26 U.S.C.A. § 37.

Under the New Mexico Income Tax Act, the only credits allowed against the state tax are the credits for taxes paid to other states as provided in Sections 72-15A-11 and 72-15A-12, N.M.S.A., 1953 Compilation (P.S.). It is well established that a tax credit or deduction cannot be taken unless there is specific statutory authority so providing. It is therefore our opinion that the retirement income credit as provided in the Internal Revenue Code cannot be applied as a credit against the New Mexico Income Tax because this credit has no statutory basis in New Mexico.

{*43} To the extent that this opinion conflicts with our former advice on this question, this opinion will be controlling.