

## Opinion No. 48-5157

June 17, 1948

**BY:** C. C. McCULLOH, Attorney General

**TO:** Victor Salazar Commissioner of Revenue Bureau of Revenue Santa Fe, New Mexico. Attention /- Joe Callaway, Director School Tax Division

{\*154} This will acknowledge receipt of your recent letter requesting an opinion as to whether Rule 59 of the Rules and Regulations issued by the Bureau of Revenue is in accord with the provisions of the New Mexico School Tax Law.

Rule 59 provides as follows:

"FLORISTS. Florists are vendors subject to 2% tax on receipts of all sales of tangible personal property to consumers not exempted under Paragraph D, Section 201; wholesale receipts are taxed at 1/8 of 1%; "Taxable receipts include orders taken by New Mexico florists or nurserymen to be telegraphed to a second florist or nurseryman whether the delivery is to be made within or without the State. Receipts derived from telegraphic orders received from another florist or nurseryman, either within or without the State, are not subject to tax."

Section 76-1405 of the 1941 Compilation provides in part that the Emergency School Tax Act shall not apply to any business or transactions exempted from taxation under the Constitution of the United States. Therefore, such of said business that constitutes interstate commerce is not taxable under the Act.

In view of recent decisions of our Supreme Court on the question of interstate commerce in connection with the New Mexico School Tax Law (Albuquerque Broadcasting Co. v. Bureau of Revenue, 51 N.M. 332, 184 P. 2d 416; Blackhawk Consolidated Mines Co. v. Bureau of Revenue, decided March 5, 1948; Western Livestock v. Bureau of Revenue, 303 U.S. 250, 82 L. Ed. 823), we conclude that:

(1) Taxable receipts include orders taken by New Mexico florists to be telegraphed to a second florist within or without the state, **but those receipts are taxable only as to the amount retained by the New Mexico florist for rendering the service of forwarding the order.**

(2) Receipts derived from telegraphic orders received by New Mexico florists, whether received from within or without the state, are subject to the tax, but those receipts are taxable only on the amount received by said florist for the sale and delivery of the flowers.

By WILLIAM R. FEDERICI,

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