

Opinion No. 53-5701

March 13, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Tibo J. Chavez Lieutenant Governor State of New Mexico Santa Fe, New Mexico

{*94} Recently you inquired for an opinion of this office concerning whether or not a person owning a retail or wholesale establishment within a municipality, who takes certain articles from that establishment and makes sales outside the city, is subject to the city occupation tax as prescribed in Section 14-3807 N.M.S.A., 1941 Compilation.

The occupation tax, as set out in Section 14-3807, supra, prescribes that the "Legislative and governing bodies of cities, towns and villages shall have the power to impose an occupation tax upon telegraph companies street railway companies, heating companies, railway express companies, gas companies, cold storage and refrigeration companies, manufacturers, wholesale and retail merchants of all kinds * * *." It can be seen quite easily from the nature of the businesses enumerated in that statute that any contemplation of the Legislature of confining the tax only to business done by the enumerated businesses within the corporate limits of a city, town or village, would make the statute completely unworkable. For instance in the case of manufacturers very few sales are made by manufacturing concerns solely within the town where the manufacturing unit is located. It will be noted that brokerage companies, mining companies, storage and transfer houses and common carriers are all included in that statute. The businesses named in the preceding sentence are businesses which conduct the major portion of their business outside the town where they are located. The tax, unless it is contemplated by the statute to be a tax upon the volume of business done regardless of where that business is done, would be completely unworkable and more expensive to administer than the benefits derived from the revenue obtained from said tax.

In opinion of the Attorney General No. 4584 dated September 24, 1944, this office held that the occupation tax is assessable against businesses in interstate commerce, so long as that tax did not constitute a burden on interstate commerce. The opinion cited above clearly indicates that the law contemplates the tax to be levied on the gross total business done, levied at the place where the site of the business is located.

{*95} Therefore, it is the opinion of this office that a person who maintains a wholesale or retail establishment within the corporate limits of a city, town or village must pay the occupation tax levied by the city, town, or village, based upon the gross volume of the business done, regardless of where sales are made or where contacts and deliveries are made. The only restriction upon the imposition of this tax is in the case of the tax constituting an unreasonable burden on interstate commerce. Where all business is

done intrastate, the tax is leviable on the gross business done and leviable against the establishment where it is located.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General