

Opinion No. 53-5857

December 3, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. E. S. Walker Commissioner of Public Lands State Capitol Building Santa Fe, New Mexico

{*279} In your letter of November 16, 1953, you refer to the Compensating Tax Act of 1939 and request an opinion upon the following set of facts:

"Assume that an oil well drilling contractor, having its present place of business outside of New Mexico, buys a drilling rig or rigs outside of New Mexico and uses such rig or rigs in its general drilling business in states other than New Mexico, and later moves the rig into New Mexico to drill oil wells in this State. Then what, if any, liability under the Compensating Tax Law does such contractor have when such rigs are moved for the first time into New Mexico?

You also inquire as to the tax liability on oil drilling rigs and machinery purchased outside of the state but already in the state at the time of the passage and adoption of the Compensating Use Tax Law in New Mexico?

The primary purpose of the Compensating Tax Act of 1939 is declared, in § 76-1501 of the 1941 Compilation, to be:

"The primary purpose of this act is declared to be to protect, so far as is practicable, the merchants, dealers and manufacturers of New Mexico who operate under the excise tax laws of this state, and who meet the requirements of such laws, against the unfair competitions of importations into New Mexico, without the payment of a sales tax, of goods, wares and merchandise.

The Compensating Tax is imposed by § 76-1503, of the 1941 Compilation, in the following language:

"Excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased from a retailer on or after July 1, 1939, for storage, use or other consumption in this state, at the rate of two (2) per cent of the sales price of such property."

It is assumed in writing this opinion that no fraud is involved on the part of the purchaser bringing equipment into this state and no effort is made by him to evade payment of the Compensating Tax which otherwise would be due.

The State of California adopted a compensating tax law in 1935 and imposed an excise tax on the storage, use or other consumption of tangible personal property purchased

from a retailer on or after July 1, 1935. In construing this act, the California courts, in the case of Chicago Bridge and Iron Co. vs. Johnson, 119 P. 2d 945, stated the conditions to be met before the tax is due on such tangible personal property as follows:

1. The tangible personal property stored or used must be purchased by the storer or user.
2. The purchases must be made from a retailer.
3. The purchase must be made on or after July 1, 1935.
4. The property must have been purchased for use or storage in this state.
5. The property must have been used or stored in this state.

The same conditions would have to be present under our law except {**280*} for the date when the law takes effect, which under our law is July 1, 1939. If the purchase was made prior to that date, the compensating tax would not be applicable.

A similar law was involved in the case entitled Morrison-Knudson Co. vs. State Tax Commission (Iowa 1950) 44 NW 2d 449. This case involved numerous items of construction equipment, some of which was purchased many years before being brought into the State of Iowa after being used in other states prior to being brought into that state. The Iowa court held that although the law was constitutional, the items purchased many years before and used in other states before being brought into the State of Iowa were not subject to the compensating tax.

It is my understanding that it has been the administrative policy of the Bureau of Revenue not to collect the tax in instances similar to the one involved here, in prior years since the law was enacted. Such administrative interpretation would be persuasive upon the courts if the matter was ever presented to the courts in this State for judicial interpretation.

From the foregoing authorities and reasons given, it is our opinion that the purchase of drilling rigs described in your statement of facts does not meet all of the conditions required by the law for the imposition of the compensating tax and therefore are not subject to such tax.

By: C. C. McCulloh

Assist. Attorney General