

## Opinion No. 54-5922

March 29, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. J. C. Bergere, Director School Tax Division Bureau of Revenue Santa Fe, New Mexico

{\*368} This will acknowledge receipt of your letter of March 2, 1954, in which you ask our opinion as to whether or not "uncollectible items" are deductible under the School Tax Act.

Your legal division and the taxpayer involved have defined "uncollectible items" as items which were previously reported by a taxpayer in his gross receipts due to the fact that the taxpayer pays upon an accrual basis rather than a cash basis. The amounts represented thereby were never actually received by the taxpayer and are deducted at a later date when the taxpayer ascertains that it will be unable to make collection of the amount previously reported. It is our understanding that if the amounts, after being deducted, are subsequently collected, they are at that time again included in the gross receipts of the taxpayer.

Section 76-1402 (d) and (e) of the 1941 Compilation, as amended, reads as follows:

"(d) The term 'gross receipts' means the total sum, not including the taxes imposed by this act, received as compensation for personal and professional services, for the exercise of which, {\*369} a privilege tax is imposed by this act, the total receipts of a taxpayer derived from trades, business, commerce, and the gross proceeds of sales as hereinafter defined, except when such taxes are not segregated from such sum, and without any deduction on account of losses or expense of any kind; provided that, even though the amount of the tax imposed by this act is segregated as set out above, if the taxpayer collects from the customer more than the amount of the tax imposed by this act, then such amount collected in excess of the amount of such tax shall be considered as a part of the 'gross receipts' and subject to the tax imposed by this act.

"(e) The term 'gross proceeds of sales' means the sum or value proceeding or accruing from the sale of tangible personal property, including the proceeds from the sale of any property handled on consignment by the taxpayer and including any services that are a part of such sales, but not including the taxes imposed by this act, unless such taxes are not segregated from such sums or value proceeding or accruing, whether received in money or otherwise, including all receipts, cash, credits and property of any kind or nature, and also the amount for which credit is allowed by the seller to the purchaser, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest paid, losses, or any other expenses whatsoever; provided that, even though the amount of the tax imposed by this act is segregated as set out above, if the taxpayer collects from the customer more than the

amount of the tax imposed by this act, then such amount collected in excess of the amount of such tax shall be considered as a part of the 'gross proceeds of sales' and subject to the tax imposed by this act; provided further that cash discounts allowed and taken on sales shall not be included, and 'gross proceeds of sales' shall not include the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit."

The tax levied by the School Tax Act is a tax upon the gross receipts of the taxpayer. (§ 76-1404, as amended) Unless there are gross receipts, there can be no tax. In this situation, the taxpayer is reporting, in advance, receipts which he anticipates will be paid at a later date. If it later appears that such payment will not be made, the taxpayer has then paid the Bureau of Revenue tax upon an amount which is not part of his receipts. You will note that § 76-1402 (d) refers to gross receipts as the amount **received**, and § 76-1402 (e) states that gross proceeds of sales is the **sum** or **value** accruing from the sale. Thus, if money or thing of value is not received by the taxpayer, no tax is due.

If the taxpayer involved were reporting on a cash basis, the amounts in question would clearly not be taxable until actually received by the taxpayer. It would be manifestly unfair to the taxpayer to penalize it because of its bookkeeping system, especially in this instance where the bookkeeping system is required to be kept in this manner by Federal regulations.

From the foregoing, it is the opinion {\*370} of this office that uncollectible items, as above mentioned, may be considered as a deductible item at the time they become uncollectible upon returns made under the New Mexico School Tax Law.

By: Walter R. Kegel

Assist. Attorney General