

Opinion No. 55-6089

January 26, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: J. B. Contreras, Director School Tax Division Bureau of Revenue, Santa Fe, New Mexico

In your letter dated January 17, 1955, you request an opinion concerning the school tax to be exacted upon the extraction of manganese ore which is sold to the United States Government for stock piling. There seems to be no question concerning the severance tax of one-eighth of one per cent upon the mining of such ore.

Section 72-16-4, subsection A, of the 1953 Compilation, provides for a tax of one-half of one per cent of the gross receipts upon the business of engaging in the business of mining metalliferous or non-metalliferous mineral products, or combination, or compound of mineral products. There is a further provision that the tax shall not apply where the ore is treated by a mill in the state owned by the person extracting the ore or where it is sold and treated by another person in a mill in this state who would be subject to payment of the tax under paragraph B.

You state that under the present circumstances the products perhaps are not being refined or smelted in this state and since the Federal Government is the purchaser, the mining and smelting would not be taxable under paragraph B. Your attention is called to § 72-16-5, 1953 Compilation, which reads as follows:

"None of the taxes levied by this act (72-16-1 to 72-16-5, 72-16-7 to 72-16-46) shall be construed to apply to sales made to the government of the United States or any agency or instrumentality, nor to sales to the state of New Mexico or any of its political subdivisions; Provided that deposits of gold and silver with the United States' mint shall not be considered as sales to the government of the United States and shall not be exempt hereunder; nor shall such taxes apply to any business or transactions exempted from taxation under the Constitution of the United States or the state of New Mexico, or to sales made to societies, hospitals, fraternal or religious organizations not organized for profit."

Since gold and silver only are excepted from the exemption of sales to the United States, the exemption would apply as to sales to the United States of all other minerals including manganese. This conclusion is substantiated in the Supreme Court decision entitled *Black Hawk Consolidated Mines Co. v. Gallegos*, 52 N.M. 74, 191 P. 2d 996.

In view of the specific exemption in the foregoing section and the language of the Supreme Court in this case, it is our opinion that no sales tax may be exacted against the person extracting manganese ore which is sold to the United States Government.

By C. C. McCulloh

Assistant Attorney General