

Opinion No. 55-6345

December 27, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: W. B. Macey, Secretary-Director, New Mexico Oil Conservation Commission, Santa Fe, New Mexico

You have requested an opinion from this office on whether or not a producer who sells oil or gas to a refinery or processing plant, within the meaning of § 72-16-4, N.M.S.A., 1953 Comp., as amended, is liable for the tax imposed by § 65-3-30, N.M.S.A., 1953 Comp., as amended.

Section 65-3-30, N.M.S.A., 1953 Comp., reads as follows:

"There is hereby levied a tax of one-eighth of one per cent on the proceeds of all oil and gas produced in this state, except royalties payable to the United States or to this state. Such tax shall be reported and collected at the same time and in the same manner as the emergency school tax now, or hereafter provided by law, is returned and collected. Such tax when collected shall be paid to the state treasurer and by him covered into a fund designated as the Oil Conservation Fund. Such fund, or so much thereof as may be necessary, is hereby appropriated to the oil conservation commission to be by it expended in the enforcement of this act. The commission is hereby authorized, within the limits of the fund available, to employ a secretary and such other employees and agents as may be necessary to enforce the provisions of this act."

You state that since said section of our statute contains the language to-wit: ". . . Such tax shall be reported and collected at the same time and in the same manner as the emergency school tax now, or hereafter provided by law, is returned and collected . . ." several of the oil and gas producers are construing this language to mean that they are entitled to whatever exemptions are afforded them under the Emergency School Tax Act. § 72-16-4, N.M.S.A., 1953 Comp., provides in substance that any producer who sells oil or gas to another person for refining or processing in this state is not liable for the 2% tax imposed thereunder.

It is important to note that the State Legislature in 1955 amended § 65-3-30, N.M.S.A., 1953, only by increasing the tax levied thereunder from 1/8 of 1 per cent to 14/100 of 1 per cent of all the proceeds of all oil and gas produced in this state. The language concerning the manner of reporting and collection of the tax is identical with the provision as it was first passed in 1935 (Chapter 72, Section 25).

It is also important to note that § 72-18-5, N.M.S.A., 1953 Comp., provides that the Severance Tax is in addition to the tax on production and other special taxes. This indicates that the Legislature intended that the tax on production was to be collected

and was separate from the Emergency School Tax, Severance Tax and special taxes levied upon real estate, etc.

This office can find nothing that expresses a legislative intent to grant the exemption contained in the Emergency School Tax to the tax on oil and gas production. We interpret the language contained in § 65-3-30, N.M.S.A., 1953 Comp., concerning the manner in which the production tax shall be reported and collected as merely legislative direction pointing to an efficient method by which the production tax can be collected and said fund applied to the Oil Conservation Fund for the enforcement of the Act.

If the Legislature had intended to allow an exemption from the payment of this tax coincident with the exemption contained in the Emergency School Tax there would have been no point in the passage of said section of the statute. It is clear that the Legislature intended this to be a separate tax, to-wit: on oil and gas production.

We, therefore, give as our opinion that the producer who sells oil or gas to a refining or processing plant in this state within the meaning of § 72-16-4, N.M.S.A., 1953 Comp., is liable for the production tax contained in § 65-3-30, N.M.S.A., 1953 Comp.

By: Jack A. Smith

Assistant Attorney General