

## Opinion No. 56-6460

June 6, 1956

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

**TO:** Mr. Chapin S. Carnes, Chairman, State Collection Agency Board, P. O. Box 715, Albuquerque, New Mexico

We have your letter of May 7, 1956, requesting an opinion from this office concerning the application of the New Mexico School Tax Law to collection agencies.

We shall answer your questions in the order in which they are listed in your letter. However, before answering the questions, it would be well to discuss briefly the nature of the New Mexico School Tax.

Section 72-16-2 (d), N.M.S.A., 1953 Compilation, reads as follows:

"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, 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."

Section 72-16-4, N.M.S.A., 1953 Compilation, reads as follows:

"There is hereby levied, and shall be collected by the Bureau of Revenue, **privilege taxes**, measured by the amount or volume of business done, against the persons, on account of their business activities, engaging or continuing, within the state of New Mexico, in any business as herein defined, and in the amounts determined by the application of rates against gross receipts, as follows: . . ."

It is to be noted that the above sections quoted provide for a privilege tax, that is, the incidence of the tax is upon the privilege of doing business in the State of New Mexico measured by the gross receipts of such business. See *Blackhawk Consolidated Mines Company vs. Gallegos*, 52 N.M. 74, 190 P. 2d 996.

Your first question is as follows:

"If an out of state seller orders by mail a credit report from a New Mexico bureau covering a New Mexico resident and said credit report is compiled, mailed, and billed to

the out of state seller, is the sale of the credit report subject to the New Mexico School Tax?"

It is the opinion of this office that the receipts from the furnishing of such credit report is part of the gross receipts of a credit agency, which is subject to the New Mexico School Tax. As already pointed out that tax is levied upon the privilege of doing business in the State of New Mexico. The Credit Bureau in the instance above named, is offering a service within the State of New Mexico, and it is this privilege of rendering this service which is taxed. The amount of such tax being figured, in this case, at a rate against the receipts from all the work performed in New Mexico from such business. Such service is actually a New Mexico service, and that is the activity for the privilege of which the taxpayer is being taxed. *Western Live Stock vs. Bureau of Revenue*, 41 N.M. 141; *Western Livestock vs. Bureau of Revenue*, 303 U.S. 250, 83 L. Ed. 823; *Lougee vs. Bureau of Revenue Commissioner*, 42 N.M. 115, 76 P. 2d 6.

Your second question is as follows:

"If an out of state merchant forwarded an account for collection owed by a person living in the state, is the collection agency's fee subject to the New Mexico School Tax?"

Clearly we think this instance comes within the New Mexico School Tax. For here again all the services which are performed are rendered in New Mexico, and the use of the mails is only incidental to this transaction. We are convinced that there can be no doubt that such a collection is subject to the collection of the School Tax.

Your third question is as follows:

"If a New Mexico retailer places an account with a New Mexico collection agency who finds the subject has moved to California, and forwards the account to another agency in California who makes the collection and remits back to the New Mexico agency, subject to the New Mexico School Tax."

In this case the New Mexico Collection Agency is offering a service for New Mexico retailers in that when an account is placed with him, the Collection Agency has arrangements by which that account can be collected any place in the United States on this forwarding basis. It is this service for which the fee is paid, and since that service is rendered in the State of New Mexico such service would be subject to the New Mexico School Tax. Here again it is the privilege of offering such service which is taxed in the State of New Mexico, and since the service is rendered in New Mexico, we are of the opinion that the receipts from such service are subject to the New Mexico School Tax.

Trusting we have answered your questions, we remain

By: Paul L. Billhymer

Assistant Attorney General