

## **Opinion No. 57-113**

May 27, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** To. Hon. Earl E. Hartley, New Mexico State Senator, Curry County, Clovis, New Mexico

### **QUESTIONS**

#### QUESTIONS

1. The effective date of Senate Bills 96, 97, 98 and 99?
2. The application and effect of such bills?

#### CONCLUSIONS

1. June 7, 1957.
2. See Opinion.

### **OPINION**

#### ANALYSIS

Senate Bills 96, 97, 98 and 99 were enacted by the 1957 Legislature, signed by the Governor, and became respectively Chapters 223, 224, 225 and 226, Laws of 1957. Hereafter reference will be made to the chapter numbers of the 1957 Laws. Inasmuch as these laws did not bear the emergency clause, their effective date in each instance is June 7, 1957. Opinion of the Attorney General No. 57-50, dated March 14, 1957.

All four chapters deal with the extension of certain New Mexico taxes into Federal areas, and again in each instance to the extent authorized by Congress.

Chapter 223 extends the use or compensating tax into the Federal areas; Chapter 224 extends the school sales and privilege or gross income taxes into the Federal areas; Chapter 225 extends the income taxes to persons residing in Federal areas or receiving income from transactions occurring or work or services performed in such Federal areas; and Chapter 226 extends fuel taxes to the use or sale of motor fuel by or to persons on Federal areas, and by or to persons by Federal instrumentalities or agencies. Again it should be emphasized that all four chapters only extend the taxes in question to the extent permitted by Congress.

Turning to the Federal law, we find at 4 U.S.C.A., § 104, that all taxes levied by any state upon or with respect to or measured by the sale, purchase, storage or use of gasoline or other motor fuels may be levied in the same manner and extent, with respect to such fuels, when sold by or through post-exchanges, ship-service stores, commissaries, filling stations, licensed traders, and other similar agencies located on United States Reservations, when such fuels are not for the exclusive use of the United States. As to sales and use taxes, Title 4, U.S.C.A., § 105, provides that states or taxing authorities therein shall have full jurisdiction and power to levy and collect any such taxes in any Federal area within such state to the same extent and effect as though such area were not a Federal area, so long as the sales or storages occurred after December 31, 1940. 4 U.S.C.A., § 106, provides that no one shall be relieved from any income tax levied by a state or a duly constituted taxing authority therein by reason of such person residing within a Federal area or receiving income from transactions occurring or services performed in such area, but the state or taxing authority can impose such tax as though such area were not a Federal area, so long as the income was received after December 31, 1940. However, according to 4 U.S.C.A., § 107, the provisions of Sections 105 and 106 do not authorize the levy or collection of any taxes on or from the United States or its instrumentalities, or the levy or collection of any tax with respect to sale, purchase, storage, or use of personal property sold by the United States or its instrumentalities to any authorized purchasers. See § 107 (b) for the definition of "authorized purchaser." And, 4 U.S.C.A., § 109, provides that Sections 105 and 106 shall not be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed.

This opinion is necessarily of a general nature, but we believe that the basic answers to your inquires are contained in the statutes, both State and Federal cited and commented upon by us. The existence of both the Federal enabling statutes, together with the State tax statutes, means, of course, that the taxes in question may validly be imposed. **Offutt Housing Co. v. County of Sarpy**, 351 U.S. 253, 100 L. Ed. 1151, 76 S. Ct. 814.