

Opinion No. 57-111

May 27, 1957

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

TO: Honorable F. Wayne Laws, Chief Tax Commissioner, New Mexico State Tax Commission, Santa Fe, New Mexico

QUESTIONS

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Can the New Mexico State Tax Commission, in view of Chapter 66, Laws 1957, not yet in effect, demand a return for 1957 from express companies as provided by Section 72-10-2, N.M.S.A., 1953 Comp.?

CONCLUSION

Yes.

OPINION

ANALYSIS

You have specifically requested our opinion on whether or not the tax return provided for in § 72-10-2, supra, may be required by the State Tax Commission in view of Chapter 66, Laws of 1957, and its repeal of § 72-10-1 to 6, both inclusive.

The Legislature can enact no law, by repeal of an existing tax statute or otherwise, which may have the effect of forgiving tax liability due the state or any municipal corporation therein. Constitution of New Mexico, Article IV, Section 32. See **Board of Education v. McRae**, 29 NM 85, holding that a repeal of a tax law cannot have the effect of relieving tax liability during the year the repealing statute went into effect. The Court further held that the prior tax law remained in effect, **and that the provisions for its collection remain in full force during the present year** (meaning the year during which the repealing statute went into effect.)

Since under § 72-10-1, et seq., N.M.S.A., 1953 Comp., the tax is on gross earnings for 1956 (in this instance), such tax can't be forgiven under Article IV, § 32 supra. Since the tax is payable during 1957, even though such year is the year during which Chapter 66, Laws 1957 goes into effect, we have a situation comparable to that in **Board of Education v. McRae**, supra, since there the tax was payable during the same year as the repealing legislation went into effect. Since the McRae case also held that the **provisions for the collection of the tax remained in effect during the then present**

year, it follows that the tax return provided for by § 72-10-2, N.M.S.A., 1953 Comp., can still be required by the State Tax Commission in 1957 since such return is but one step in the orderly procedure of tax collection set forth in Sections 72-10-2 to 72-10-6.