

Opinion No. 57-196

August 8, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: The Honorable Jesse U. Richardson, State Senator, Dona Ana County, 1001 North
Armijo Street, Las Cruces, New Mexico

QUESTION

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A company is engaged in the processing of lettuce. What amount of their gross receipts received from processing should be paid under the New Mexico Emergency School Tax Act?

CONCLUSION

An amount equal to one-fourth (1/4) of one (1%) percent of the gross receipts of the business.

OPINION

ANALYSIS

We are informed that a company at Mesilla Park, New Mexico, has in operation a vacuum tube used in the processing of lettuce prior to its shipment to market. Further, that this company was charged approximately \$ 1,000.00, at the rate of two (2%) percent of the gross receipts under the New Mexico Emergency School Tax Act, on their spring operation. Based on the above facts, as we know them, the question arises as to what amount of the gross receipts should be charged and collected by the Bureau of Revenue of the State of New Mexico when the taxpayer is processing an agricultural product.

Section 72-16-4, N.M.S.A., 1953 Comp., 1955 Pocket Supplement (the effective Act during the time in which the tax was collected) at sub-section I states in part:

"At an amount equal to two (2) percent of the gross receipts of any person engaging or continuing in any of the following or similar businesses . . . Provided that threshing (thrashing) or cleaning of agricultural products, including the ginning of cotton, shall be considered as manufacturing and **preparing for commercial use and shall be taxed under paragraph B of this section . . .**"

(Emphasis ours.)

Paragraph B of § 72-16-4, supra, and referred to in sub-section I, states, in part, that:

"At an amount equal to one-fourth of one per cent of the gross receipts of the business of every person engaging or continuing in each or any or all of the businesses of manufacturing, smelting, refining, reducing, **processing**, comfacturing, fabricating, packing, preserving, distilling, preparing for sale or commercial use, . . ."

(Emphasis ours.)

A rate of one-fourth of one percent of the gross receipts from the processing of lettuce is clearly indicated, we believe, in the instant case.

If the Bureau of Revenue has been charging at a rate of two percent of the gross receipts, we believe such action abrogates 72-16-4 at sub-sections B and I, and an application for refund should be made, consistent with the Act.