

Opinion No. 57-297

November 20, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Charles B. Barker, Attorney, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Are the receipts of sales made or services rendered, not under contract, to the Federal Government, its agencies and instrumentalities, including utility services, subject to emergency school tax provisions of § 72-16-4, N.M.S.A., 1953, Pocket Supplement?
2. Are the receipts of sales made or services rendered, not under contract, to "national Banks", or state banks, subject to the emergency school tax?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

ANALYSIS

As pointed out in Attorney General's Opinion No. 57-247, quoting from *Black Hawk Consol. Mines Co. v. Gallegos*, 52 N.M. 74:

"The New Mexico Emergency School Tax is a tax upon the privilege of engaging or continuing in business in New Mexico. It is not limited to taxing those whose gross receipts are derived from sales of property; but it covers the entire range of business activities, with a few specific exceptions."

The exceptions, afore suggested, are specified in § 72-16-5, N.M.S.A., 1953 Compilation, Pocket Supplement, as follows:

"None of the taxes levied by this act shall be construed to apply to sales made to the state of New Mexico or any of its political subdivisions; nor to sales made to societies, hospitals, fraternal or religious organizations not organized for profit."

As pointed out further in Attorney General's Opinion No. 57-247:

"By the amendment (1957), the previously stated exemptions for the government of the United States, its agencies and instrumentalities, were removed."

It is, accordingly, our opinion that the receipts from non-contract sales and services rendered to the Federal Government, its agencies and instrumentalities are subject to the provisions of the emergency school tax act.

With reference to your second query concerning sales and service transaction with national banks, it is our opinion that the law and conclusions expressed in the Attorney General's Opinion cited, *supra*, are here equally applicable.

Previous to the legislative amendment of 1957, § 72-16-5, *supra*, Federal instrumentalities were specifically excepted and exempt from the provisions of the emergency school tax act. This exception no longer exists.

The question above puts deals with transactions in the nature of sales made or services rendered to a bank and is not concerned with receipts realized from services rendered by such bank as contemplated by § 72-16-15. Accordingly, as the incident of the tax, herein considered, is on the "privilege" of doing business, *Black Hawk Case*, *supra*, as compared with a true sales tax incident, and further, since there is no requirement that the tax be passed on, it is our opinion that sales and services to national banks are subject to the tax discussed.

Any part or parts of Attorney General's Opinion No. 6027, October 20, 1954, which may be inconsistent herewith are specifically overruled.