

## **Opinion No. 57-32**

February 26, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Santiago E. Campos,  
Assistant Attorney General

**TO:** Mr. Robert R. Salazar, Motor Vehicle Commissioner, Bureau of Revenue, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

Must the 1% excise tax imposed by Section 3, Chapter 247, Laws 1955 (Section 64-11-15, N.M.S.A., 1953 (P.S.)) be paid by nonprofit or charitable organizations?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

Section 3, Chapter 247, Laws 1955 evolved as follows: The Emergency School Tax Act, passed in 1935, levied a privilege tax on, among others, those persons engaged in the business of selling new or second hand automobiles, trucks or tractors. The tax was measured by the amount or volume of business done. The tax was imposed by § 72-16-4 D., N.M.S.A., 1953, which, in part, provided:

". . . Provided that a person engaged in selling at retail, new or second-hand automobiles, trucks or tractors, shall pay a tax of one (1) per cent upon the gross receipts of sales of such commodities; and further Provided that allowances for trade-ins on the purchase of tangible personal property shall be deductible before computing the tax due under this section. . . ."

And, in order to keep out-of-state automobile dealers from securing an advantage over local dealers because of the above tax, and to otherwise equalize taxes, the Legislature, in the Compensating Tax Act of 1939, provided that:

". . . Provided that the storage, use or other consumption in this state of new or secondhand automobiles, trucks or tractors shall be at the rate of one per cent (1%) of the sales price of such automobile, truck or tractor; and further Provided that allowances for trade-ins on the purchase-price of such tangible personal property shall be

deductible before computing the tax due under this section. . . ." § 72-17-3, N.M.S.A., 1953.

The tax imposed by the Emergency School Tax Act is a privilege tax measured by gross receipts of business done. The person responsible for the tax is the dealer and not the consumer.

Under the Compensating Tax Act of 1939, the incidence of the tax is upon the "storage, use or other consumption" and the purchaser, not the dealer, is the taxpayer. See § 72-17-10, N.M.S.A., 1953.

In 1955 the Legislature amended the two sections quoted above. For the proviso quoted from § 72-16-4 D., it substituted:

". . . . Provided that in consideration of the provision of section 3 (a) the sales of new and second-hand vehicles of a type required to be registered in this state shall be exempt from said tax. . . ." Laws of 1955, § 1 Chapter 247.

For the proviso quoted from § 72-17-3, N.M.S.A., 1953, it substituted:

". . . Provided that in consideration of the provisions of section 3 (b) the storage, use or other consumption in this state of new or second-hand vehicles of a type required to be registered under the provisions of Section 64-3-2 shall be exempt from said tax. . . ." § 2, Chapter 247, Laws of 1955.

The two subsections referred to in the last two provisos quoted above are contained in a completely new section. This is § 3, Chapter 247, Laws 1955. The Pertinent portions of these subsections read:

"(a) There is levied and imposed hereby in addition to all other fees prescribed by Section 64-11-10, an excise tax for the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered in this state in the case of sales or resales thereof. . . ."

"(b) There is levied and imposed hereby in addition to all other fees prescribed by Section 64-11-10, an excise tax on the issuance of every original certificate of title for vehicles of a type required to be registered in this state and brought into this state for use or other consumption at the rate of one (1%) per cent of the sales price, if the vehicle be newly purchased, or in all other cases at the rate of one (1%) per cent upon the fair market value of such vehicle as shown by nationally recognized vehicle pricing guides; . . . ."

Now, both the Emergency School Tax Act and the Compensating Tax Act of 1939 specifically exempt charitable organizations from the taxes imposed by these two acts. The Emergency School Tax Act exempts these organizations under § 72-16-15 (a),

N.M.S.A., 1953; and the Compensating Tax Act of 1939 exempts them under § 72-17-4 (b), N.M.S.A., 1953.

It is probably because of these exemptions that these organizations now contend that the tax imposed by Chapter 247, Laws 1955, does not apply to them.

The inquiry, then, may be summed up in this fashion: Is Chapter 247, Laws 1955, a part of either the Emergency School Tax Act or the Compensating Tax Act of 1939, so that the exemptions extended to charitable organizations under either of the last two Acts exempt from the tax imposed by Chapter 247, Laws 1955?

We think not. We reason thus: The incidence of the tax imposed by Chapter 247, Laws 1955, is upon the "issuance" of a certificate of title, and the person responsible for the tax is the person applying for the certificate, the consumer. It differs from the tax imposed by the Emergency School Tax Act in that the latter is a tax imposed upon the privilege of doing business and is paid by the dealer. From the tax imposed by the Compensating Tax Act of 1939, it differs in that under the latter the incidence is upon the "storage, use or other consumption," a standard alien to that contained in Chapter 247, Laws 1955.

There is yet another reason why we believe § 3, Chapter 237, Laws 1955, is a law complete in itself and not a part of any other.

Subsection (c), Section 3, Chapter 247, provides a specific exemption to the State of New Mexico and its political subdivisions. Similar exemptions are extended the State in the Compensating Tax Act of 1939 under § 72-17-4, N.M.S.A., 1953, and in the Emergency School Tax Act under § 72-16-5. Thus it seems to us that had the Legislature intended that § 3, Chapter 247 be a part of either the Compensating Tax Act of 1939 or the Emergency School Tax Act, then it would have been unnecessary to provide a specific exemption to the State under this Act when the same exemption existed under the other Acts.

Anticipating the argument that Article 8, § 3 of the New Mexico Constitution exempts nonprofit and charitable organizations from payment of this tax, it may be pointed out that this constitutional provision applies to ad valorem taxes and not to excise taxes. Although our Supreme Court has not passed on this question, this seems to be the uniform interpretation of similar constitutional provisions in other states. *People v. City and County of Denver*, 272 P. 629; *Independent School District v. Pfof*, 51 Ida. 240, 4 P. 2d 893, 84 A.L.R. 82.