

Opinion No. 59-144

September 16, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Paul W. Robinson District Attorney Second Judicial District Bernalillo County
Court House Albuquerque, New Mexico

{*220} This opinion is in response to your request on the following question:

Does the use of sulphuric acid to regenerate water used in connection with the refining of uranium ore exempt a seller from a compensating tax levied on the sales of such sulphuric acid?

In our opinion, the answer to your question is no.

A question has been raised as to whether the use of sulphuric acid in regenerating water to be used in water softening units needed in the processing of uranium exempts such sulphuric acid from a levy of a compensating tax.

The response to your above question necessitates an interpretation of the exemptions from compensating tax afforded by § 72-17-4, N.M.S.A., 1953 Compilation, (P.S.), subsection L, which reads as follows:

"All chemicals and reagents procured or purchased by any mining, milling or oil company for use or consumption in processing ores or oil in mill, smelter, or refinery, or in acidizing oil wells; Provided, that in no case shall explosives, blasting powder or dynamite be exempted."

In construing a statutory exemption from taxation, it is necessary to apply the rule of strict construction.

". . . an alleged constitutional or statutory grant of exemption from taxation will be strictly construed in favor of the state and taxation and against the taxpayer and exemption, and in following this rule of strict construction all doubts will be resolved against the claimed exemption. Such a privilege or immunity cannot be made out by inference or implication, but must be conferred in terms too clear and plain to be mistaken, and in fact admitting of no reasonable doubt, and where it exists it should be carefully scrutinized and not permitted to extend either in scope or duration beyond what the terms of the concession clearly require or allow, or so as to create an absolute and irrevocable exemption unless the language of the statute clearly so requires." 84 C.J.S., Taxation, § 227.

See also **Peisker v. Unemployment Compensation Commission**, 45 N.M. 307.

The statute specifically provides that these chemicals to be exempted must be for "use or consumption in processing ores". In view of the language of the exemption and because of the rule of strict construction, it is our opinion that the sulphuric acid purchased for the purpose of regenerating the water used in the milling process is not a chemical actually used or consumed in processing ores. Rather, it is used in connection with the water and such use is too remote from the exemption of the statute as to fall within the exemption.

Therefore, we conclude that the compensating tax must be paid on the sulphuric acid used for the designated purposes.

Thomas O. Olson

Assistant Attorney General