

## Opinion No. 60-206

October 27, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Richard H. Robinson Chief Counsel Bureau of Revenue State Capitol Santa Fe, New Mexico

### QUESTION

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Can municipalities impose a municipal sales tax on the gross receipts of retail sales of motor vehicles?

#### CONCLUSION

No.

### OPINION

#### {\*619} ANALYSIS

Municipalities are empowered to impose municipal sales taxes by § 14-42-25, N.M.S.A., 1953 Comp., (P.S.), the first paragraph of which provides:

"Authority is hereby granted to the governing body of any municipality to fix and have collected a municipal sales tax of any amount to and including one per cent (1%) of the gross receipts of all retail business and services within the corporate limits of said municipality; said gross receipts to be measured by the amount or volume of business done. **Any ordinance adopted by any municipality providing for a municipal sales tax shall exempt from municipal taxation receipts from sales presently or hereafter exempted by the emergency School Tax Act (72-16-1 to 72-16-47). . . .** (Emphasis Ours).

If sales or motor vehicles are exempt from the Emergency School Tax Act, they are exempt from municipal taxation by the statute quoted above. § 72-16-4.5, N.M.S.A., 1953 Comp. (P.S.), part of the Emergency School Tax Act, contains this language:

"Provided, that in consideration of the provisions of section 64-11-15, New Mexico Statutes Annotated, 1953 Compilation, **the sales of new and secondhand vehicles of a type required to be registered in this state shall be exempt from the tax.**

Preceding portions of this section imposed a privilege tax at the rate of 2% on the gross receipts of retailers of goods, wares, materials, equipment, machinery, and

commodities. But this section exempted the sale of motor vehicles in consideration of the payment of the taxes on the issuance of certificates of title specified in § 64-11-15, N.M.S.A., 1953 Comp. (P.S.). If we refer to that section, we find that it imposes an excise tax at the rate of one per cent of the sale price of the vehicle, and a use or compensating tax of one per cent of the sale price, both payable at the time of issuance of the certificate of title. Thus, the tax imposed under § 64-11-15, supra, is equal to the school tax imposed by § 72-16-4.5, supra, on other retailers.

We have been presented with a legal memorandum supporting the contention that municipalities may levy a sales tax on the sale of motor vehicles. The argument is made that there is no true exemption under the Emergency School Tax Act for sales of motor vehicles, because the same tax is imposed under § 64-11-15, supra, that the rate is the same, and the taxes collected are paid into {\*620} the same fund. In other words, the school tax is levied in the form of an excise tax, but it is the school tax nonetheless, and therefore no exemption exists.

We are unable to agree with this reasoning. The fact that there is an excise tax levied against the sale and use of motor vehicles does not mean that such sales are not exempt from the school tax. These are two distinct taxes, levied under the authority of two distinct statutes. § 72-16-4.5 provides that the sale of motor vehicles shall be exempt from the School Tax. The reason for this exemption is immaterial; our inquiry is at an end when it is once determined that an exemption exists. We think it clear that sales of motor vehicles are exempt from the school tax, and that the imposition of an excise tax on such sales does not take away the exemption. Having so determined, it follows that § 14-42-25, supra, prohibits municipalities levying a municipal sales tax against such sales.

We are aware that this view permits most retailers to be taxed at the rate of 3% of gross receipts (2% school tax and 1% municipal sales tax), while sales of motor vehicles are taxed at the rate of 2% of gross receipts (excise tax). But this lesser rate is more than made up by the advantages to the public of the registered title system, the protection of buyers and sellers that is afforded, convenience in licensing, and the prevention and detection of automobile thefts.

In conclusion, it is our opinion that municipalities may not levy a municipal sales tax against the gross receipts of retail sales of motor vehicles.

By: Norman S. Thayer

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