

Opinion No. 61-65

July 19, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General F. Harlan Flint, Assistant Attorney General

TO: Col. John W. Chapman, Director, Legal Department, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

QUESTION

Are receipts from rentals of tangible personal property to be treated the same as sales of tangible personal property for purposes of the exemptions of the Emergency School Tax Act provided by Section 72-16-5, N.M.S.A., 1953 Comp. (PS), as amended by Laws 1961, Chapter 195, Section 1?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 72-16-5 as amended by Chapter 195 of the Laws of 1961 provides that none of the taxes levied by the Emergency School Tax Act shall apply to **sales of tangible personal property**, other than metalliferous mineral ores, made to the United States, the State of New Mexico or its political subdivisions, or to nonprofit, religious or charitable organizations. The critical language for purposes of this opinion are the emphasized words "sales of tangible personal property". We are in effect asked to rule upon the question of whether rentals of tangible personal property are to be considered as sales of tangible personal property. If such transactions are considered to be sales of tangible personal property, they are exempt under the operation of Section 72-16-5. If not, then the transaction will be subject to the tax if within the purview of the Emergency School Tax Act.

In order to determine the character of rentals of tangible personal property under the Act, it is necessary to examine the applicable provisions which levy the tax. In order to benefit from the exemption provided by Section 72-16-5, these rentals must be within the class of transactions which would otherwise be subject to the emergency school tax. In this regard, we refer to Section 72-16-4.5 which imposes the privilege tax upon retailers:

"The tax shall be computed at an amount equal to two per cent (2%) of the gross receipts of the business of every person engaging or continuing in the business of selling at retail of goods, wares, materials, equipment, machinery and commodities, including airplane parts and equipment, alcohol and all alcoholic liquors and beverages for consumption and not for resale and **including receipts from rentals or leasing of tangible personal property**, * * *". (Emphasis supplied)

It will be noted from reading the quoted portion of the section that the legislature has clearly placed rentals and leases of tangible personal property in the same category with sales of such property for purposes of levying the tax. There is no separate section levying a tax upon the business of renting or leasing such property. It is, therefore, apparent that the legislature considered that the renting or leasing of such property should be regarded in the same manner for tax purposes as the sale of tangible personal property.

If rentals and leases of the type under consideration made to the State or other governmental units are to be taxable at all, they would have to be subject to the tax imposed by the above-mentioned Section 72-16-4.5. It is our conclusion that these transactions would be subject to the tax imposed by that section but for the exemption granted by Section 72-16-5. Prior to the most recent amendment of the latter section, sales of tangible personal property **or services** made to the State of New Mexico or any of its political subdivisions were exempt from the emergency school tax. The 1961 legislature removed the exemption on the sales of services, retaining the exemption on the sales of tangible personal property. Since the legislature has included rentals and leases of such property within the statutory definition of sales of such property, we conclude that the exemption section should be construed in a manner consistent with the section levying the tax. We, therefore, rule that rentals and leases are included within the exemption given to the sales of tangible personal property by Section 72-16-5.