

Opinion No. 62-131

October 16, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mrs. Inez B. Gill, Legislative Fiscal Analyst, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Are Rural Electric Administration Cooperatives liable for the payment of compensating tax on their out of state purchases of materials for use or consumption within the State?

CONCLUSION

No.

OPINION

ANALYSIS

Section 45-4-28, N.M.S.A., 1953 Compilation, as amended by Chapter 236, Laws 1961, Section 28, is determinative of the question presented above. This Section provides in full:

"Taxation. -- Cooperative and foreign corporations, transacting business in this state pursuant to the provisions of sections 45-4-1 through 45-4-32, New Mexico Statutes Annotated, 1953 Compilation, shall pay annually, on or before July 1, to the state corporation commission, a tax of ten dollars (\$ 10.00) for each one hundred persons or fraction thereof to whom electricity is supplied within this state **which tax shall be in lieu of all other taxes except those-provided in the Emergency School Tax Act (72-16-1 to 72-16-47)**; provided, however, that in the event a contract has been entered into by a rural electric cooperative and a power consumer prior to February 1, 1961, and such contract does not contain an escalator clause providing for an increase for added tax liability on the cooperative, then the sale to such power consumer shall be exempt until the expiration, extension or renewal of the contract." (Emphasis supplied).

The above Section prior to its amendment in 1961, excluded Rural Electric Cooperatives from the payment of the emergency school tax for the sale of electricity to its customers. See Attorney General's Opinion No. 57-302, dated November 25, 1957. Section 45 - 4 - 28, supra, was specifically amended by the 1961 legislature to make rural electric cooperatives subject to the payment of the Emergency School Tax.

Under the Emergency School Tax Act. Section 72-16-4.6, N.M.S.A., 1953 Compilation, as amended, a two per cent privilege tax is imposed upon the gross receipts of every corporation, association or person furnishing to consumers, electricity or electrical power as a retailer. Section 72-16-4.4, N.M.S.A., 1953 Compilation of The Emergency School Tax Act also imposes a tax equal to one-eighth of one percent of the gross receipts of the business of every person engaged in the business of wholesale merchandising of electricity. These sections have application to rural electric administration cooperatives, and under the clear import of Section 45-4-28, supra, such taxes in addition to the tax imposed under the provisions of Section 45-4-28 are intended to be "in lieu of all other taxes."

Section 72-17-4, N.M.S.A., 1953 Compilation sets out specific exemptions to the payment of taxes imposed under the Compensating Tax Act of 1939, as amended. However, these provisions have no application to rural electric cooperatives. Under the clear wording of Section 45-4-28, supra, Rural Electric Cooperatives are not subject to the payment of any State taxes other than those imposed under the provisions of the Emergency School Tax, and Section 45-4-28, N.M.S.A., 1953 Compilation, as amended.