

## **Opinion No. 68-83**

August 12, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Honorable Bradford H. Prince State Representative Bernalillo County 917  
Pennsylvania, N.E. Albuquerque, New Mexico

### **QUESTION**

#### **FACTS**

A company erects signs on service station buildings, canopies, columns on the buildings and free-standing poles. The signs are from forty to three-hundred eighty-eight square feet in size. The poles and columns are usually thirty to seventy feet high.

The company frequently fabricates, paints and installs the free-standing poles on which the signs are attached, as part of the erection job. This installation includes excavation and pouring of concrete for the foundation in which the pole is set. The Foundation may be as deep as twelve feet. The company also installs the necessary electrical wiring, conduits, etc. for illumination of the signs.

The company also alters these sign structures by, for example, changing the heights of the columns or poles to which the signs are attached. The company also repairs the signs and supporting poles and columns damaged by storm, fire, etc or because of normal wear.

Maintenance work, such as replacement of plastic faces, fluorescent tubes or cleaning, is also performed by the company.

We are informed that the company also leases signs that it erects, alters, repairs and maintains.

#### **QUESTION**

Is the company performing "contracting" services as that term is defined in Section 72-16A-3C, N.M.S.A., 1953 Compilation (1967 P.S.)?

#### **CONCLUSION**

See analysis.

### **OPINION**

{\*134} **ANALYSIS**

Section 72-16A-3C, supra provides in part that:

Contracting includes, but is not limited to constructing, altering, repairing or demolishing any:

\* \* \*

(2) building, stadium or other structure;

\* \* \*

{\*135} (12) similar work.

Section 72-16A-14, N.M.S.A., 1953 Compilation (1967 P.S.) provides in part that:

In computing the gross receipts tax due:

\* \* \*

E. Fifty per cent (50%) of the receipts from performing a **contracting project** may be deducted from gross receipts. (Emphasis added)

The term "contracting" is limited in the Gross Receipts and Compensating Tax Act to those activities that can generally be classified as being a part of the construction business. **Gross Receipts and Compensating Tax Regulation No. 3(C)-1 (1967).**

It is our opinion that the erection of signs on columns on the service station building or on free standing poles is a "contracting" service because the company is constructing a structure. The erection of these signs on the service station building or on canopies is likewise a "contracting" service because the company is altering an existing structure. The erection of the free-standing poles to which the sign is attached is also a "contracting" service because the company is constructing a structure.

It is our opinion that the terms "altering" and "repairing" imply that substantial changes or restorations are made of a structure. A minor change or restoration of a structure would not be a "contracting" service. See, **Gross Receipts and Compensating Tax Regulation No. 3(C)-2, Example (A) at 3 (1967).** A change in the height of a service station sign would be a substantial change in the structure and would, therefore, be a "contracting" service. Repairs of the signs and supporting structures required because of damage by storm or fire would be a "contracting" service if they are substantial restorations of the signs and supporting structures. Repairs that are required because of normal wear to preserve the condition of the signs and supporting structures are not, in our opinion, substantial enough to be "contracting" services. They are maintenance services.

The replacement of plastic faces, fluorescent tubes and cleaning of the signs are not "contracting" services because they are not substantial changes or restorations of the signs or their supporting structures. **Gross Receipts and Compensating Tax** Regulation No. 3(C)-2. Example (A) at 3 (1967).

When the company leases signs, it is subject to gross receipts tax measured by the receipts it receives under the lease. Section 72-16A-3E, supra. When the company erects, alters, repairs or maintains the signs it leases, the company is not performing "services" because these activities are performed for itself as owner of the signs, Section 72-16A-3J, supra, and it does not therefore, receive "gross receipts from these activities by which to measure the gross receipts tax, Section 72-16A-3E, supra.

By: Edward R. Pearson

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