

Opinion No. 21-3030

July 6, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: State Tax Commission, Santa Fe, New Mexico.

Tax Assessments Upon Express Companies.

OPINION

{*73} I find on my desk among several papers a letter from you under date of June 21st which has not been previously called to my attention, wherein you request an opinion regarding the tax assessment to be levied upon express companies, and calling my attention to Chapter 100, Laws 1919, the Franchise Tax Act, Chapter 178, Laws 1921, the Private Car Tax Act, and Section 6 of Chapter 137 of the Laws of 1921, wherein is contained the following expression:

"The taxes paid under this chapter shall be in lieu of all other taxes upon the properties of such express companies, except real estate and improvements, which shall be taxed the same as other property."

Chapter 137, Laws 1921, was approved by the Governor on March 12, while Chapter 178, Laws 1921, was approved by the Governor on March 14th.

If there is any conflict in the two acts, the latter would prevail unless the provisions of both laws could be construed so that both could be sustained.

The tax provided for in Chapter 178 is a property tax, as is also the tax imposed by Chapter 137. The tax imposed by Chapter 100, Laws of 1919, the Franchise Tax, is not a property tax and, therefore, could be exacted in spite of the provisions of Chapter 137 which prohibit the collection of other property taxes from express companies. There is some doubt, however, as to whether both the Private Car Tax provided for by Chapter 178 and the express property tax provided for by Chapter 137 can be collected, as the imposition of the tax provided for by both laws might be held to be double taxation. If they are not double taxation, the fact that Chapter 178 was approved at a date later than Chapter 137 would amend the latter act so that the provisions that the taxes imposed under that Chapter should be in lieu of all other property taxes would not prevail.

The matter is one of considerable doubt and uncertainty and I believe should be submitted to the courts for disposition. I shall be glad to aid in any manner possible to expedite a hearing upon the question should the American Express Company care to contest the imposition of the tax imposed by Chapter 178 in view of the provisions of Chapter 137.