

## Opinion No. 2350 1-02

September 1, 1919

**BY:** N. D. MEYER, Assistant Attorney General

**TO:** Hon. L. A. Gillett, State Engineer, Santa Fe, N.M.

Excise Tax Upon Automobiles Not to Be Paid By State Agencies.

### OPINION

In answer to a communication sent by this office to the Treasury Department for information as to a ruling made by the Treasury Department on July 7, 1919, relative to the excise tax of five per cent which automobile supply houses are seeking to impose upon states, counties and municipalities, we beg to advise that we are informed as follows:

"Referring to your letter of August 16, 1919, you are advised that under a ruling of the Attorney General, dated July 7, 1919, it is held that the tax imposed by section 900 of the Revenue Act of 1918 applies to articles taxable thereunder when sold by the manufacturer, producer, or importer, even though sold to a State or political subdivision thereof. A copy of Treasury Decision 2897, in which this ruling is promulgated, is enclosed for your information.

"However, the tax imposed by section 900 is on the manufacturer, producer, or importer of the taxable article, and is to be returned and paid by him, and the question of whether he is to be reimbursed by the purchaser for the amount of the tax is a matter of agreement between the parties to the sale over which this Department has no jurisdiction."

We are of the opinion that in no event can a state, county or municipality be compelled to pay an excise tax imposed by the federal government. Under the ruling of the Treasury Department of July 7 it was held that manufacturers, producers or importers must pay the tax even though they sell to state or political subdivisions thereof. This does not say or imply that the said manufacturers, producers, or importers may in turn collect the tax from the State or its political subdivisions, nor can it do so as an excise tax.

However I am informed that some of the dealers from whom the State has been purchasing automobile supplies are adding the amount of the excise tax to the price, and I hardly see how the State in such a case could save itself from paying this raise because, after all, it seems that all raises on everything regardless of what the cause is has ultimately been borne by the consumer.

I believe, however, that you can take the second paragraph of the letter written by the Treasury Department to this office and use it as a basis to refuse to pay the five per cent increase regardless of whether the dealer puts it in the form of an excise tax or in the form of a five per cent raise in price.