

Opinion No. 41-3959

November 26, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*132} In your letter dated November 22, 1941 you enclose a letter from Mr. Dalbey, Bursar of the New Mexico Highlands University at Las Vegas, inquiring as to what taxes the University may be subject to upon the sale of tickets to athletic events, student plays, etc., to the general public.

The New Mexico Highlands University, and any other state institution, is not subject to the payment of any state taxes upon admissions to any sort of athletic contest, student show or other exhibition given by the University.

Until the passage and approval of the Revenue Act of 1941, passed by the Seventy-seventh Congress of the United States, no federal tax was levied upon admissions, the proceeds of which enured exclusively to the benefit of religious, educational or charitable institutions, except in the case of admissions to athletic games or exhibitions. However, these exemptions appearing in Title 26, Section 1701, U. S. C. A., have been abolished under Section 541 of the Revenue Act of 1941 in this language:

"(b) Termination of Exemptions. -- Section 1701 of the Internal Revenue Code (relating to exemptions from admissions tax) shall not apply with respect to amounts paid, on or after the effective date of this Part, for admission."

The amount of admission tax which must be collected by all persons, associations or organizations, as well as state institutions, is provided for under Section 541 of the Revenue Act of 1941, sub-section (a), as follows:

"(a) Reduction of Exemption. -- Section 1700 (a) (1) of the Internal Revenue Code is amended to read as follows:

"(1) Rate. -- A tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription. In the case of persons (except bona fide employees, municipal officers on official business, children under twelve years of age, members of the military or naval forces of the United States when in uniform) admitted free or at reduced rates to any place at any time when and under circumstances under which an admission charge is made to other persons, an equivalent tax shall be collected based on the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted. No tax shall be imposed on the amount paid for the admission of a child under twelve years of age if the {*133} amount paid is less than 10 cents".

It thus appears that a tax of ten percent of the amount paid for admission should be collected for admission to any place, except that no tax shall be collected on the amount paid for the admission of a child under twelve years of age, if the amount paid is less than ten cents.

Trusting that the foregoing sufficiently answers your inquiry, I am

By C. C. McCULLOH,

Asst. Atty. General