

Opinion No. 45-4752

July 13, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Earle Kerr, Director School Tax Division Bureau of Revenue Santa Fe, New Mexico

{*104} In your letter dated July 12, 1945, you state that since receiving an Attorney General's Opinion dated September 25, 1936, the School Tax Division has made no attempt to collect taxes from persons producing petroleum products on lands owned by an Indian tribe, and you are wondering whether the Buck Act does not now authorize the levying of School Taxes pursuant to Section 76-1404, subsection (a), of the 1941 Compilation.

{*105} The Buck Act became effective January 1, 1941. Under Title 4, Section 13, U.S.C.A., this act provides as follows:

"No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any state, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area."

Under Section 18, the term "sales or use tax" is defined as meaning any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage or use of tangible personal property, except a tax upon an Indian or Indians themselves.

The former opinion of this office held that the conservation tax could be collected on operations upon an Indian reservation because of Congressional authority contained in the Act of May 29, 1924, being 43 Statutes 244, 25 U.S.C.A. 398. At that time there was no Congressional consent to a sales tax specifically, but at the present time, under the Buck Act, such consent is in effect, and for that reason the privilege of producing petroleum products on Indian lands, measured by the receipts from sales, would be taxable, and have been taxable, since January 1, 1941.