

Opinion No. 53-5770

June 26, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Patrick F. Hanagan District Attorney Fifth Judicial District Roswell, New Mexico

{*170} We are in receipt of your letter of May 20th, in which an opinion is requested concerning the assessment of the county license tax under Section 62-101, et seq.

Section 62-101, N.M.S.A., 1941 Compilation, reads as follows:

"62-101. A license tax or occupation tax, one-half to be paid into the general school fund, and one-half to the general current expense fund of the respective counties, shall be imposed each year upon the business or avocations mentioned in this chapter, carried on by any person within the state of New Mexico.

First. Dealers in merchandise other than liquors, whose annual sales do not exceed three thousand dollars (\$ 3,000.00) shall pay a license tax of five dollars (\$ 5.00) per annum. Dealers in merchandise other than liquors, whose annual sales exceed three thousand dollars (\$ 3,000.00) and do not exceed ten thousand dollars (\$ 10,000.00) shall pay a license tax of ten dollars (\$ 10.00) per annum.

Second. Dealers in merchandise, other than liquors whose annual sale exceeds ten thousand dollars (\$ 10,000) and do not exceed twenty thousand dollars (\$ 20,000), shall pay a license tax of twenty dollars (\$ 20.00) per annum.

Third. Dealers in merchandise, other than liquors, whose annual sale exceeds twenty thousand dollars (\$ 20,000), and do not exceed fifty thousand dollars (\$ 50,000), fifty dollars (\$ 50.00).

Fourth. Dealers in merchandise, other than liquors whose annual sale exceeds fifty thousand dollars (\$ 50,000), but do not exceed seventy-five thousand dollars (\$ 75,000) seventy-five dollars (\$ 75.00).

Fifth. Dealers in merchandise, other than liquors, whose annual sale exceeds seventy-five thousand dollars (\$ 75,000), and do not exceed one hundred thousand dollars (\$ 100,000), one hundred dollars, (\$ 100.00).

Sixth. Dealers in merchandise, other than liquors, whose annual sale exceeds one hundred thousand dollars (\$ 100,000), one hundred and fifty dollars (\$ 150.00)."

From the reading of this statute it is obvious that the place of sale of the products mentioned therein has no effect. The tax is imposed at the place of doing business and

regardless of where the products are sold the tax is effective. This is true even if the products are being sold in inter-state commerce unless the tax itself constitutes a burden on inter-state commerce. The situation as applied to cotton gins is not applicable as they are covered by a separate section of the law entirely. Alfalfa mills are not included in the law under which cotton gins are regulated, but the activities or sales made by an alfalfa mill are within the contemplation of § 62-101.

Therefore, it is the opinion of this office that alfalfa mills and the products thereof are subject to the county license tax as provided in § 62-101.

Trusting that this answers your inquiry.

By: Fred H. Standley

Assist. Attorney General