

Opinion No. 54-5973

June 17, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Paul Tackett District Attorney Second Floor, Court House Albuquerque, New Mexico

{*431} In your letter dated June 11, 1954, you addressed a letter from a certain motor vehicle distributor who has been carrying a large stock of small parts inventory. However, the manufacturer, who does all of its business outside the State of New Mexico, has agreed to ship the necessary stock of parts to the local dealer on consignment and store them in the dealer's warehouse. As the parts are needed or sold, they are taken from storage and sold at wholesale or retail to customers of the dealer. At the end of each month a list of parts withdrawn is then sent to the manufacturer out of the State, who bills the dealer for the parts used. You request our opinion concerning liability of the manufacturer for the payment of wholesale sales tax on the parts taken out and sold by the dealer during each month.

Section 76-1404 of the 1941 Comp., 1953 Supplement, levies a privilege tax on account of business activities within the State of New Mexico. Subsection (b) levies a tax of one-fourth {*432} of one per cent against the business of manufacturing etc. and provides that the measure of the tax imposed is the value of the entire production in this State.

Since the business of manufacturing in this instance is conducted outside the State of New Mexico, the privilege tax would not apply merely because the property is stored in the State ready to be withdrawn when needed for use or sale by the local wholesale and retail dealer. For that reason, it is our opinion that no privilege tax should be charged against the manufacturer who does not engage in business in New Mexico, although the stock of goods stored in this State would be subject to an assessment for property taxes.

By: C. C. McCulloh

Assist. Attorney General