

Opinion No. 58-17

January 22, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Hon. R. C. Morgan, State Representative, Roosevelt County, Portales, New Mexico

QUESTION

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Is a broom manufacturer required to pay the "manufacturing tax"?

CONCLUSION

No.

OPINION

ANALYSIS

The New Mexico Emergency School Tax Act provided in Sec. 72-16-4, in part:

"There is hereby levied, and shall be collected by the Bureau of Revenue, privilege taxes, measured by the amount or volume of business done, against the persons, on account of their business activities, engaging or continuing, within the state of New Mexico, in any business as herein defined, and in the amounts determined by the application of rates against gross receipts, as follows:"

And by paragraph B, the Act levied a tax:

"B. At an amount equal to one-fourth of one per cent of the gross receipts of the business of every person engaging or continuing in each or any or all of the businesses of manufacturing, smelting, refining, reducing, processing, compounding, fabricating, packing, preserving, distilling, preparing for sale or commercial use, or the making of wares, commodities or material products by hand or machinery, including the generation of electricity; Provided that the tax provided by this paragraph shall be at the rate of one-half of one per cent of the gross receipts of the business of every person engaging or continuing in the business of smelting, leaching, refining, reducing or processing oil, natural gas, carbon dioxide gas, potash, copper, gold, silver, limestone, sand, gravel or other metalliferous or non-metalliferous products or combinations, or compound of mineral products."

The 1957 Legislature, however, by Chapter 227, amended Section 72-16-4, paragraph B, so as to provide the following:

"B. At an amount equal to one-fourth of one per cent (1/4 of 1%) of the gross receipts of the business of every person engaging or continuing in the business of preparing timber or lumber for commercial use or sale to a wholesaler or retailer.

At an amount equal to one-half of one percent (1/2 of 1%) of the gross receipts of the business of every person engaging or continuing in the business of smelting, leaching, refining, reducing, or processing oil, natural gas, carbon dioxide gas, potash, copper, gold, silver, limestone, sand, gravel or other metalliferous or nonmetalliferous products or combinations or compound of mineral products.

The gross receipts of the business of every person engaging or continuing in the business of manufacturing, smelting, refining, reducing, processing, compounding, fabricating, packing, preserving, distilling, preparing for sale or commercial use, or the making of wares, commodities or material products other than the natural resource products set out immediately above in this section, and including the generation of electricity, shall be specifically excluded from taxation under paragraph B of section 201 of the Emergency School Tax Act, as amended, provided that all such persons shall be required to obtain a license from the bureau of revenue in the same manner as other persons subject to taxation under the Emergency School Tax Act and for the purpose of proving exemption under this paragraph shall, if required by the bureau of revenue, make reports on forms prescribed by the bureau showing the gross receipts of such business and the persons to whom such products were sold.

The measure of the tax imposed by this paragraph is the value of the entire production in this state, regardless of the place of sale or the fact that delivery may be made to points outside of the state." (Emphasis added)

Accordingly, it is our opinion that broom manufacturing in New Mexico is exempt from the payment of a "manufacturing tax".