

Opinion No. 58-198

September 25, 1958

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

TO: Honorable Luis E. Armijo, District Judge, Fourth Judicial District, Las Vegas, New
Mexico

QUESTION

QUESTION

In keeping with the provisions of the New Mexico Emergency School Tax law are receipts, realized from the sale of cigarettes which have previously been taxed under the cigarette and tobacco tax act, exempt in determining school tax liability?

CONCLUSION

No.

OPINION

ANALYSIS

§ 72-16-4 (D) (P.S.) of the Emergency School Tax Act provides in part as follows:

"There is 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 New Mexico, in any business as herein defined, and in the amounts determined by the application of rates against gross receipts, as follows:

D. At an amount equal to two per cent (2%) of the gross receipts of the business of every person engaging or continuing in the business of selling at retail of goods, wares, materials, equipment, machinery, and commodities, including alcohol and all alcoholic liquors and beverages, for consumption and not for resale,"

Also to be considered in connection with the question above stated is § 72-14-2, N.M.S.A., 1953 Comp. (P.S.) which provides in part as follows:

"In addition to any and all forms of tax upon the sale, gift or consumption of cigarettes taxed by this act within the State of New Mexico, on and after July 1, 1955, there is hereby levied upon the sale, gift or consumption of said articles a stamp excise tax at the following rates:"

With reference to the aforesaid statutory requirements it is our opinion that the cigarette and tobacco tax is to be treated as a separate and additional tax to that imposed by the Emergency School Tax Act. It might also be pointed out that § 72-16-13 has a definitional bearing upon the question instantly considered:

"In all computations of the tax levied by this act (72-16-1 to 72-16-5, 72-16-7 to 72-16-46), there shall be excepted from the gross receipts or gross proceeds of sales of any business all sums paid by the taxpayer to the United States as taxes on the product produced or sold, or on such business; Provided that this exception shall not include any stamp or income tax in any form."

Accordingly, it is our opinion that receipts realized from the retail sale of cigarettes on which there has previously been paid the provided for tobacco tax, are not exempt in determining an emergency school tax liability.