

Opinion No. 58-71

April 4, 1958

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

TO: Mr. Charles B. Barker, Attorney, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

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"Are prime contractors and sub-contractors or either of them subject to the emergency school tax upon their gross receipts derived from their contracts with a United States government agency and which contracts are performed upon Canon Air Force Base, jurisdiction over which has been ceded to the United States?"

CONCLUSION

Yes.

OPINION

ANALYSIS

Authority for the conclusion above stated is found in the following. Section 72-16-4 (p.s.) 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: . . ."

Prior to 1940 it was generally held that performance of contracts on ceded military reservations, lying within the exterior boundaries of the state, and the receipts realized therefrom were not subject to the School Tax law.

However, with the passage of the Buck Act in 1940 there was receded to the several states taxing jurisdiction over so-called military enclaves. Specifically, Section 105 (a) 4 USCA (p.s.) provides in part as follows:

"(a) 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."

New Mexico has accepted the provisions of this Act by § 7-2-4.1 (p.s.)

Congressional intent and purpose for the aforesaid legislation is clearly expressed in **Davis v. Howard**, 206 Ky. 149, 206 S. W. 2d 467.

"It is argued that the Buck Act does not undertake to confer sovereignty upon the state, but only an incident of sovereignty -- the power to levy and collect certain taxes -- and was not intended to apply where the state had ceded exclusive jurisdiction to the Federal Government. Undoubtedly, it was the purpose of the Congress to recede to the state sufficient sovereignty over Federal areas within its territorial limits to enable it to levy and collect taxes named in the Act. Otherwise the Act was a futile gesture."

And finally, with the enactment of Chapter 187, § 1, Laws 1957, any previously stated exemption under state law was eliminated.

Accordingly, it is our opinion that prime contractors as well as sub-contractors are subject to payment of the emergency school tax upon their gross receipts, as above questioned.