

## **Opinion No. 63-92**

August 9, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Carlos Trujillo, Jr. School Tax Director Bureau of Revenue Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. (a) Does a purchase by a state bank subject the person selling the tangible personal property to it to the New Mexico Emergency School Tax?

(b) Is a state bank subject to the Compensating Tax Act on purchases of tangible personal property from an out-of-state seller for use in New Mexico?

2. (a) Does a purchase by a national bank subject the person selling tangible personal property to it to the New Mexico Emergency School Tax?

(b) Is a national bank subject to the Compensating Tax Act on its purchases of tangible personal property from out-of-state for use in this state?

3. Do purchases by a state or federal credit union subject the person selling tangible personal property to them to the New Mexico Emergency School Tax?

4. Are state and federal credit unions subject to the New Mexico Compensating tax on their out-of-state purchases of tangible personal property for use in New Mexico?

5. Do purchases by state and federal savings and loan associations subject the person selling the tangible personal property to them to the New Mexico Emergency School Tax?

6. Are state and federal savings and loan associations subject to the Compensating Tax Act on their out-of-state purchases of tangible personal property for use in this state?

#### CONCLUSIONS

1. (a). Yes.

1. (b). Yes.

2. (a). No.

2. (b). No.

3. State Credit Union - Yes. Federal Credit Union - No.

4. No.

5. State savings and loan associations - Yes.

Federal savings and loan associations - No.

6. No.

## OPINION

### {\*200} ANALYSIS

The New Mexico Emergency School Tax Act is a tax on the privilege of doing business in this state. The incidence of the tax is upon the person selling tangible personal property or services.

{\*201} N.M.S.A., 72-16-5 (A & B) provide an exemption on sales of tangible personal property to certain governmental entities; however, none of the taxes levied by the Emergency School Tax Act (72-16-2 to 72-16-47), as amended, shall be construed to apply to:

"A. Sales of tangible personal property, other than metalliferous mineral ores, whether refined or unrefined, made to the government of the United States, its departments or agencies;

"B. Sales of tangible personal property, other than metalliferous mineral ores, whether refined or unrefined, made to the state of New Mexico or any of its political subdivisions;"

Therefore, when a business which is subject to the New Mexico Emergency School Tax sells tangible personal property to one of the above mentioned exempt governmental bodies it does not have to include the income realized from the sale in its gross receipts. If state and national banks, state and federal building and loan associations, state and federal credit unions may be considered to be instrumentalities of the state of New Mexico, or of the United States, the business selling property to them is exempt from the school tax and the above named organizations would not have to bear the economic burden of the tax.

State banks, state building and loan associations, and state credit unions are organized under the laws of this state and are regulated by the state of New Mexico, but they are not to be considered instrumentalities of the state of New Mexico. The seller, therefore, is not exempt from taxation on its sales of tangible personal property to such institutions by N.M.S.A. 72-16-15 (b), supra.

National banks have been uniformly held to be instrumentalities of the United States, **Smith v. Witherow**, 102 F.2d 638, **Deitrich v. Greangy**, 309 U.S. 190. Federal savings and loan associations have also been held to be instrumentalities of the United States, **People of California v. Coast Federal Savings and Loan Association**, 98 F. Supp. 311 (1951) **U.S. v. Harper**, 241 F.2d 103 (1957). Federal Credit Unions would seem to occupy a similar position. Therefore, national banks, federal savings and loan associations and federal credit unions must be placed in an exempt category under Section 72-16-5 (a).

The New Mexico Compensating Tax is a use tax which is levied against a person purchasing tangible personal property outside the boundaries of this state for use within the state. It differs from the school tax in that it is a tax upon the purchaser rather than the seller.

N.M.S.A., 72-17-4 (B) provides an exemption for purchases made by agencies and instrumentalities of the state and federal government. The storage, use or other consumption in this state of tangible personal property is specifically exempted from the tax imposed by the Compensating Tax Act of 1939, as amended (72-17-1 to 72-17-30).

"B. Property, the storage, use or other consumption of which this state is prohibited from taxing by the Constitution of this state, or the storage, use or consumption of such property by the United States government, or by the state, its departments and institutions and political subdivision {\*202} or by any nonprofit hospital, religious or charitable organizations in the conduct of their regular hospital, religious or charitable functions."

Since the United States and its instrumentalities are not subject to the tax, federal savings and loan associations, national banks, and federal credit unions are not subject to the New Mexico Compensating Tax on purchases of tangible personal property which they make outside the state for use within the state.

"Are state banks subject to the New Mexico Compensating Tax?"

N.M.S.A., 72-1-5 provides: "Corporations doing banking business in this state, whether organized under the laws of the United States or under the laws of the state of New Mexico, shall be subject to no other taxation than that provided by law except upon real property."

A state bank is a corporation doing banking business in this state. The New Mexico Compensating Tax is a tax provided by law. State Banks are therefore subject to the New Mexico Compensating Tax Act.

State savings and loan associations have no exemption from the compensating tax. They are, therefore, subject to the tax on all of their out-of-state purchases of tangible personal property for use in this state.

N.M.S.A., 48-19-22 (1953) provides:

"A credit union shall be deemed an institution for savings and, together with accumulations therein, shall not be subject to taxation except as to property owned..."

It is apparent that Section 48-19-22 exempts state credit unions from the New Mexico Compensating Tax Act.

To the extent that this opinion conflicts with Opinion of the Attorney General No. 6027, October 1954, and prior memorandum opinions of the Bureau of Revenue, they must be considered to be overruled.

By: Joel M. Carson

Assistant Attorney General