

**Opinion No. 67-70**

May 23, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Morris Stagner District Attorney Ninth Judicial District County Courthouse  
Clovis, New Mexico

**QUESTION**

QUESTION

Are gross receipts derived from the retail sale and delivery of concrete in Texas by a ready mix concrete plant operating in New Mexico subject to New Mexico emergency school tax?

CONCLUSION

No.

**OPINION**

{\*102} **ANALYSIS**

In Opinion of the Attorney General No. 63-145, dated October 30, 1963, we concluded that gross receipts derived from retail sales of tangible personal property in interstate commerce are exempt only from the taxes imposed by Sections 72-16-4.3 and 72-16-12, N.M.S.A., 1953 Compilation (1965 P.S.), but are not exempt from other taxes imposed by the Emergency School Tax Act on business activities performed prior to the final retail transaction in interstate commerce. This conclusion was based both upon provisions of the Emergency School Tax Act and court decisions.

The retail sale and delivery of concrete in Texas is a transaction in interstate commerce. Therefore, gross receipts derived from such sales are not subject to the tax imposed by Section 72-16-12, supra. The manufacturer of the concrete is, however, liable for the processor's tax imposed by Section 72-16-4.3B, N.M.S.A., 1953 Compilation (1965 P.S.) at the rate of three-fourths of one percent of the fair market value of sand and gravel used in the manufacture of the concrete. Fair market value is the amount of money that would have been received had the sand and gravel been sold in a normal market in the same area and at the same time it was used in the manufacture of the concrete.

By: Edward R. Pearson

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