

## **Opinion No. 19-2274**

May 22, 1919

**BY:** HARRY S. BOWMAN, Assistant Attorney General

**TO:** Mr. L. A. Gillett, State Highway Engineer, Santa Fe, New Mexico.

State Agencies Not Subject to Motor Excise Tax.

### **OPINION**

In reply to your oral request, accompanied by a letter from the Southern Motor Company of Raton for an opinion from this office as to the necessity for the payment by your department of the excise tax upon automobiles purchased by you, we would refer you to our opinion of May 20, wherein we advised you that you were not required to pay the excise tax of two cents per gallon on gasoline.

It is true that the automobile excise tax is a measure provided by congress, while the excise tax on gasoline was levied by the state legislature, but the same rule governs both cases.

In addition to the reason set out in our opinion rendered you in regard to the gasoline tax, we would say that the state is exempted from the payment of any war tax provided for by the federal revenue laws, for the reason that the federal government is prohibited from levying any kind of a tax upon state governments or any branches or divisions thereof.

This point has been passed upon by the supreme court of the United States in many cases, and it has been uniformly held that states and municipal corporations are not subject to tax by the federal government.

The levy of an excise tax upon automobiles by the federal government is a tax the same as if an attempt were made to levy a tax upon state lands or other state property, and such a tax cannot be enforced against a state or any of its agencies.

We note that the letter from the Southern Motor Company states that the Ford Motor Company insists that the tax be paid, and that it is necessary for the government to purchase direct from the manufacturer in order to avail itself of the exemptions from tax.

We cannot agree with this statement for, as we have heretofore said, neither the state government nor any of its sub-divisions are subject to tax by the federal government.

We are returning herewith the letter from the Southern Motor Company, together with the other papers thereto attached, which were left in the office by your Mr. May.