

Opinion No. 35-886

February 6, 1935

BY: FRANK H. PATTON, Attorney General

TO: State Tax Commission, Santa Fe, New Mexico. Attention: Mr. L. D. Sparks.

{*41} In your letter of February 6th you request an opinion as to whether the state sales tax is deductible upon the state income tax return of the merchant, the customer, both or either of them.

The sales tax is levied by the provisions of Chapter 7 of the Special Session Laws of 1934, and by Section 201 of said act we find that said tax is a privilege tax measured by the amount or the volume of business done and against persons on account of their business activities, who engage in or continue in business within this state.

By the provisions of Section 204 we find that this sales tax is not to be considered as a tax upon income, but that it is the intention that such sales tax shall be considered as a part of operating overhead and is to be, as far as possible, passed on in cost calculations as such.

In our opinion, therefore, the tax paid by one engaged or continuing in business measured by the amount or volume of his business is deductible, not, however, as being taxes paid but as a part of his operating expense.

Nowhere in the sales tax law do we find any imposition of any tax upon any consumer. It is true the consumer actually pays the bill but it is indirect taxation and we are unable to see how any deduction could be made upon the income tax return of such person.