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GOODPASTER
I Concur
GIBSON
I Concur
VANLANDINGHAM

June 1, 1960

Office of the Adjutant General
Military Department
747 West Van Buren
Phoenix, Arizona

Attention K. W. Hunter
Capt, AGC, Ariz. ARNG
Asst. to TAG (Army)

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Sir:

Reference is made to your letter of May 9, 1960 in which you requested an opinion from this office regarding whether or not sales tax should be paid on purchases by the National Guard from Arizona businesses where the Federal government is reimbursing the state 75% of the amount paid.

The tax involved, A.R.S. § 42-1301, et seq., is a transaction privilege tax which is levied not upon the buyer but upon the seller for the privilege of engaging in the sales of products in the State of Arizona. Since this tax is levied upon the seller and not the buyer, all sales by the seller are taxable except as specifically exempted and the seller can pass the tax on to the buyer.

For this reason, it has always been held that sales to the State of Arizona are not tax exempt because the statute does not specifically so exempt them.

From your correspondence on the contract involved herein, this office takes it that the selling involved sales made to the State of Arizona, specifically the Arizona National Guard, and the Federal government reimbursed the Arizona National Guard 75% of the purchase price. In such a case, the exemption provisions of A.R.S. § 42-1321 do not apply. In order to secure the exemption provisions of these sections the sales must be made directly to the United States Government and in this case the sales were not so made. Reimbursement to the purchaser by the United States Government for purchases made under a contract with the United States does not constitute the purchaser and agent of the United States Government for the purposes of tax exemption. Alabama v. King & Boozer (1941) 314 U.S. 1, 86 L. Ed. 3.

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Therefore, it is the opinion of this office that the sales involved are not tax exempt and that the State of Arizona should pay the taxes involved which can be passed on to the purchaser.

Very truly yours,

WADE CHURCH
The Attorney General

STANLEY Z. GOODFARB
Assistant Attorney General

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