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STATE CAPITOL  
PHOENIX, ARIZONA

August 19, 1969

DEPARTMENT OF LAW OPINION NO. 69-21 (R-89)

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REQUESTED BY: THE HONORABLE ISABEL BURGESS  
Arizona State Senator

QUESTION: Is it proper for the County Assessor to use as a base value a figure which includes federal excise taxes, for purposes of assessing the in-lieu tax on motor vehicles?

ANSWER: Yes.

Article 9, Section 11, of the Arizona Constitution (as amended, 1968), establishes the in-lieu tax for registered vehicles as follows:

"Section 11. The manner, method and mode of assessing, equalizing and levying taxes in the State of Arizona shall be such as is prescribed by law.

"Beginning January 1, 1941, a license tax is hereby imposed on vehicles registered for operation upon the highways in Arizona, which license tax shall be in lieu of all ad valorem property taxes on any vehicle subject to such license tax. Such license tax shall be collected annually by the registering officer at the time of application for and before registration of the vehicle each year and shall be (a) at a rate equal to the average ad valorem rate for all purposes in the several taxing districts of the state for the preceding year, but in no event to exceed a rate of four dollars on each one hundred dollars in value, and (b) during the first calendar year of the life of the vehicle upon a value equal to sixty per cent of the manufacturer's list price of such vehicle, and during each succeeding calendar year upon a value

twenty-five per cent less than the value for the preceding calendar year:

"Beginning January 1, 1969, mobile homes, as defined by law for tax purposes, shall not be subject to the license tax imposed under the provisions of this section but shall be subject to ad valorem property taxes on any mobile homes in the manner provided by law. Distribution of the proceeds derived from such tax shall be as provided by law.

"In the event application is made after the beginning of the registration year for registration of a vehicle not previously registered in the state, the license tax for such year on such vehicle shall be reduced by one-twelfth for each full month of the registration year already expired.

"The Legislature shall provide for the distribution of the proceeds from such license tax to the state, counties, school districts, cities and towns."

The principal inquiry is whether the base figure for computation and assessment of the tax, viz., "manufacturer's list price", may lawfully include the federal excise tax established by 26 U.S.C.A., § 4061 (Int. Rev. Code 1954). It is clear that the federal excise tax is a tax directly upon the manufacturer. Smith v. United States, 319 F.2d 776 (5th Cir. 1963).

There appears to be no universally accepted definition of "manufacturer's list price", but in general, it may be stated that a manufacturer's list price is the price at which the manufacturer is willing to offer his goods for sale. A tax which is assessed upon a manufacturer for goods sold becomes a part of his "cost of goods sold", and it ordinarily is included as an item of the price

the manufacturer expects to receive for his goods. The economic burden of the tax is ultimately borne by the consumer of the goods sold; this is particularly true in the sale of motor vehicles.

In the case of Undercofler v. Capital Automobile Co., 11 Ga. App. 709, 143 S.E.2d 206 (1965), the State of Georgia rendered a deficiency statement against an automobile dealer for the collection of sales and use taxes where the dealer had computed such taxes on a base price excluding the federal excise tax. The Georgia Court of Appeals noted that:

"\* \* \* The manufacturer's excise tax upon automobiles . . . is a tax liability resting directly upon the manufacturer . . . , and amounts to an expense of his incidental to the sale or lease . . . or the manufacturer's own use . . . of the manufactured article; \* \* \*. To the dealer it is an element of 'the cost of the property sold' within the meaning of the unambiguous language of Code Ann. § 92-3403 a(f) and hence to the purchaser, a part of the 'sales price', just as much so as the manufacturer's cost of raw materials and labor are elements figuring in the 'sales price' as defined by this code section." 143 S.E.2d, at.210.

In the case of S. & L. Straus Beverage Corp. v. Commonwealth, 185 Va. 1055, 41 S.E.2d 76 (1947), a wholesale dealer of beer contended that the Virginia license privilege tax could not be assessed upon a price base which included the Virginia manufacturer's excise tax on beer, and that because the invoice he received from the manufacturer listed both the price of the goods and the excise tax as separate items, the license tax could only be upon the wholesale price less the excise tax. It was nevertheless held that the privilege tax, assessed upon the "amount of purchases" of the dealer, was properly based upon the whole sum, including the excise tax. The Court stated:

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"Section 188 of the tax Code does not specifically define what elements make up the 'Amount of Purchases' on which the tax is to be calculated. \* \* \*. It is true, too, that you do not buy a tax as such, but you do buy many commodities in the cost of which are included various taxes along with other elements that determine price.

"'Amount of Purchases', as it seems to us, carries the meaning of being the amount you pay for what you buy, the sum total surrendered in exchange for the thing purchased." 41 S.E.2d, at 78.

The Court cited numerous situations where excise and other taxes contribute to the determination of the purchase price of goods, and further noted that:

"The retailer, whether of tobacco, gasoline, clothing or automobiles has no duty or burden of collecting or paying over to the federal government any manufacturer's, importer's or excise taxes -- they have already been paid before he gets the article, and they are as much a part of the cost to him as are freight, express, insurance, and other charges which enter into and increase the cost of such articles. When the automobile is sold, the retailer recoups himself against loss when he gets at least as much as he paid for the article, regardless of how much federal or other taxes may have been paid at different stages by the processors, importers, or manufacturers who preceded him in its ownership." 41 S.E.2d, at 79.

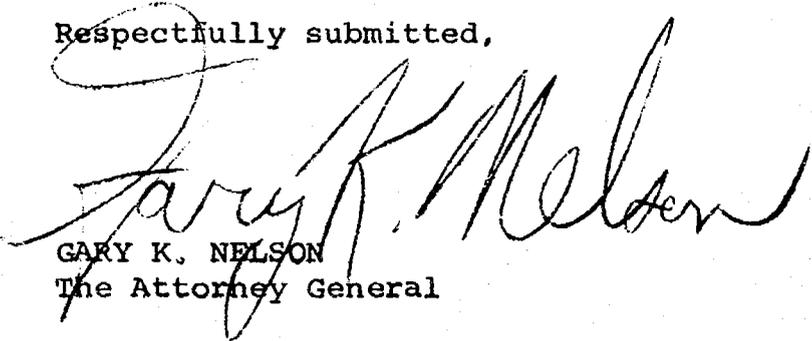
Cases from other jurisdictions uniformly indicate that excise taxes become a part of the "price" for the goods, and this "price" is the base for assessment of subsequent taxes. See Sun Oil Co. v. Gross Income Tax Div., (Ind.) 149 N.E.2d 115 (1958); Lush's Prods. Co. v.

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United States, 278 U.S. 175 (1928); Consolidated Distributors v. City of Atlanta, 193 Ga. 853, 20 S.E.2d 421 (1942). These cases rather effectively answer any argument that the inclusion of this federal excise tax in the "price" of the goods would be a tax on a tax.

It is therefore the opinion of this office that County Assessors, in determining the value of motor vehicles for purposes of assessing the in-lieu tax, should use a base price figure which includes the federal excise tax.

Respectfully submitted,



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The Attorney General

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