

April 5, 1948

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**ARIZONA ATTORNEY GENERAL**

Jennings, Strouss, Salmon & Trask,  
Attorneys at Law,  
Title & Trust Building  
Phoenix, Arizona

Attention: Mr. Sutter

*Rec*  
Gentlemen:

We have your request for an opinion as to whether or not a State sales tax shall be collected on sales of merchandise, power, materials and other items where such merchandise, etc., is for use at Duppa Villa, a Federal Housing Project owned by the United States Government.

We premise our opinion on the assumption that Duppa Villa is owned by the United States and is operated by the Housing Authority of Phoenix as the agent or instrumentality of the Federal Government.

Section 73-1308, A.C.A. 1939, reads as follows:

"Constitutional prohibition.-The taxes herein levied shall not be construed to apply to transactions in interstate commerce which, under the Constitution of the United States, the state of Arizona is prohibited from taxing or upon any sales made to the United States government, its departments or agencies, nor to businesses or transactions exempted from taxation under the Constitution of the United States or the constitution of the state of Arizona".

This section of our Code is discussed in the following cases, among others:

Luke v. East Vulture Mining Co., 47 Ariz.  
220, 54 Pac. (2d) 1002;

Arizona State Tax Commission v. Harmonson,  
63 Ariz. 452, 163 Pac. (2d) 667;

Duhame v. State Tax Commission, 65 Ariz.  
268, 179 Pac. (2d) 252;

O'Neil v. Byrne, 65 Ariz. 23, 173 Pac.  
(2d) 633.

In the Duhame case, supra, the court said:

"The exemption statute, 73-1308, in so far as pertinent states: 'The taxes herein levied shall not be construed to apply to \* \* \* any sales made to the United States Government, its departments or agencies. \* \* \*'.

This statute does not bottom the exemption upon the tax base used for any particular business, nor upon the fact that the tax is alternately described within its very borders as an 'excise', 'sales', 'privilege' tax, nor the fact that it is the businesses and not the sales which the act purports to tax. Instead, the exemption statute says, in effect, that whenever in the course of operation of any of the businesses subject to this tax, a sale of tangible personal property is made to the government, the amount of that sale shall be deducted from the total amount of the business upon which the tax is due".

The fact that the sales involved are made to the Housing Authority of the City of Phoenix, would in nowise detract from their character as sales to the United States Government, where the Housing Authority acted as agent for the United States, as the term "agencies" is used in the above statute.

See 47 Am. Jur. p. 214.

It is therefore our opinion that sales made to the Housing Authority of the City of Phoenix for use at Duppa Villa are exempt from Arizona Sales tax.

Very truly yours,

EVO DE CONCINI, Attorney General

PERRY M. LING,  
Chief Assistant Attorney General

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