

**OPINION
52-115**

December 16, 1952 (OPINION)

TAXATION

RE: Oleomargarine

Reference is made to your letter of December 10, 1952, in which you ask the opinion of this office as to the applicability of this state's tax on the sale of oleomargarine to sales made to a branch of the United States Veteran's Administration.

Our statutes with reference to the per pound tax on oleomargarine, which is section 19-0508, as amended, makes no specific exemption in the case of sales made to the federal agencies. However, the doctrine of "implied constitutional immunity" has arisen in federal decisions whereby instrumentalities of the national government are impliedly exempted from the operation of state tax laws.

We are of the opinion that this doctrine must apply in the case of sales of oleomargarine to governmental agencies such as the Veterans Administration and that therefore no per pound tax need be collected by the retailer making such sales.

We are aware of the numerous tests which have been used by the courts in determining the constitutionality of the application of a state tax to federal agencies but we are of the opinion that none of these would apply in this case. Our tax on the sale of oleomargarine is in the nature of a special sales tax, is a direct tax on the consumer and to the full degree a burden upon the exertion of governmental powers.

Our state supreme court, in the case of Federal Land Bank v. DeRochford 69 N.D.382,287 N.W. 522, recognized the uncontroverted existence of the general principle of exemption for federal agencies from our tax laws, although in that case it was decided that our state gasoline tax was not within this doctrine.

Citations adhering to this general principle may also be found in American Jurisprudence, TAXATION, Section 218 and SALES AND USE TAXES, Sections 13 and 20, and in 140 A.L.R. 621.

Concluding, therefore, it is the opinion of this office that an implied exemption from the effect of our state per pound oleomargarine tax exists in the case of sales made to a governmental agency such as the Veterans Administration.

ELMO T. CHRISTIANSON

Attorney General