

MEMORANDUM

TO: Sen Wm + Jackson Jr  
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TO: Janie Bowen  
FROM: Tim Winks *gm*  
DATE: July 23, 1987  
RE: Inclusion of Federal Manufacturers  
Excise Taxes in Sales Price of Goods Sold

From my review, it appears that there are no restrictions on states' authority to include federal manufacturers excise taxes within the sales and use tax base. The only instance in which an excise tax may not be included in the sales and use tax base is when the excise tax is imposed upon the purchaser or consumer. The fact that an excise tax may be collected from the purchaser or consumer does not necessarily indicate that the tax is imposed on the purchaser or consumer.

For instance, the federal manufacturers excise tax on gasoline is collected from consumers through the pump price, but is actually imposed upon the manufacturer.

BACKGROUND:

Hellerstein and Hellerstein note that "the determination whether the (excise) tax is imposed on the consumer is an important factor in determining whether another tax is to be included in the measure of a retail sales tax." If the tax is imposed on the consumer directly, there is no reason for the inclusion of the excise tax in the sales price of the article. This is because the retailer is merely the tax collector of the federal government, i.e., the taxes held in trust for the government never enter into his gross receipts from the transaction.

Manufacturers excise taxes, however, are not imposed on the consumer. Rather, they are imposed on manufacturers and merely passed through to the consumer. Thus, our inclusion of the taxes in the sales price of goods sold would appear proper.

Our policy is directly supported by the 1975 U. S. Supreme Court opinion in Gurley v. Rhoden, in which the inclusion of the federal manufacturers excise tax on gasoline in the Mississippi sales tax base was upheld. In that case, the court upheld the Mississippi tax, finding that the federal tax was imposed on the manufacturer and was merely passed on to the consumer.

CCH notes that federal manufacturers excise are taxable except when the sale is from the manufacturer directly to the consumer. However, this would seem dated based on Gurley v. Rhoden, which found the legal incidence of the manufacturers tax not to be on the consumer.