3362

January 24, 1941

TAX: SALES, PURCHASES, STORAGE AND USE, PERSONAL PROPERTY, INCOME, GROSS RECEIPTS — PERSONS, FIRMS, CORPORATIONS — FEDERAL PROPERTY IN STATE.

H.R. 6687, 76TH CONGRESS — ACT, NOT CONSENT TO LEVY OR COLLECT SUCH TAX FROM OR AGAINST GOVERNMENT — EXCEPTION, SALES TO PERSONS OTHER THAN AUTHORIZED PURCHASERS — STATUS: SALES, ORDER OF WAR DEPARTMENT TO PERSONNEL OF POST OR CAMP — JURISDICTION, STATE TO TAX PRIVATE INDIVIDUALS, FIRMS OR CORPORATIONS WHO OPERATE CONCESSIONS UPON FEDERAL AREAS — STATUS: CIVILIAN CONSERVATION CORPS POST EXCHANGE, OPERATED BY DIRECTOR, SALES TO MEMBERS AND ATTACHES OF CORPS DISTINGUISHED FROM SALES IN CAMPS BY PERSON WHO OPERATES CONCESSION.

SYLLABUS:

1. *By the enactment of H.R. 6687 by the 76th Congress, the federal government has empowered the state to levy and collect taxes on or with respect to sales, purchases, storage and use of personal property, taxes measured by sales, receipts from sales, purchases, storage or use of personal property, and taxes measured by income or gross receipts by persons, firms or corporations within or upon federal property located within the geographical limits of the state.*

2. *In such Act the federal government has not consented to the levy or collection of such taxes from or against itself or its instrumentalities, except in cases where sales are made by its instrumentalities to persons other than those therein defined as authorized purchasers.*

3. *Under authority of such H.R. 6687 the state of Ohio may not collect "sales or use" taxes or "income" taxes measured by or upon sales or income received by post exchanges, and commissaries upon federal areas, since such sales are limited by orders of the War Department to be made only to the personnel of the post or camp.*

4. *Under authority of such H.R.* 6687 *the state may tax sales or collect taxes coming within the meaning of "sales or use" or "income" taxes, as therein defined, upon federal areas from private individuals, firms or corporations who operate concessions therein, regardless of whether the sales may be made to members of the camp or otherwise.*

5. *In such Act Congress has not granted its consent to tax sales made by a civilian conservation corps post exchange, where such exchange is operated by the director in the manner authorized by federal statute and the sales are made only to members and attaches of the corps, but has consented to the taxation when sales are made in such camps by a person operating a concession therein.*

Hon. William S. Evatt, Tax Commissioner,
Columbus, Ohio.

Dear Sir:

I am in receipt of your request for my opinion reading:

> "The Department of Taxation respectfully requests your opinion concerning the status on the collection of sales, excise, and cigarette taxes on federal areas within the State of Ohio. This request is made as a result of the passage of the Buck Resolution (H.R. 6687) by the 76th Congress which became effective on January 2, 1941.
>
> We are particularly interested in the effect of this act on license or permit requirements on federal activities and whether the Department of Taxation has the right to collect sales, excise, and cigarette taxes on all federal instrumentalities. For example, may the state tax sales made by post exchanges, commissaries, concessions on federal territory operated by private individuals and CCC Camps?"

It is axiomatic that Congress had some purpose in the enactment of H.R. 6687. It may well be that an examination of such purpose and the hardship sought to be remedied by such act will bear upon the interpretation of the act.

It is an elemental but fundamental principle in all questions of taxation that "the jurisdiction to tax exists only in regard to persons and property or upon business done within the state." Dewey v. Des Moines, 173 U. S. 193. See also Safe Deposit Co. v. Virginia, 280, U. S. 83; Southern Ry. Co. v. Kentucky 274 U. S. 76; Tax Commission v. Kelly-

Springfield Tire Co. 38 O. App. 109; State Tax on Foreign-held Bonds, 15 Wall. 300; Rhode Island Trust Co. v. Dougherty 270 U. S. 69. However, it is likewise a well settled rule that when a state cedes jurisdiction over certain lands to the federal government it may retain such jurisdiction thereon as may be reserved to it by the agreement or such as thereafter may be consented to by the federal government. Collins v. Yosemite Park & Curry Company, 304 U. S. 518; James v. Dravo Contracting Co., 302 U. S. 134, 146; Silas Mason Co. v. Tax Commission 302 U. S. 186, 203; Surplus Trading Co. v. Cook, 281 U. S. 647, 651.

It is thus evident that even though a state has ceded exclusive jurisdiction over certain territory to the federal government, the federal government may return such jurisdiction or any part thereof to the state, if the state assents thereto. Such consents or partial releases of jurisdiction being in derogation of sovereignty should not be extended by interpretation beyond the plain import of the language of the grant.

The second of such principles, that a state may not tax the federal government or an instrumentality thereof without the consent of Congress, has been so often reiterated by the Supreme Court, that the citation of authorities is surplusage. See Graves v. New York, 306 U. S. 466; McCullough v. Maryland, 4 Wheat. 421, 422; Van Brocklin v. Tennessee, 117 U. S. 151, 158; South Carolina v. U. S. 199 U. S. 437, 451; Federal Land Bank v. Crosland 261 U. S. 374.

However, as stated by Mr. Chief Justice Hughes, in United States v. Bekins, 304 U. S. 27, 52:

> "While the instrumentalities of the national government are immune from taxation by a State, the State may tax them if tha national government consents."

(See also, Baltimore National Bank v. State Tax Commission, 297 U. S. 209, 211, 212.)

That portion of H.R. 6687, as enacted by the 76th Congress which is pertinent to your inquiry reads:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) no person shall be relieved from liability for payment of,

collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940.

Sec. 2. (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

Sec. 3. (a) The provisions of sections 1 and 2 of this Act shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, under regulations promulgated by the Secretary of War or the Secretary of the Navy."

In Section 6 of such Act, sub-paragraph (a), Congress has defined the term "person" as used in the Act as follows:

"The term 'person' shall have the meaning assigned to it in section 3797 of the Internal Revenue Code."

Such Section 3797 of the Internal Revenue Code is Section 3797 of Title 26 of Federal Code Annotated and defines "person" as follows:

"When used in this Act, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof —

> Person. The term 'person' shall be construed and mean and include an individual, a trust, estate, partnership, company, or corporation."

In your request you refer to sales taxes but do not refer to the use and storage tax imposed by Section 5546-26, General Code. Since the provisions of the use tax are similar and complementary, I will, with your indulgence, extend this opinion to cover not only the tax popularly referred to as the "sales tax" levied by Section 5546-2 of the General Code, but also to the tax, popularly referred to as "use tax", levied by Section 5546-26, of the General Code.

For the purposes of this opinion I am assuming that the taxes to which you refer as "excise taxes" are those referred to as "Admissions Tax", imposed by Section 5544-2, General Code; Malt and Brewers' Wort Tax, imposed by Section 5545-2, General Code; Grain Handling Tax, imposed by Section 5545-22, General Code, etc.

In view of such assumptions I will regard your inquiry to be whether the sales, use and storage, the admissions, malt and brewers' wort, grain handling and cigarette taxes may be collected under the circumstances mentioned in your letter.

As you have undoubtedly noticed the act purports to authorize the imposition and collection of sales and use taxes. As has been repeatedly held, the nomenclature or terminology of a tax does not determine the nature of a tax. Such nature must be determined from the act levying the tax and the effect of the tax levy in its operation. Thus, a tax may be a sales or use tax and yet at no place in the law use either of such terms. However, in the Act of Congress under consideration the legislative body has prescribed the meaning which shall be given to the phrase "sales or use tax."

Such definition states that a tax law is a sales or use tax law whether with respect to or measured by any one of the several things. It may be levied with respect to sales, receipts from sales, purchases, storage or use of tangible personal property *or* it may be measured by sales, receipts from sales, purchases, storage or use of tangible personal property and yet be a sales or use tax.

It is well established that the definition and rules of construction contained in the interpretation clause of a statute are a part of the law and are binding upon the courts.

Black — Interpretation of Laws, Sec. 84.

As you are familiar the sales tax law of Ohio is a tax with respect to and specifically measured by the sales of tangible personal property. See Section 5546-2, General Code.

The use and storage tax is specifically levied "for storage, use, or other consumption in this state" and is measured by the amount paid for such tangible personal property for the purchase of which sales tax has not been paid. (Section 5546-26, General Code.) In making the levy of taxes on malt and brewers' wort the legislature has stated that "excise taxes are hereby levied and imposed *on sales* of brewers' wort and of malt * * * at the following rates, to-wit * * *." (Section 5545, General Code.) It is thus to be seen that this tax is levied upon the sales of such articles of tangible personal property.

In making the levy of the so-called "cigarette tax" the legislature has provided that "an excise tax *on sales* of cigarettes is hereby levied and imposed", the rate is also measured by the amount of the sale as "one cent on each ten or fraction thereof." (Section 5894-2, General Code.)

Likewise, in Section 6064-41, General Code, the legislature has provided that "a tax is levied *on the sale* and distribution in Ohio of wine. In Section 6212-48, General Code, the legislature has provided that "a tax is hereby levied *on the sale* or distribution in Ohio of beer, ale, porter, stout and other malt beverages containing more than 3.2 per centum, but not less than 7 per centum of alcohol by weight * * * ." In Section 6212-49, General Code, it has provided that "tax is hereby levied *on the sale* or distribution, in Ohio, of beer whether in barrels or other containers * * *." In Section 6212-49b, General Code, it has provided that "a tax is hereby levied *upon the sale* within this state of beverages in sealed bottles and cans * * *."

You will observe that in each of the cases above mentioned the tax is upon the sale or use of the property as such phrase is defined in Section 6 of the Act in question.

Since such H.R. 6687 in terms limits its authorization to collect (1) sales or use taxes, and (2) income taxes, we must refer to the definition of "sales or use tax" as contained in such Act in order to determine

whether such Act grants to the state of Ohio any right to collect the taxes mentioned in your request. Section 6 of such Act contains the following definition:

> "As used in this Act * * *
>
> (b) The term 'sales or use tax' means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 10 of the Federal Highway Act, approved June 16, 1936, are applicable."

Such section 10, so referred to is to motor vehicle fuels and has no bearing upon the taxes referrėd to in your request.

However, when we examine the statute which levies a tax upon admissions, dues, green fees, etc., we find that the legislature has used different language. In levying such tax we find that in Section 5544-2, General Code, the legislature has used the following language:

> * * * "(1) A tax of three percentum on the amounts received for admission to any place, including admission by season ticket or subscription.
>
> (2) A tax of three percentum on the excess of amounts received for tickets or cards of admission to theatres, operas, and other places of amusement, sold at news stands, hotels, and places other than the ticket offices of such theatres, operas, or other places of amusement, over and above the amounts representing the established price therefor at such ticket offices; such tax to be returned and paid in the manner and subject to the interest provided in section 5544-5 of the General Code, by the person selling such tickets.
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> (3) A tax of three per centum on the amount received for admission to any public performance for profit at any roof garden, cabaret, or other similar entertainment in case the charge for admission is in the form of a service charge, or cover charge, or other similar charge.
>
> (4) A tax of three per centum on the amount received as annual membership dues by every club or organization maintaining a golf course; and a tax of three per centum on green fees collected by golf courses either under club or private ownership."

In Section 2 of such H.R. 6687 we find the following language:

> "(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income

from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal one."

In sub-paragraph (c) of Section 6 of such Act we find the following definition of "income tax":

> "The term 'income tax' means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts."

From the language of Section 5544-2, General Code, above quoted, it is self-evident that such tax is "levied on, with respect to, or measured by" gross receipts. It is, therefore, my opinion that such and similarly levied taxes are of the type permitted by H.R. 6687 under consideration within the "federal areas."

Congress has defined in Section 6, sub-paragraph (e) what meaning it intended to be given to the term "federal area" for the purposes of the Act under consideration. Such sub-paragraph reads:

> "The term 'Federal area' means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State shall be deemed to be a Federal area located within such State."

It should be remembered that were it not for the provisions of the Act under consideration the state would not have jurisdiction to levy a tax on "the sale or use" of articles within such "federal areas" and could not levy "an income tax" on income received by persons residing in such area or having a "business situs" therein.

Opinions of the Attorney General, Vol. III, 1937, 2255.

Opinions of the Attorney General, Vol. II, 1932, 828.

Opinions of the Attorney General, Vol. III, 1933, 2008.

Standard Oil Co. v. California, 291 U. S. 262.

Such being true, it necessarily follows that if the federal government has the power to withhold the power to levy or collect any taxes within such area the state may levy and collect such taxes only to the extent permitted by the Act which grants a limited authority to the state to so

tax. In Section 3, of such H.R. 6687, Congress has placed certain restrictions upon exercise of the authority granted by the federal government to the state to impose and collect taxes within such areas. That is, Congress has granted a limited right to collect such taxes from persons within such areas. Such section provides:

> "(a) The provisions of sections 1 and 2 of this Act shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.
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> (b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, under regulations promulgated by the Secretary of War or the Secretary of the Navy."

By reason of the express provisions of Section 3(a) it is evident (1) that no levy or collection of tax may be made against or from the United States by reason of the performance of its functions in such areas; (2) that no tax may be levied against or from an instrumentality of the United States by reason of the performance of its functions within such areas. In this respect there is no difference of power in the state whether within or without the areas; (3) that no tax may be levied or collected with respect to the sale, purchase, storage or use of tangible property when sold either by the United States or an instrumentality thereof, within the area to an "authorized purchaser." It would thus appear that when we eliminate cases coming within such exceptions the state has been granted express authority to levy and collect "sales and use taxes" and "income taxes" within "federal areas" to the same extent as though the federal areas were not within the exclusive jurisdictions. Beyond such exceptions, for the purposes of such taxes it is as though such territory had not been ceded to the federal government.

Such being true it becomes necessary to determine who is an "authorized purchaser." Such term is defined in paragraph (b) of Section 3 of such Act as follows:

> "A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary

unincorporated organizations of Army or Navy personnel, under regulations promulgated by the Secretary of War or the Secretary of the Navy."

The provisions of the forgoing sub-paragraph cease to have the appearance of being ambiguous when we bear in mind that post exchanges have been in operation for a long period of time at army posts, under regulations of the war department to the effect that they may vend their wares only to members of the post. A post exchange is operated by members of the post for the benefit and convenience of the members of the post under regulations established by the department of war. Howver, Congress has provided that no money appropriated for the support of the army shall be expended for post exchanges or gardens, except to the extent that the quartermaster general may permit the use of public buildings and public transportation facilities for such purposes to the extent that they may not be required for other purposes. (See Title 10, Section 1335, U.S.C.A.) I am informed that in some army camps and forts there may exist battalion, company or other sectional exchanges organized by means of a loan of funds by the unit to an association of members of the unit, which loan is to be repaid upon sale of commodities. In each case of these, whether operated as a post exchange, battalion exchange or company exchange, I am informed that the operative management is a voluntary unincorporated organization of army personnel. I am further informed that they are authorized to make sales only to the personnel of the post, battalion, brigade or company. It is, therefore, my opinion that the language of H.R. 6687 does not grant consent to the states to levy a sales or income tax concerning sales made by such exchanges. A commissary, as the term is used by military men, is a unit in a system of distribution of food and necessities to the personnel of the army and is operated by the Subsistence Department of the army. From the language of Section 3, sub-paragraph (a) of H.R. 6687, it is evident that Congress has withheld its consent to tax. Such sales, if they may be called such, are made by the one unit of the army to other units and persons of the army. Since such sales, if sales, are made only to units of an instrumentality of the United States (to-wit, the army) the language of the Act is of the effect that Congress has withheld its authority to tax.

When we come to the question as to whether the Act (H.R. 6687) consents to the enforcement of the tax laws with respect to concessioners, different considerations are applicable. In our discussion, we must keep

in mind that there were, prior to the enactment of the Act under consideration, two reasons why taxes could not be collected from persons on governmental areas. The first, was for the reason that the subject matter of the tax was not within the territorial limits of the state. The second was for the reason that the state has no power to tax the federal government or any of its instrumentalities, without its consent. The language of Section 1 of the Act is specific with respect to the following propositions:

1. No person, association, partnership or corporation shall be exempt from a "sales or use tax" levied by a state on the ground that the sale occurred in whole or in part within a federal area.

2. No such person, firm, corporation, etc., shall be exempt from an "income tax" by reason of the fact that the income was from transactions occurring or services rendered within a federal area.

Full jurisdiction is granted to the state to levy and collect both "sales and use tax" and "income tax" within federal areas lying within the geographical limits of a state (Sections 1 and 2 of H.R. 6687), except (1) when the tax is sought to be levied on or collected from the United States or an instrumentality thereof, or (2) or the tax is sought to be levied and collected with respect to a sale by the United States or an instrumentality to persons defined in sub-paragraph (b) of Section 3 of such Act.

It has been repeatedly held that a concessioner operating upon federal lands is not an instrumentality of the United States. Such being true, it becomes evident that there is no language in the exceptions mentioned in either of sub-paragraphs (a) or (b) of Section 3 which purports to exempt sales made by a concessioner unless they be on sales made either to the United States or an instrumentality thereof. It is immaterial that some of its customers might be what would be "authorized purchasers" from camp exchanges or posts. A concessioner on a federal area is but a contractor with the federal government and not an instrumentality of the federal government. A tax upon such contractor is not within the inhibition of taxes upon federal instrumentalities. See James v. Dravo Contracting Co., 302 U. S. 134; Silas Mason Co., Inc., v. Tax Commission, 302 U. S. 186.

In view of the foregoing, I am of the opinion that the Act in question

grants authority or consent to the state to tax a concessioner doing business in a "federal area."

In order to determine whether the same rules apply to sales made in civilian conservation corps areas or camps, we must refer to the act which creates such organization. The authority for such organization is contained in Title 16, Sections 584, 584a to 584q, U.S.C.A., both inclusive. The purpose of such organization is stated in Section 584 to be: "for the purpose of providing employment, as well as vocational training, for youthful citizens of the United States who are unemployed and in need of employment, and to a limited extent as hereinafter set out, for war veterans and Indians, through the performance of useful work in connection with the conservation and development of the natural resources of the United States". Such organization is financed entirely by the federal government. (See Section 584a, Title 16, U.S.C.A.) Such organizations are authorized to operate camp exchanges by the following provisions of Title 16, U.S.C.A.:

Section 584c.

> "* * * and the Corps shall take over the institution of the camp exchange heretofore established and maintained, under supervision of the War Department, in connection with and aiding in administration of Civilian Conservation Corps workcamps conducted under the authority of said sections 585 to 590 as amended: Provided, That such camp exchange shall not sell to persons not connected with the operation of the Civilian Conservation Corps."

and, Section 584p,

> "There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the purpose of carrying out the purposes of this subchapter: Provided, That no part of any such appropriation shall be used in any way to pay any expense in connection with the conduct, operation, or management of any camp exchange, save and except such camp exchanges as are established and operated, in accordance with regulations to be prescribed by the Director, at such camps as may be designated by him, for real assistance and convenience to enrollees in supplying them and their supervising personnel on duty at any such camp with articles of ordinary use and consumption not furnished by the Government: Provided further, That the person in charge of any such camp exchange shall certify, monthly, that during the preceding calendar month such exchange was operated in compliance therewith."

From the language of such act, it is patent that the operation of the Civilian Conservation Corps is a function of the government itself.

In United States v. Query, et al., 21 Fed. Supp. 784, the district court for the eastern district of South Carolina held as stated in the first, third, fifth and sixth branches of the headnotes:

> "1. A Civilian Conservation camp exchange established pursuant to statutory authority and operated for the welfare of the enrollees is a federal instrumentality not subject to the license tax imposed by state statute on the privilege of selling certain articles, and not subject to the supervisory authority of the State Tax Commission. * * *
>
> 3. Instrumentalities, means and operations imposed by the United States in the exercise of its governmental powers are exempt from tax, regulation, or interference by the states, and the instrumentalities, means and operations whereby the states exercise their governmental powers are exempt from tax, regulation, or interference by the United States. * * *
>
> 5. A state statute may not interfere with or burden the operation of the civilian conservation corps camp exchange in the slightest degree.
>
> 6. The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission, but does not extend to those means and instrumentalities which are employed by Congress to carry into execution powers conferred upon that body by the people of the United States."

In such case the question was presented as to whether the state of South Carolina might require a civilian conservation corps camp exchange to obtain a license to engage in the business of selling cigars, cigarettes, chewing tobacco, etc., and pay a license tax on such privilege. It has been urged that the reasoning in such opinion would prevent the taxing of a concessioner in such camps. Upon examination of such opinion I am unable to form the opinion that such holding or the reasoning therein has any application to a tax upon a concessioner. The United States Supreme Court has many times held that a tax upon a concessioner or a contractor with the judicial government is not a tax upon an instrumentality of the United States.

Susquehanna Power Co. v. State Tax Commission, 283 U.S. 291.

James v. Dravo Contracting Co., 302 U.S. 134.

I am uninformed as to whether the federal government has established any civilian conservation corps camps upon federal lands. If it be a fact that such camps have been so established the same question would arise and the principles of law would be applicable as in the case of an army post. When a post exchange is operated by the director of the civilian conservation corps, under authority of Sections 584c and 584p of Title 16, U.S.C.A., sales to or by it would not be taxable since such tax under the present tax laws of Ohio would be collectible "from the United States or an instrumentality thereof" and would be a tax on a function of the instrumentality, for which Congress has not yet consented. I believe a similar conclusion would necessarily follow whether the camp was in a "federal area". If, however, sales are made by a concessioner to members of the camp, whether within or without the area, I find no language in the Act which would exempt such sales from taxation by the state of Ohio.

I believe my opinion as herein expressed is not at variance with that rendered by the Attorney General of the United States under date of August 5, 1939, with reference to the Hawaiian Tobacco Tax.

Specifically answering your inquiries, it is my opinion that:

1. By the enactment of H.R. 6687 by the 76th Congress, the federal government has empowered the state to levy and collect taxes on or with respect to sales, purchases, storage and use of personal property, taxes measured by sales, receipts from sales, purchases, storage or use of personal property, and taxes measured by income or gross receipts by persons, firms or corporations within or upon federal property located within the geographical limits of the state.

2. In such Act the federal government has not consented to the levy or collection of such taxes from or against itself or its instrumentalities, except in cases where sales are made by its instrumentalities to persons other than those therein defined as authorized purchasers.

3. Under authority of such H.R. 6687 the state of Ohio may not collect "sales or use" taxes or "income" taxes measured by or upon sales or income received by post exchanges, and commissaries upon federal areas, since such sales are limited by orders of the War Department to be made only to the personnel of the post or camp.

4. Under authority of such H.R. 6687 the state may tax sales or collect taxes coming within the meaning of "sales or use" or "income" taxes, as therein defined, upon federal areas from private individuals, firms or corporations who operate concessions therein, regardless of whether the sales may be made to members of the camp or otherwise.

5. In such Act Congress has not granted its consent to tax sales made by a civilian conservation corps post exchange, where such exchange is operated by the director in the manner authorized by federal statute and the sales are made only to members and attaches of the corps, but has consented to the taxation when sales are made in such camps by a person operating a concession therein.

Respectfully,

THOMAS J. HERBERT,
Attorney General.