

## Opinion No. 51-5361

April 30, 1951

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. Evan Wilson Director, Motor Transportation Div. Bureau of Revenue Post Office  
Rox 1666 Santa Fe, New Mexico

{\*40} In reply to your letter of March 22, 1951, in which you request an opinion as to which truckers are exempt from the New Mexico Mileage Tax. I call your attention to two statutes that specifically provide the motor vehicles, or truckers as you call them, that are exempt from the mileage tax, §§ 68-1532 and 68-1533, 1941 New Mexico Compilation, pocket supplement, which read as follows:

"68-1532. Vehicles transporting certain farm products exempt from tax. -- Motor vehicles, properly licensed in the state of New Mexico or in any other state, having a reciprocal agreement with New Mexico, shall not be required to pay a mileage tax when being used in the transportation of a cargo, consisting exclusively of livestock on the hoof, live poultry, eggs, shelled or threshed grain, cleaned or recleaned, bulk or sacked, cotton, either ginned or unginned, peanuts, either roasted or unroasted, hay either loose or baled, non-processed agricultural products, nonprocessed fruits, nonprocessed vegetables, nonprocessed milk or cream, either sweet or sour, sweet potatoes, either cured or uncured, from the original place of growing or raising to market.

"Any motor vehicle, as hereinabove described, shall not be required to pay a mileage tax on a return trip when empty or when transporting a cargo consisting of farm products and live stock as described hereinabove or farm and/or ranch supplies to be used exclusively for home consumption and not being transported for resale or hire."

"68-1533. Retail merchants -- Exemptions from tax. -- No mileage tax shall be assessed on any motor vehicle properly licensed in this or in any other state, operated by a retail merchant doing business without the state of New Mexico when such motor vehicle is being used exclusively for the transportation of any of the goods or commodities mentioned in section 13 (§ 68-1532) of this act when such goods or commodities have been taken by the owner of such vehicle in the regular course of his business and are being transported to points within the state of New Mexico for delivery to wholesalers or manufacturers."

You ask if a trucker whose equipment is properly licensed in any one of the fifteen states with which we have a reciprocal agreement on license plates, and is hauling his own manufactured commodities in interstate operation only, is exempt from the mileage tax. Such trucker is exempt if such commodities come within those specified in § 68-1532.

Your second question is whether a trucker under the same conditions {41} as above, who buys commodities, exempt from the mileage tax when operating interstate only. Under § 68-1533, above quoted, it is specifically stated that a "retail merchant", it does not say a "trucker", who is doing business without the State of New Mexico when such motor vehicle is being used exclusively for the transportation of any of the goods or commodities mentioned in § 68-1532 and when such goods or commodities have been taken by the owner of such vehicle in the regular course of his business and are being transported to points within the State of New Mexico for delivery to wholesalers or manufacturers. If a person does not qualify under the provisions herein mentioned, he would have to pay the mileage tax; if he meets the conditions provided in either § 68-1532 or § 68-1533 then he is exempt.

Your last question is whether a trucker hauling his own commodities, but whose equipment is licensed in a state other than one of the fifteen states with which we have a reciprocal agreement on license plates, exempt from mileage tax when operating interstate only. Under § 68-1532 herein above quoted, this trucker would not come under the exemption because the state where he comes from and where the motor vehicle is licensed is not a state having a reciprocal agreement with New Mexico. It is not believed he would qualify under the provisions of § 68-1533 for you did not state that he is a "retail merchant" but only a "trucker" hauling his own commodities.

Trusting that this fully answers your inquiry, I remain,