

**Opinion No. 55-6086**

January 26, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** J. B. Contreras, Director School Tax Division Bureau of Revenue, Santa Fe, New Mexico

Re: A. E. Beavers, d/b/a Pecos Sand Company, Lic. No. 3-86573

**OPINION**

In your letter dated January 19, 1955, you state that the Builders' Block and Stone Company is a lessee of mineral pits from which cinders are mined and extracted. These cinders along with other materials are used for the manufacture of blocks which are thereafter sold as a manufactured product. This company pays a manufacturer's tax plus a 2% tax on its retail sales. The company has a contract with Mr. Beavers, d/b/a Pecos Sand Company, under which Mr. Beavers mines, extracts and delivers these cinders to the company at a price of \$ 3.50 per ton. You request an opinion concerning the tax which should be levied against Mr. Beavers.

Since Mr. Beavers does not own the lease or the products extracted therefrom and does not sell the same, there would be no basis for computing a tax on the extracting of such products. Under § 72-16-4 (A) of the 1953 Compilation, he is engaged partly in the business of excavation, or similar work, and partly in transporting the products for a stipulated sum per ton.

It is our opinion that the services performed by Mr. Beavers are taxable partly under § 72-16-4, sub-section (E) (3) and partly under sub-section (F). Since the tax is the same under each of these sub-sections, Mr. Beavers is subject to a tax of 2% upon the services being performed by him.

By C. C. McCulloh

Assistant Attorney General