

Opinion No. 56-6447

May 24, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Richard Pino, Director, Department of Courtesy & Information, State Capitol Building, Santa Fe, New Mexico

In your letter of May 16, 1956, you ask whether mileage tax as provided by Chapter 125, Laws 1943, is collectible from a certified carrier registered with the State Corporation Commission when that carrier fails to comply with all of the provisions of paragraphs (a) and (b) of Section 10 of said Chapter 125. Section 10 of Chapter 125, Laws 1943, being Section 64-30-10, N.M.S.A., 1953 Compilation, provides as follows:

"After such registration and inspection, clearance certificates or special permits shall be issued for:

"(a) Commercial motor vehicles operating in compliance with the provisions of chapter 154 of the New Mexico Session Laws of 1933 (64-27-1 et seq.) and acts amendatory thereof when

(1) All taxes and license tag fees required by the laws of this state upon the vehicles and contents of such vehicles have been paid, and all other laws and rules and regulations of departments of this state applicable to such vehicles and contents have been complied with; and

(2) The operator or owner of such motor vehicle is not in default or delinquent in the payment of any tax, the filing of any report or the observance of any requirements of said chapter 154 of the Session Laws of 1933 (64-27-1 et seq.) as amended:

"(b) Commercial motor vehicles classified and designated in chapter 154 of the Session Laws of 1933 (64-27-1 et seq.) as exempt when

(1) All taxes required by the laws of this state upon the contents of such vehicles have been paid and all other laws and rules and regulations of departments of this state applicable to such contents have been complied with; and

(2) Such vehicles have been licensed in this state and are displaying the license tags required by the laws of this state:

"(c) Commercial motor vehicles not registered or licensed in this state which are transporting passengers for hire or property for hire or resale when

(1) All taxes and license tag fees required by the laws of this state upon the vehicles and contents of such vehicles have been paid, and all other laws, and rules and

regulations of departments of this state applicable to such vehicles and contents have been complied with; and

(2) Said vehicle shall be properly covered by liability insurance issued in some insurance company or association authorized to transact business in the state of New Mexico, with coverage for its operation within the state of New Mexico of not less than \$ 7,500.00 for any one (1) person, or not less than \$ 10,000.00 for all persons who may sustain injuries or be damaged in any one contingency or accident covered by such policy; and

(3) When the mileage tax in section 12 (64-30-12) hereinafter set forth shall have been paid;

"(d) Commercial motor vehicles not registered or licensed in this state which are transporting property not for hire or resale when

(1) All taxes required by the laws of this state upon the contents of such vehicles have been paid and all other laws, and rules and regulations of departments of this state applicable to such contents have been complied with; and

(2) When the mileage tax in section 12 (64-30-12) hereinafter set forth shall have been fully paid."

Mileage tax is then assessed under Section 12, Chapter 125, Laws 1943, being Section 64-30-12, N.M.S.A., 1953 Compilation, which provides as follows:

"There is hereby levied and assessed against commercial motor vehicles in subsections (c) and (d) of section 10 (64-30-10), for the administration of this act (64-30-1 to 64-30-18) and for the maintenance, repair and reconstruction of the public highways a mileage tax which shall be computed as follows:

(1) Where the gross weight of the vehicle and cargo does not exceed fifteen thousand (15,000) pounds, one and one-half (1 1/2) cents per mile from the point of entering the state to the point of destination or place of leaving the state;

(2) Where the gross weight of the vehicle and cargo exceeds fifteen thousand (15,000) pounds and does not exceed twenty-five thousand (25,000) pounds, two (2) cents per mile from the point of entering the state to the point of destination or place of leaving the state;

(3) Where the gross weight of the vehicle and cargo exceeds twenty-five thousand (25,000) pounds, three (3) cents per mile from the point of entering the state to the point of destination or place of leaving the state."

Although the wording of Section 10 is not entirely clear, it appears that the intention of the Legislature was to include and describe therein all types of commercial motor

vehicle operations. Certain types under (a) and (b) were to be given clearance certificates or special permits. All other types would then fall under (c) and (d). As to those a mileage tax is assessed. You will note that clearance certificates and special permits as to the vehicles described in (a) and (b) are to be issued only when certain pre-requisites have been complied with. What then is to be done with those vehicles when those pre-requisites have not been complied with? That is the situation presented in your letter. The vehicles are of the type mentioned in (a) or (b) but do not fulfill the pre-requisites. They may, of course, be detained at the Port of Entry until such time as the pre-requisites are met. On the other hand, it seems to us, that they may waive the rights granted to them under (a) and (b) and pay a mileage tax as provided by (c) or (d), and proceed. Once such a tax is paid it would appear to be a valid waiver of the rights granted under (a) and (b).

When it is considered that all commercial transportation was meant to be covered by the Act, and clearance certificates and special permits given only in certain specified instances then the conclusion follows that all vehicles which do not completely comply with either Section (a) or (b) must be considered as falling within the (c) or (d) classification as to which mileage tax is applicable.

Therefore it is the opinion of this office that commercial motor vehicles registered with the State Corporation Commission but which fail to comply with all the provisions under paragraph (a) or (b) of Section 10 above quoted, fall within the category of (c) or (d), and must pay a mileage tax under the provisions of Section 12 or remain at the Port of Entry until such time as they fully comply with the provisions of (a) or (b).

By: Walter R. Kegel

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