

Opinion No. 57-06

January 16, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Robert R. Salazar, Commissioner, Motor Vehicle Department, Bureau of Revenue, Santa Fe, New Mexico

QUESTIONS

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"A" corporation proposes to transfer substantially all its assets to "B" corporation, a wholly-owned subsidiary of "C" corporation. In consideration of the transfer, "C" corporation will transfer 137,083 of its shares to "A" corporation and will, in addition assume the revealed obligations of 'A' corporation. Among the assets of "A" corporation to be transferred are certain motor vehicles presently within New Mexico and which have New Mexico Certificates of Title. Specifically, the question is whether "B" corporation, the transferee of the motor vehicles, will have to apply to your department for Certificates of Title and will have to pay the 1% tax imposed by the cited section?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 64-11-15 (a), N.M.S.A., 1953 Compilation, reads as follows:

"There is levied and imposed hereby in addition to all other fees prescribed by Section 64-11-10, an excise tax for the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered in the state in the case of sales or resales thereof and the commissioner of motor vehicles shall collect said tax at the time application is made for issuance of such certificate of title at the rate of one (1%) per cent of the sale price of the vehicle; Provided that allowances for trade-ins on the purchase of tangible personal property shall be deductible before computing the tax due under this section. Said tax shall be paid by the applicant and the commissioner of motor vehicles shall require upon the application for certificate of title a statement of the sales price of the vehicle, the amount of allowance for trade-in and the net difference upon which the tax is to be levied and such other information as he may deem necessary to establish the amount of said tax."

The provisions of this statute are not as clear as might be desired. If the statute is restricted to what is thought of as sales or resales in the narrow sense, then its application to the transaction at hand would be doubtful. However, it is our opinion that the Legislature had in mind a broad definition of sales or resales. A sale has been defined as a contract for the transfer of property from one party to another for consideration. 46 Am. Jur., "Sales" Section 2.

Taxation is essentially a practical matter, and while it is true that where doubt exists as to the meaning and scope of language imposing a license tax, such doubt is to be resolved in favor of the taxpayer, nevertheless in construing a license tax law courts regard the substance and purpose of the law rather than its form and language. 33 Am. Jur., "Licenses" Section 4.

It therefore seems clear that it was the intention of the Legislature to impose the tax when there was an actual transfer of assets from one party to another for consideration.

Accordingly you are advised that the 1% excise tax cannot be waived in this instance.

We trust that this fully answers your inquiry.