

Opinion No. 58-208

October 23, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: J. P. Roach, Chief, New Mexico State Police, P. O. Box 919, Santa Fe, New
Mexico

QUESTION

QUESTIONS

1. Does the caravan tax apply to the transportation of out-of-state automobiles by a driver who is under contract to the owner, arranged by an agent, to transport the car from one state to another when the vehicle is not being transported for sale or for lease?
2. Would the AAA Driveaway, Inc., be considered to be engaged in the business of transporting motor vehicles for the purpose of the applicability of this tax?

CONCLUSIONS

1. No.
2. No.

OPINION

ANALYSIS

The pertinent part of § 64-6-2 (2), N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, states:

"No person, dealer, agency, firm or corporation and no agent or representative of any person, dealer, agency, firm or corporation shall use the highways of the state of New Mexico for the transportation of any motor vehicle, truck, trailer, semitrailer, tractor, or house trailer, whether licensed in another state or not, either on its own wheels, or on another vehicle, or by being drawn or towed behind another (a) by any person, firm or corporation, or the agents or employees thereof, **engaged in the business of transporting motor vehicles;**. . . unless such vehicle either:

1. Carries valid New Mexico registration plates.
2. Carries valid dealer's plate or plates issued by the division.

3. A special permit for the use of the highways of this state for the transportation of such vehicle, in the manner in which the same is being transported, has first been obtained and the fee therefor has been paid as hereinafter specified.

4. Carries a valid temporary transportation permit issued under section 44 (b) (64-3-5 (b), 1953 Compilation)." (Emphasis supplied)

The facts, as we understand them, which give rise to this case, are substantially as follows: A company known as AAA Driveaway, Inc., is engaged in the business of bringing together the owner of a given automobile who wishes to have his automobile driven to a predetermined destination and a driver who desires to reach the same destination. AAA Driveaway, Inc., is compensated for bringing the driver and the owner together. The driver, however, is not an employee of the AAA Driveaway, Inc., and apparently, if employed by anyone, is employed by the owner. Apparently, the AAA Driveaway, Inc., is compensated by obtaining a registration fee from the driver when he registers with them. The company does not at any time have or take possession of the car. The car is turned over to the driver by the owner and returned to the owner by the driver upon arrival at the destination point. The company does not receive any compensation from the owner, nor do they bond the driver or insure the automobile.

Relating the above facts to § 64-6-2, supra, we answer both questions in the negative. The AAA Driveaway, Inc., certainly is not engaged in the business of transporting motor vehicles. The facts likewise do not indicate that the said AAA Driveaway, Inc., is contracting to provide the transporting of motor vehicles. Our information similarly fails to indicate that the owner of the vehicle is engaged in the business of transporting motor vehicles, since he owns the vehicle in question. The driver of the automobile apparently pays a fee in order to have the use of the automobile and the transportation provided from the embarkation point to the destination point. It would, therefore, appear that he is more interested in obtaining transportation than in "engaging in the business of transporting vehicles".

For the reasons stated above, we, therefore, conclude on the basis of information available that the above matter does not come within the purview of § 64-6-2 (2), supra.