

Opinion No. 60-11

January 28, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Dan Sosa, Jr. District Attorney Third Judicial District Las Cruces, New Mexico

QUESTION

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Must owners of foreign vehicles, who are required to register such vehicles pursuant to the provisions of Section 64-6-1, N.M.S.A., 1953 Compilation (P.S.) pay the excise tax required by Section 64-11-15 (b)?

CONCLUSION

Yes.

OPINION

{*351} ANALYSIS

This question is precipitated by the factual situation considered in our opinion No. 59-71. That opinion concerned itself with those nonresident truckers who came into the State of New Mexico and were employed for periods in excess of thirty (30) days, using their vehicles in the course of such employment. Our conclusion therein was that such truckers were required to be licensed because of the provisions of Section 64-6-1 B. Now, your question is whether these same truckers must also pay the excise tax required under Section 64-11-15 (b).

Section 64-11-15 (b) levies an excise tax of 1% of the sales price or the fair market value of a {*352} vehicle upon the issuance of an original certificate of title for vehicles of the type required to be registered in this state and brought into the state for use or other consumption.

In determining the answer to your question, it is our opinion that Section 64-3-2, N.M.S.A., 1953 Compilation is dispositive of the issue. This section entitled "Vehicles Subject to Registration -- Exceptions" provides in part as follows:

"Every motor vehicle, trailer, semitrailer and pole trailer when driven or moved upon a highway shall be subject to the registration **and certificate of title provisions** of this act except:

(a) Any such vehicle driven or moved upon a highway in conformance with the provisions of this act relating to manufacturers, dealers, lienholders or nonresidents: . . ." (Emphasis supplied)

It is recognized that the language "this Act" would not include Section 64-11-15 as the latter is a later enacted statute. However, the opening clause of the section in question reads: "There is levied and imposed hereby in addition to all other fees prescribed by Section 64-11-10, . . .". Section 64-11-10 does fall within the act described in the quoted section and therefore the fees imposed by Section 64-11-15 (b) would be an addition to those fees.

It becomes clear in view of the interpretation in our opinion No. 59-71 that the nonresident truckers therein described must secure certificates of title as well as registration plates. Further, it is equally clear from subsection (b) of Section 64-11-15 that the excise tax therein levied is a condition precedent to the issuance of such a certificate of title.

Therefore, it is our conclusion that, complementing the requirement of registration of the vehicles described in Opinion No. 59-71, it is necessary that certificates of title be also procured and that before such certificates may be issued the excise tax described in Section 64-11-15 (b) must be paid.

By: Thomas O. Olson

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