

## **Opinion No. 60-153**

August 31, 1960

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

**TO:** Mr. Tom O. Montoya Director, Department of Courtesy and Information Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Is an out of state company with a branch business in New Mexico, whose commercial vehicles enter and leave the state in the regular course of the management and operation of the business within the state, which vehicles are not registered or licensed in New Mexico, and do not transport persons for hire, or property for hire or resale, exempt from payment of the mileage tax imposed by Section 64-30-12, New Mexico Statutes Annotated, 1953 Compilation?

#### CONCLUSION

Yes.

### **OPINION**

#### **{\*539} ANALYSIS**

We understand from your letter that an out of state corporation operates commercial vehicles into New Mexico in the regular course and management of a business that the corporation has established in this state. The vehicles are neither registered nor licensed in this state, and do not transport persons for hire, or property for hire or resale. The corporation has been charged mileage tax on such **{\*540}** operations at our ports of entry, but claims to be exempt from the tax under Section 64-30-15, N.M.S.A., 1953 Compilation. We agree with that contention.

Section 64-30-10 (d), N.M.S.A., 1953 Compilation, seems, at first glance, to include these operations and make them subject to our mileage tax. That section covers commercial motor vehicles that are not registered or licensed in this state, and that are transporting property not for hire or resale. The operations of the corporation certainly fall within this section, so far as the section goes. But the operations of the corporation have two additional elements: they are conducted in the regular course of the management and operation of a business, and that business is located in New Mexico. Section 64-30-15, N.M.S.A., 1953 Compilation, grants an exemption to such operations in these terms:

"64-30-15. Exemption from mileage tax of vehicles of public utilities, corporations, companies or individuals used in regular course of business. Nothing in the provisions of this act (64-30-1 to 64-30-18) shall apply to the operation of motor vehicles, combinations of motor vehicles or equipment owned and operated by public utilities, corporations, companies or individuals in the regular course of the management and operation of their business located within the state, when such motor vehicles are not transporting property for hire or resale."

This section applies to motor vehicles registered and licensed in another state because the mileage tax applies only to such vehicles, and not to vehicles registered and licensed in New Mexico. See Opinion of the Attorney General, No. 5940, April 8, 1954.

It might seem that Section 64-30-15 renders Section 64-30-10 (d) meaningless, but we can think of three situations that fall within the latter section, but still do not qualify for the exemption. All three situations concern (1) commercial motor vehicles, (2) owned by an out of state company, (3) not registered or licensed in New Mexico, and (4) not transporting property for hire or resale. Firstly, the case of vehicles entering or leaving the state, but not in the course of the management or operation of any business in this state. This could arise where an out of state seller delivers the goods sold to the buyer in New Mexico. The haul would not be for hire or resale, but it lacks necessary elements to come within the exemption. Secondly, the case of vehicles entering and leaving the state in the regular course of the management of a business, but the business is not located in New Mexico. Thirdly, the case of vehicles entering and leaving the state, but not in the course and management of a business, even though the vehicles are owned by a company having a branch operation in New Mexico. All three situations are taxable under Section 64-30-10 (d), N.M.S.A., 1953 Compilation for failure to meet all the elements of the exemption. But where commercial vehicles not registered or licensed in New Mexico enter or leave the state with property not transported for hire or resale, and such trips are made in the regular course of the management and operation of a business located within the state, they are exempt from our mileage tax. The corporation's operations have all these elements, and are exempt.

The argument has been presented to this office that the exemption granted by Section 64-30-15, N.M.S.A., 1953 Compilation applies only to trips performed wholly within New Mexico, and not to trips in interstate commerce. We are unable to agree. The entire article of our statutes relating to mileage taxes concerns interstate commerce. Unless the state line is crossed, no question of taxation or exemption arises. Moreover, Section 64-30-15 says only that the business must be located in New Mexico, and the portions dealing {\*541} with the operation of motor vehicles in the regular course of the management and operation of such business is unqualified. We are of the opinion that this section necessarily contemplates trips made in inter-state commerce, so long as those trips are made in the regular course of the management and operation of a business, and that business is located within New Mexico.

We hold, therefore, that an out of state company with a branch operation in New Mexico, whose commercial vehicles enter and leave the state in the regular course of

the management and operation of the business located within this state, which vehicles are not registered or licensed in New Mexico, and do not transport persons for hire ,or property for hire or resale, is exempt from the payment of the New Mexico mileage tax imposed by Section 64-30-12, N.M.S.A., 1953 Compilation.

By: Norman S. Thayer

Assistant Attorney General