

Opinion No. 67-135

November 15, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: F. A. Vigil Commissioner Bureau of Revenue State of New Mexico Santa Fe, New Mexico

QUESTION

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X, an intrastate carrier, transports tangible personal property for Y to Y's customer Z. X bills Y for the freight. Y bills Z for the freight as well as for its product. May X deduct receipts from the sale of its service to Y in the computation of its gross receipts tax?

CONCLUSION

Yes.

OPINION

{*216} ANALYSIS

The gross receipts tax is imposed at a rate of 3% of gross receipts on any person engaging in business in New Mexico. Section 72-16A-4A, N.M.S.A., 1953 Compilation (1967 P.S.). Gross receipts {*217} include the total amount of money or the value of other consideration received from performing services in New Mexico. Section 72-16A-3E, N.M.S.A., 1953 Compilation (1967 P.S.). The term "service" is defined to mean "all activities engaged in for other persons for a consideration, which activities involve primarily the performance of a service as distinguished from selling property." Section 72-16A-3J, N.M.S.A., 1953 Compilation (1967 P.S.). The intrastate carrier is clearly rendering a service and therefore receives "gross receipts."

Section 72-16A-12, N.M.S.A., 1953 Compilation (1967 P.S.) lists those receipts which are exempt from the gross receipts tax. None of the exemptions listed in Section 72-16A-12, supra, are applicable to the intrastate carrier.

Section 72-16A-14, N.M.S.A., 1953 Compilation (1967 P.S.) lists receipts which may be deducted from gross receipts in computing the gross receipts tax due. Section 72-16A-14D, supra provides in part that:

Receipts from selling a service for resale may be deducted from gross receipts if:

(1) the sale is made to a person who delivers a nontaxable transaction certificate to the seller,

(2) the value of the particular service is stated separately in the buyer's charge for the subsequent sale of the service,

(3) the subsequent sale of the service is a transaction taxable under the gross receipts tax, and

(4) the subsequent sale is in the ordinary course of business.

It is our opinion that the intrastate carrier may deduct receipts received from performing its service for Y from its gross receipts in computing the gross receipts tax due, provided the conditions of Section 72-16A-14D, *supra* are performed.

By: Edward R. Pearson

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