

Opinion No. 54-5905

February 19, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: State Corporation Commission Motor Transportation Department State Capitol Building Santa Fe, New Mexico

{*344} You have requested an opinion upon two questions as follows:

(1) Are interstate motor carriers registered with the Corporation Commission of New Mexico required to report all miles traveled within the {*345} State of New Mexico to the Bureau of Revenue of this State regardless of whether or not such a mileage may be exempt from payment of mileage tax as assessed under Laws 1945, Ch. 85, Section 1, (§ 68-1346, N.M.S.A., 1941 Comp., as amended) by reason of a reciprocity agreement.

(2) May interstate motor carriers registered with the Corporation Commission of New Mexico deduct from amounts due under the mileage tax assessed under Laws 1945, Ch. 85 Section 1 (§ 68-1346, N.M.S.A., 1941 Comp., as amended) the amounts paid to the Ports of Entry under the mileage tax assessed by Laws 1943, Ch. 125, Section 12 (§ 68-1531, N.M.S.A., 1941 Comp.).

In answer to the first question, it is the opinion of this office that regardless of whether the Reciprocity Commission of New Mexico as set up under Laws 1947, Ch. 56, Section 1 et seq.: as amended by Laws 1949, Ch. 163, Section 1 (§ 68-249 et seq., N.M.S.A., 1941 Comp., as amended) has entered into a compact exempting non-residents of this State, whose motor vehicles, trailers or semi-trailers are properly registered or licensed in a state or territory of the United States, from the payment of license fees, registration fees, permit or other motor vehicle fees or taxes or compensation for the unusual use of the highways, or the display of registration numbers, compensation permits or other numbers or permits on motor vehicles, trailers, semi-trailers, such non-residents are still required to report all miles traveled in the State of New Mexico to the State Corporation Commission of New Mexico.

It is apparent that the State Corporation Commission of New Mexico can condone the practice of allowing such reports to be made to the Bureau of Revenue in conjunction with the administration and collection of the mileage tax assessed under Laws 1945, Ch. 85, Section 1 (§ 68-1346, N.M.S.A., 1941 Comp., as amended), but if the Commission so required, which has not been the case, this information could be separately required by the Corporation Commission over and above that information provided to the Bureau of Revenue under their authority to administer and collect the mileage tax granted them under Laws 1937, Ch. 40, Sections 1 and 2, (§ 68-1347, 48, N.M.S.A., 1941 Comp.).

The following statute, Laws 1933, Ch. 154, Section 1, (§ 68-1351, N.M.S.A., 1941 Comp.) requires **all** carriers subject to the Motor Carriers Act to keep daily records upon their vehicles being used upon the highways of this State. This statute further requires such carriers to certify under oath to the Commission summaries of these daily records once a month. The levy and collection of mileage tax assessed under Section 68-1346, N.M.S.A., 1941 Comp., as amended, (cited above) was originally a duty of the Corporation Commission, but the power to transfer the administration and collection of this tax to the Bureau of Revenue was granted to the Governor under Section 68-1347, N.M.S.A., 1941 Comp., (cited above). The power to transfer the administration and collection of the tax specifically excludes the transfer of final or annual and other reports, tariffs, schedules and other data.

In answer to your second question of whether interstate motor carriers registered with the Corporation Commission of New Mexico can deduct mileage tax paid at the Port of Entry under Laws 1943, Ch. 125, Section 12 (§ 68-1531, N.M.S.A., 1941 Comp., as amended) from mileage ~~{*346}~~ tax due and payable under Laws 1945, Ch. 85, Section 1 (§ 68-1346, N.M.S.A., 1941 Comp., as amended), it is the opinion of this office that such deduction is not permitted. It appears that the Legislature first levied a mileage tax upon motor carriers using the highways for hire in 1933 which appears as Laws 1933, Ch. 154, Section 3 (§ 68-1346, N.M.S.A., 1941 Comp., as amended). The original act was amended in 1937 and 1945, but the character and effect of the tax upon those carriers specified therein remains the same.

It is apparent from reading of the statute that this tax is a "third structure" tax levied for the use of the highways and is in addition to required license fees and all other taxes. In contrast to this aforesaid mileage tax, the Legislature in 1939 by Laws 1939, Ch. 73, Section 14 (§ 68-1513, N.M.S.A., 1941 Comp.) created another mileage tax, for the purpose of procuring revenue for reconstruction of public highways, to be imposed specifically upon both private and public carriers not registered or licensed in this State. It would appear apparent that this tax was a tax in lieu of license plates and would fall in the classification of a "second structure" motor vehicle tax. This mileage tax in lieu of license plates was repealed by Laws 1943, Ch. 125, Section 19 and in its place was enacted a tax quite similar to its predecessor. Laws 1953, Ch. 125, Section 12 (§ 68-1531, N.M.S.A., 1941 Comp., as amended). Both mileage taxes provide that, after payment for the administration of the act, the balances are to be transferred to the General Road Fund of the State of New Mexico. Laws 1943, Ch. 25, Section 17, (§ 68-1535, N.M.S.A., 1941 Comp., as amended), and Laws 1935, Ch. 153, Section 44, as amended (§ 68-1354, N.M.S.A., 1941 Comp., as amended).

It is therefore the opinion of this office that the two taxes created by the Legislature are separate and distinct and apply under the conditions stated by the Legislature. Interstate motor carriers registered with the Corporation Commission are required under the Corporation Commission mileage tax to report and pay the sum indicated therein for every mile traveled in this State, with the exception of petroleum haulers who are obligated to pay only when loaded. If such motor carriers appear at the Ports of Entry and are not licensed or registered in the State of New Mexico, and do not have licenses

or registration permits from States having valid reciprocity agreements with this State, such vehicles would be subject to the additional levy and assessment by the Bureau of Courtesy and information under the mileage tax stated above under the Bureau's direct supervision.

We trust this is of some assistance to you in this matter.

By: William J. Torrington

Assist. Attorney General