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Robert R. Corbin

June 18, 1982

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**ARIZONA ATTORNEY GENERAL**

INTERAGENCY  
Mr. Juan Martin, Jr.  
Assistant Director,  
Motor Vehicle Division  
Arizona Department of Transportation  
1801 W. Jefferson Street  
Phoenix, Arizona 85007

Re: Opinion Request I82-066 (R82-085)

Dear Mr. Martin:

You have requested a legal opinion from this office relating to an interpretation of A.R.S. § 28-1599.05.B<sup>1</sup>, which becomes effective on July 1, 1982. Specifically, your question inquires whether that provision applies to non-commercial motor vehicles that are not engaged in commercial activities and thus not subject to the commercial vehicle weight fee schedule of A.R.S. § 28-206.A and, if so, whether motor vehicles and lightweight motor vehicles owned or operated by the State or other political subdivisions engaged in non-commercial activities will be subject to the new tax. We think the provision does not apply to non-commercial vehicles engaged in non-commercial activities so that vehicles owned or operated by the State or political subdivisions are not subject to the tax.

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1. The conclusions which are reached herein with respect to motor vehicles (i.e., those vehicles weighing in excess of 26,000 pounds gross weight) apply equally to "lightweight motor vehicles" (i.e., those vehicles weighing between 12,001 and 26,000 pounds gross weight under A.R.S. § 28-1599) taxed under A.R.S. § 28-1599.05.C.

Mr. Juan Martin, Jr.  
June 18, 1982  
Page 2

The newly enacted A.R.S. § 28-1599.05.B. may be very broadly construed. It provides, in pertinent part:

There is imposed against each motor vehicle of a licensed motor carrier a motor carrier tax based on its weight pursuant to § 28-206 and the miles traveled on the public highways within this state.

A.R.S. § 28-206 specifies that the fee assessed under the provision applies to certain vehicles "designed, used or maintained primarily for the transportation of passengers for compensation or for transportation of property...." The question, then, is whether the reference to A.R.S. § 28-206, which appears in A.R.S. § 28-1599.05.B, is intended to limit the scope of applicability of the latter provision. We think the reference to A.R.S. § 28-206 limits the applicability of A.R.S. § 28-1599.05.B.

When a taxing statute is ambiguous, under principles of statutory construction, the doubt will be resolved in favor of concluding that the tax does not apply. Ebasco Services, Inc. v. Arizona State Tax Commission, 105 Ariz. 94, 459 P.2d 719 (1969); Alvord v. State Tax Commission, 69 Ariz. 287, 213 P.2d 363 (1950). A.R.S. § 28-206 applies to commercial transportation activities<sup>2</sup>. We cannot say, in the absence of an indication of specific legislative intent, that the Legislature intended to impose a tax on a new class of vehicles pursuant to A.R.S. § 28-1599.05.B, in light of the reference to A.R.S. § 28-206 in that provision. Moreover, the Legislature clearly has exempted governmental units from the provisions of A.R.S. § 28-206.

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2. The title or heading of A.R.S. § 28-206 states that the statute concerns "[g]ross weight fees on commercial motor vehicles." While headings to sections do not constitute part of the law (A.R.S. § 1-212), in determining the extent and operation of an act, a court must properly consider not only the words of the statute, but the title of the statute as well. In re Twenty-One Slot Machines, 72 Ariz. 408, 236 P.2d 733 (1951); State v. Dixon, 127 Ariz. 554, 622 P.2d 501 (App. 1980).

Mr. Juan Martin, Jr.  
June 18, 1982  
Page 3

A.R.S. § 28-207.E. provides:

A vehicle owned and operated by a foreign government, a consul or other official representative of a foreign government, by the United States, by a state or political subdivision of a state or by an Indian tribal government is exempt from the weight fees provided by § 28-206.

The Legislature did not amend this provision when it enacted A.R.S. § 28-1599.05.B. This provides additional support for the idea that the Legislature did not intend to alter the class of vehicles subject to taxation.

Furthermore, under the prior motor carrier tax imposed pursuant to A.R.S. § 40-641 (which tax is repealed on the same date that the new motor carrier tax goes into effect, July 1, 1982), the Arizona Supreme Court held that the purpose of the tax is to collect revenues for the maintenance of state highways from persons who enter into business arrangements which look directly to the inordinate use of the public highways to realize pecuniary benefits. Campbell v. Commonwealth Plan, Inc., 101 Ariz. 554, 422 P.2d 118 (1966). This reasoning, carried forward, lends additional support to the conclusion that it is commercial, business transportation activities that have pecuniary gain as their objective, rather than governmental operations, that the Legislature intended to tax.

Accordingly, we think that A.R.S. § 28-1599.05.B does not apply to non-commercial vehicles not engaged in commercial compensated transportation activities subject to the gross weight fees of A.R.S. § 28-206.<sup>3</sup> However, we finally note

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3. With respect to the operation of urban mass transportation system motor vehicles, counties, cities and towns and contractors furnishing transportation services solely at the direction of and in accordance with a system adopted by the governing body of such county, city or town will not be subject to the provisions of Title 28, Chapter 9, Article 6, A.R.S., including A.R.S. § 28-1599.05. See A.R.S. § 40-1152, as amended Laws 1981, Ch. 207, § 10.

Mr. Juan Martin, Jr.  
June 18, 1982  
Page 4

that commercial operations of vehicles operating under special permits (such as "single trip registration permits" under A.R.S. § 28-501.01) and other similar activities will nonetheless be subject to the tax imposed under A.R.S. § 28-1599.05.B.

Sincerely,

*Bob Corbin*

BOB CORBIN  
Attorney General