

CALIFORNIA JURISPRUDENCE

SECOND EDITION

Volume 34

VII. LICENSE TAX

A. GENERALLY

§ 47. In General

licensee.¹⁶ The license is not transferable or assignable.¹⁷ It may be suspended or revoked.¹⁸ Records open to inspection must be kept by the broker.¹⁹ And fines and penalties, including imprisonment, are prescribed for violations.²⁰

VIII. LICENSE TAX

A. GENERALLY

§ 47. **In General.**—The Motor Vehicle Transportation License Tax Act¹ imposes on transporters of persons or property for compensation a tax of 3 per cent of the gross receipts from their operations.² This tax is a charge for the use of the highways and a compensation therefor.³ Its purpose is to provide revenue by which to maintain and repair the public highways.⁴ It is designed to secure a fair return to the state for the use of its public highways, not only from carriers both common and private, but also from a larger class of persons

16. Pub U C §§ 4838-4840.

17. Pub U C § 4841.

18. Grounds for suspension or revocation are: (1) licensee not fit and proper person; (2) engaging in false advertising or false representation; or (3) licensee has sold or offered transportation by unlicensed carrier or one violating law. Pub U C § 4872.

19. Pub U C § 4874.

20. Pub U C §§ 4879, 4880.

The burden of proof is on one charged with acting as a motor transportation broker without a license to prove that he is properly licensed, or that the carrier he represents is not within the purview of the act. Pub U C § 4877.

1. Rev & Tax C §§ 9601 et seq.

2. Rev & Tax C § 9651.

The fact that the in lieu tax prior to 1935 and the tax under the act of 1933 overlapped during the first 6 months of 1935 is no valid objection to the constitutionality of either. *Valley Motor Lines, Inc. v Riley* 23 CA2d 208, 73 P2d 288. For similar interpretation of previous statutes, see *Los Angeles & West Side Transp. Co. v Superior Court* 211 C 411, 295 P 837; *People v Borderland Express Co.* 218 C 680, 24 P2d 823.

Anno: Constitutionality of excise tax on motor carriers, 75 ALR 13.

3. *Valley Motor Lines, Inc. v Riley* 23 CA2d 208, 73 P2d 288.

4. *Robertson v Johnson* 55 CA2d 610, 131 P2d 388.

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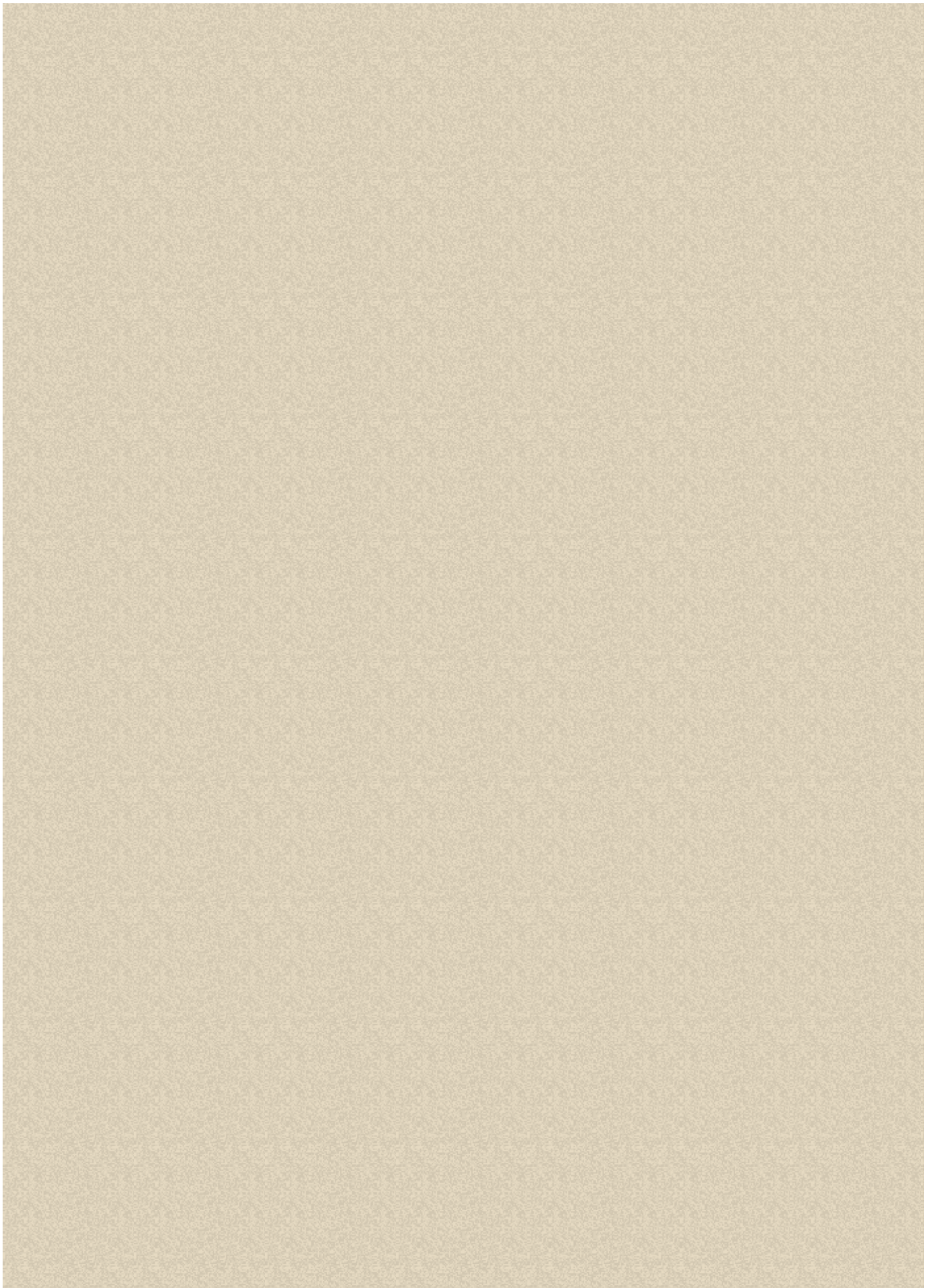
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5. *Bush, In* 511.

6. §§ 2-44,

7. *Bush, In* 511.

8. For hist former motor tax legislation 208 C 359, 2 & West Side



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who fairly answer to the description of "operator" as defined
in the act as taxable and who receive compensation either
directly or indirectly from the use of the public highways, on
the principle that it is just and fair that those who receive
compensation from the use of the public highways should bear
a proportionate share of the burden of maintenance.⁵ The
application of the act should be distinguished, therefore, from
the regulatory statutes,⁶ which deal with transportation of
property for compensation or hire as a business.⁷

Although different from earlier taxation of the same type,
which distinguished between common and private carriers,
and as to the former imposed a property tax which relieved
them of payment of all other taxes,⁸ the present motor vehicle
transportation license tax may also be considered as in the
nature of an in lieu tax, though it is not an all-purpose tax
and though ad valorem taxes are assessable.⁹

§ 48. Relation to Municipal Taxation.—No city may
assess or collect an excise or license tax on any motor vehicle
carrier which is subject to the jurisdiction of the public utili-
ties commission when the delivery of merchandise by such
carrier in the city is occasional and incidental to business con-
ducted elsewhere.¹⁰ Thus, a city may not tax a carrier simply
because its trucks pass through the city, nor may it tax where
it maintains no place of business in the city and only makes
occasional deliveries there.¹¹ But where the carrier makes
regular and continuous deliveries in a city that is the terminus

5. Bush, In re 6 C2d 43, 56 P2d 511.

6. §§ 2-44, supra.

7. Bush, In re 6 C2d 43, 56 P2d 511.

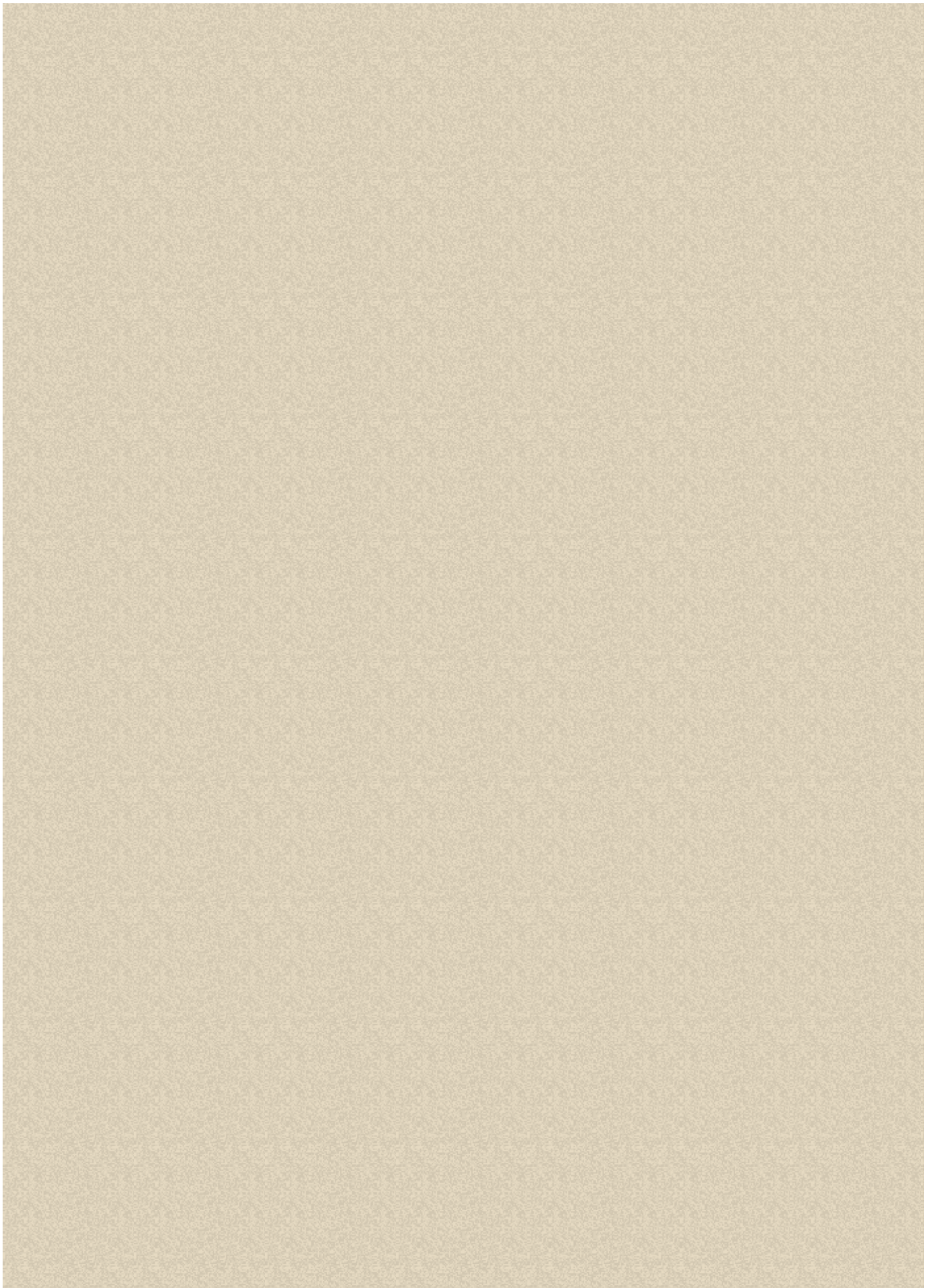
8. For history and discussion of
former motor vehicle transportation
tax legislation, see Alward v Johnson
208 C 359, 281 P 389; Los Angeles
& West Side Transp. Co. v Superior

Court 211 C 411, 295 P 837; People
v Duntley 217 C 150, 17 P 715;
Sutherland v San Diego Elec. Ry.
Co. 139 CA 535, 34 P2d 180.

9. Bekins Van Lines v Johnson 21
C2d 135, 130 P2d 421.

10. Pub U C § 4302.

11. Security Truck Line v Mon-
terey 117 CA2d 441, 256 P2d 366,
257 P2d 755.



for its hauls, it is doing business in the city sufficient to empower its taxation under a proper, nondiscriminatory ordinance.¹²

**B. ON WHOM TAX IMPOSED;
ACTIVITIES TAXABLE**

§ 49. In General.—The Revenue and Taxation Code provides that the motor vehicle transportation license tax is imposed on "operators," in the amount of a percentage of their "gross receipts" from "operations."¹³

§ 50. Operator.—The motor vehicle transportation license tax is not limited to carriers or those engaged in the regular business of transportation of persons and property, but includes in addition other transportation on the public highways for hire or compensation, directly or indirectly.¹⁴ This is indicated by the use of the term "operator,"¹⁵ defined as "any person engaging in the transportation of persons or property for hire or compensation by or upon a motor vehicle upon any public highway in this state, either directly or indirectly."¹⁶ The very fact that the act expressly defines an

12. *Security Truck Line v Monterey* 117 CA2d 441, 256 P2d 366, 257 P2d 755 (city ordinance imposing on fish-hauling vehicles license tax based not on amount of deliveries or tonnage carried, but on number of trucks making deliveries, is arbitrary and discriminatory). Exemption allowed where city imposes gross receipts tax or license fee on passenger carrier operations partly within and partly without city, § 54, *infra*.

13. Rev & Tax C § 9651.

14. *Bush, In re* 6 C2d 43, 56 P2d 511.

15. *Bush, In re* 6 C2d 43, 56 P2d 511.

16. Rev & Tax C § 9603. And see, for pertinent rulings of board of equalization, Adm C tit 18 §§ 1401 (definition of "public highway"), 1402 (definition of "operations upon the highways"), 1419 (regulation governing transporters of materials in connection with highway construction, repair, and maintenance).

As defined in an earlier statute, "operator" included all persons "who operate motor vehicles upon any public highway in this state and

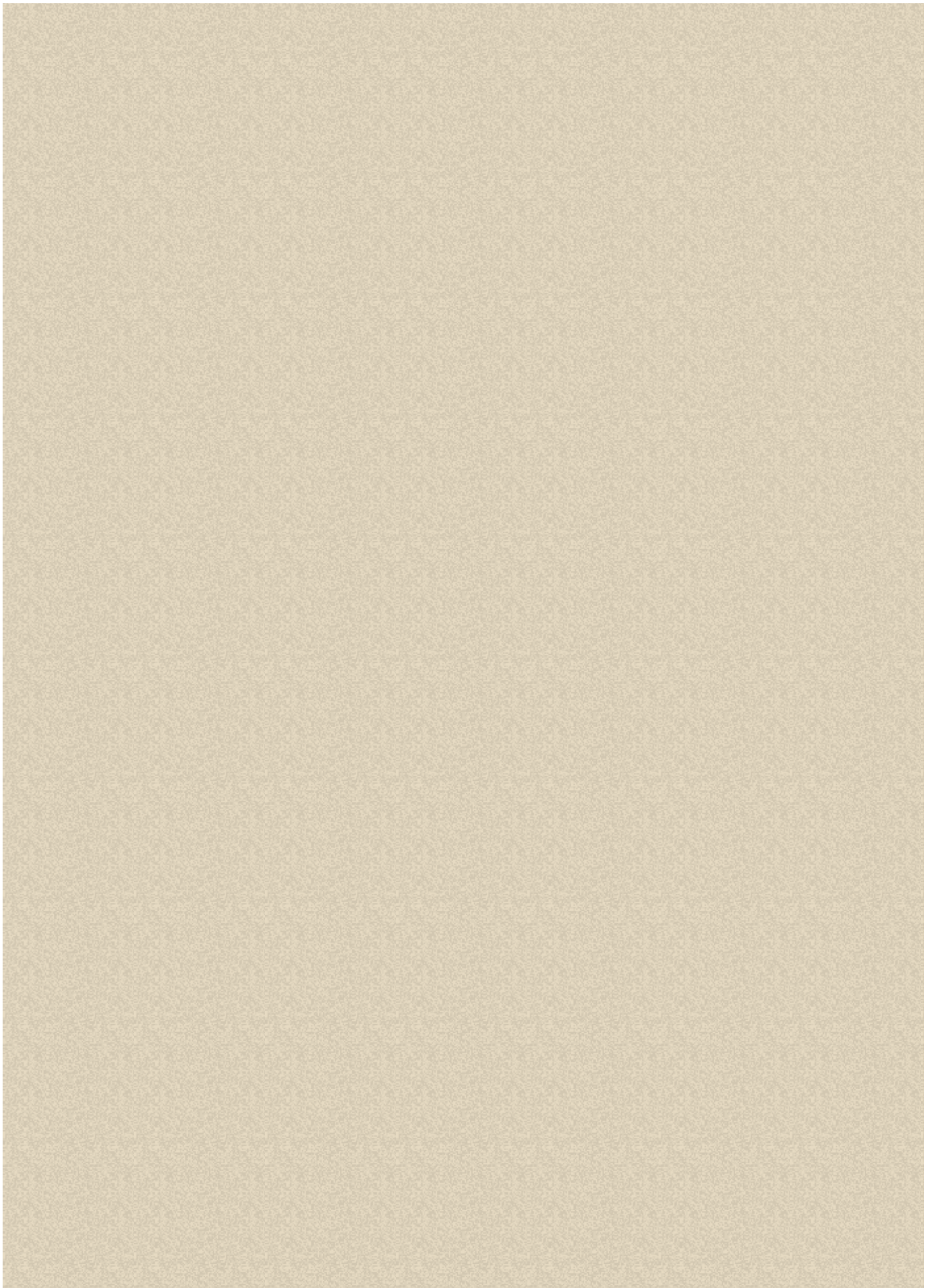
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operator as one who operates a motor vehicle for compensa-
tion, either directly or indirectly, supports the conclusion that
the act was intended to have a wider application than to car-
riers alone.¹⁷ Accordingly, one who transports goods for sale
and adds a transportation charge to his selling price is trans-
porting those goods for compensation, at least indirectly.¹⁸
Also included in the definition of operator is any person who
for compensation furnishes a motor vehicle for the transpor-
tation of persons or property under a lease or rental agree-
ment, in certain circumstances.¹⁹

§ 51. Gross Receipts.—"Gross receipts" is defined by the
Revenue and Taxation Code to include all receipts from trans-
portation operations entirely within the state and a proportion,
based on the proportion of the mileage within the state to the
entire mileage over which such operations extend, of the re-
ceipts from operations passing through, into, or out of the
state, or partly within and partly without the state.²⁰ This
provision was given a broad interpretation, at a time when the
statutory definition of "gross receipts" referred to all receipts
"from operation of motor vehicles." It has since been
amended to include all receipts from "transportation opera-
tions."²¹ Thus, it was said that the provisions of the license
tax act are not ambiguous as to what constitutes gross re-

thereby engage in the transportation
of persons or property for hire or
compensation, either directly or in-
directly." This language was said to
be clear, and contemporaneous con-
struction could not be looked to.
Consolidated Rock Products Co. v
State 57 CA2d 959, 135 P2d 699.

17. Bush, In re 6 C2d 43, 56 P2d
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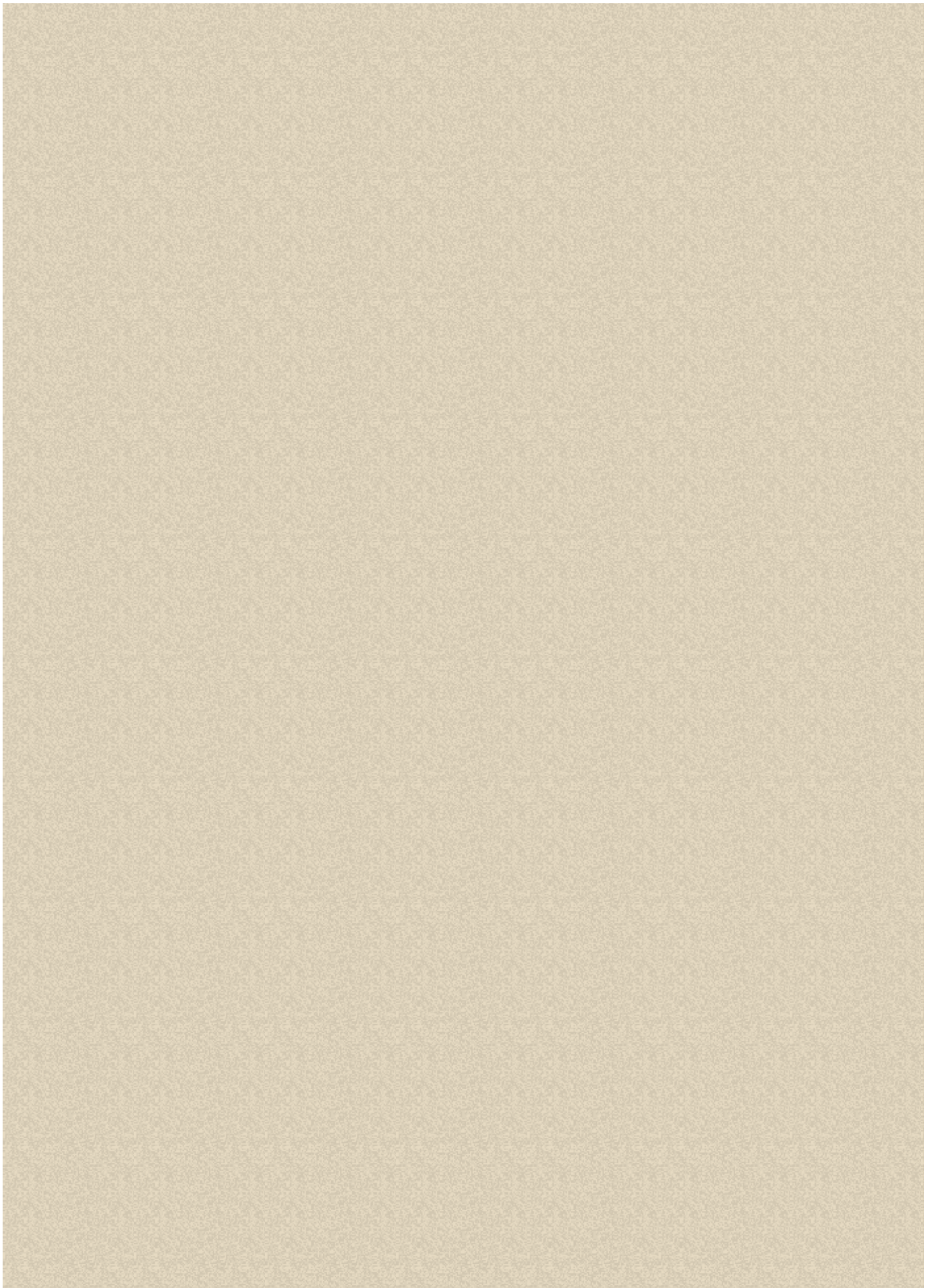
18. Consolidated Rock Products
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699. Distinction between addition

to selling price and charge specified
to be for transportation of goods,
§ 53, infra.

19. Rev & Tax C § 9603 subd
(b). See also Adm C tit 18 §§ 1462
(contracting operator employing
subcontractors), 1482 (surrendered
transportation and joint operations).

20. Rev & Tax C § 9606. For
regulations of state board of equali-
zation as to gross receipts, see Adm
C tit 18 § 1403.

1. Statutes 1953 ch 1397 § 2.



ceipts, so that all receipts not specifically excluded are to be included,² and that the term "gross receipts from operation" should be taken in its plain sense, without limitation or deduction beyond what is contained in the statutory definition.³ Under this broad interpretation, it has been held that gross receipts are not restricted to receipts from operations derived from the actual use of vehicles on the public streets and highways, but embrace as well the inseparable preparatory activities of loading and unloading between sidewalk and house, even if more than 50 per cent of a company's gross receipts might be derived from such activities.⁴ An operator has also been held subject to the tax on the portion of compensation received for services in delivering his products, and the fact that it may be difficult to ascertain the exact portion of income which is directly or indirectly compensatory for transportation operations furnishes no excuse for noncompliance with the statute.⁵ However, charges for labor furnished for the purpose of packing and crating goods, or warehousing, have been held properly excluded.⁶ In any event, there is a presumption that gross receipts from all operations of operators are subject to the motor vehicle transportation license tax, until the contrary is established.⁷

The application of the motor vehicle transportation license tax provisions to operations incidentally connected with the business of transportation is a proper exercise of the taxing

2. *Pacific Greyhound Lines v Johnson* 54 CA2d 297, 129 P2d 32. Statutory exclusions, §§ 54, 56, 59, *infra*.

3. *Robertson v Johnson* 55 CA2d 610, 131 P2d 388.

Gross receipts are not the same as gross earnings. *Pacific Greyhound Lines v Johnson* 54 CA2d 297, 129 P2d 32.

4. *Bekins Van Lines v Johnson* 21 C2d 135, 130 P2d 421.

C.O.D. collection fees taxable, 3 Ops Atty Gen 1; Charges for unloading and segregating freight prior to delivery includable as gross receipts, 23 Ops Atty Gen 221.

5. *Bush*, In re 6 C2d 43, 56 P2d 511.

6. *Bekins Van Lines v Johnson* 21 C2d 135, 130 P2d 421. Other exclusions and inclusions, §§ 52-59, *infra*.

7. Rev & Tax C § 9652.

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§ 52. exemptions granted by the definition, ample, declared express of commerce

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§ 53. cludes from the transport operated transport

8. *Bekins* C2d 135,

9. *Bush* 511.

10. § 5

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CONTINUE TO "BLASHFIELD'S AUTOMOBILE LAW AND PRACTICE"  [HERE](#)