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CORPORATION — OPERATION TRUCKS — CROSS PUBLIC HIGHWAYS AT RIGHT ANGLES WHEN PASSING ONE PART OF LAND TO ANOTHER — CORPORATION OWNS ABUTTING LAND, BOTH SIDES PUBLIC HIGHWAY OUTSIDE OF MUNICIPALITY — NOT REQUIRED TO PAY MOTOR VEHICLE LICENSE TAX — SECTION 6291 G.C.

SYLLABUS:

A corporation which owns the abutting land on both sides of a public highway lying outside of a municipality is not required to pay the motor vehicle tax levied upon the operation of motor vehicles under the provisions of section 6291, General Code, for the operation of trucks used by it in connection with its business, where such operation consists merely of crossing such public highway at right angles, when passing from one part of its land to another.

Columbus, Ohio, June 10, 1942.

Hon. Cylon W. Wallace, Registrar, Bureau of Motor Vehicles,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

> "With reference to the provisions of Section 6291, General Code, and relating sections, will you please give us your formal opinion as to whether or not license plate registration is required for a truck owned by a coal company which is used only to cross a public highway at a right angle at a point outside of a municipality, the adjacent land on both sides of such public highway being owned by the coal company?"

Section 6291 of the General Code, which provides for the levy of an annual license tax on the operation of motor vehicles, reads in part as follows:

> "An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles, constructing, maintaining and repairing public roads, highways and streets, and maintaining and repairing bridges and viaducts, paying the counties' proportion of the cost and

> expenses of co-operating with the department of highways in the improvement and construction of state highways, paying the counties' portion of the compensation, damages, cost and expenses of constructing, reconstructing, improving, maintaining and repairing roads, and for the purpose of enforcing and paying the expenses of administering the law to provide reimbursement for hospitals on account of the expenses for the care of indigent persons injured in motor vehicle accidents, and, until and including April 15, 1941, for the purpose of supplementing revenues available for paying the salaries and wages of traffic police officers in cities."

From the above section, it will be noted that the tax laid thereunder is upon the operation of motor vehicles on the public highways of this state. The tax is not on motor vehicles as such, but is a tax on the privilege of using motor vehicles for transportation on the public highways.

With respect to the nature of the tax levied by the above statute, it was stated in the case of Saviers, et al. v. Smith, Secretary of state, 101 O. S. 132 (page 135):

> "It is perfectly apparent that this statute is a tax or revenue measure. The taxes are raised for a specific object, namely, the maintenance and repair of the public roads. The tax is levied on the privilege of operating a motor vehicle on the public highways. The provisions in the law with reference to its administration, and with reference to regulation and registration of motor vehicles, are merely incidental police regulations which do not affect the main object intended."

From the above, it is obvious that, in order to be subject to the motor vehicles registration laws, the owner of a motor vehicle must operate the same on the public highways.

While the General Assembly clearly has authority to prescribe a license fee or tax for vehicles using the highways of this state, it must be borne in mind that such authority may only be exercised upon the theory that the state has power to exact reasonable compensation for special facilities afforded or special privileges granted.

The special facilities afforded are, of course, the improved highways of the state, and the special privilege granted is the right to operate motor vehicles over such highways. Therefore, if the company in the instant case does not avail itself of the facilities offered by the state and does not exercise the privilege which is taxed, it would not be subject to the payment of the tax.

The highway facilities provided by the state in no way inure to the benefit of the company. Such facilities are not essential to the needs of the company while its trucks are being used in connection with its mine operations. The improved highways of the state contribute nothing to the operation of the trucks in question, and the privilege granted by the state is in no way enjoyed by the company while operating its trucks in the manner described. It would therefore appear that the operation of such trucks is not subject to the incidence of the license tax levied under section 6291, supra.

Moreover, it must be borne in mind that the statute under consideration herein is one levying a tax. It is a general rule that taxing statutes must be strictly construed in favor of the taxpayer and against the state. In keeping with such general rule is the rule that the property or privilege upon which a tax is levied must come fairly and clearly within the language of the taxing act. The language employed in a taxing statute should not be extended by implication beyond its clear import, or so enlarged in its operation as to embrace subjects not specifically named.

In regard thereto, it is stated in the case of Cassidy, et al., v. Ellerhorst, 110 O. S. 535, at page 539:

> "In approaching the interpretation of statutes imposing taxes, it should be recognized at the outset that the rule of strict construction should be followed, and that, where there is ambiguity or doubt as to legislative intent, the doubt should be resolved in favor of the person upon whom the burden of taxation is sought to be imposed, and that language employed in a taxation statute should not be extended by implication beyond its clear import, or to enlarge its operation so as to embrace subjects of taxation not specifically named. This rule has been declared by this court in Gray v. City of Toledo, 80 Ohio St. 445, 448, 89 N.E. 12, and City of Cincinnati v. Connor, 55 Ohio St. 82, 91, 44 N. E. 582; and by the Supreme Court of the United States in Gould v. Gould, 245 U.S. 151, 38 Sup. Ct. 53, 62 L. Ed. 211."

To the same effect is the language contained in the opinion of Marshall, C. J., in the case of Caldwell, et al., v. State, 115 O. S. 458 (pages 461 and 462):

> "This court has several times declared the rule of interpretation of statutes levying taxes; the most recent declaration being found in Cassidy v. Ellerhorst, 110 Ohio St., 535, at page 539 (144 N.E. 252, 42 A.L.R., 372) of the opinion. The rule which has been often declared, and which was followed in that

case, is that, where there is ambiguity or doubt as to the legislative intent, the doubt should be resolved in favor of the person upon whom the burden of taxation is sought to be imposed, and that language employed in a taxation statute should not be extended by implication beyond its clear import, or to enlarge its operation so as to embrace subjects of taxation not specifically named. This rule is so well settled as not to be longer debatable. It is supported both by authority and reason. In the interpretation of a contract the document is construed strictly against the person who prepared it, and favorably to the person who had no voice in the selection of the language. In a statute relating to the rights of citizens, as between themselves, a reasonable rule of interpretation is followed without favor to any of the parties affected by it. But in statutes where the state is involved, on the one part, and the citizen, on the other, by analogy to the same rule of interpretation governing contracts, the Legislature having chosen the language, that language will not be extended by implication beyond its clear import. Thus it is that in a penal statute, or a statute levying a tax, a rule of strictness will be followed as against the sovereign and a rule of favor as toward the citizen. This does not, of course, mean that by a simple showing of ambiguity, or of doubtful language, a taxation statute must fail entirely. The language employed should receive a fair interpretation, but its operation will never be extended by implication to embrace subjects not specifically named."

It has already been pointed out that the statue levies a tax only "upon the operation of motor vehicles on the roads or highways of this state." In view of this, it seems to me that the language of the statute in question would have to be extended beyond the meaning intended for it, if the operation of the trucks herein concerned were included in the levy of the tax.

Significant also is the fact that the company is the owner of the land on both sides of the highway. The portion of the highway involved is not within the limits of a municipality. Therefore, the fee in such portion of the highway is in the company. See Telephone Co. v. Watson Co. 112 O. S. 385, wherein it was held:

"In this state the fee to the country highway is in the abutting owner, and the public has only the right of improvement thereof and uninterrupted travel thereover."

In the opinion of the above case, it is stated:

"The fee to streets within municipalities in Ohio rests in trust in the municipality for street purposes, subject to the abutting owner's rights to ingress and egress, light, and air. On

> the other hand, outside the limits of a municipality, the fee to the land in the rural highway rests in the abutting landowner, subject only to such rights as are incident to and necessary for public passage, in other words, the right of the public to improvement, maintenance and uninterrupted travel; the abutting owner having all right to all uses of the land not inconsistent with such right of improvement and travel."

The use of the highway in the manner described merely constitutes the use of its own property by the company and it does not appear that such use interferes with the free passage of the public on the highway.

In view of the foregoing, you are advised that, in my opinion, a corporation which owns the abutting land on both sides of a public highway lying outside of a municipality is not required to pay the motor vehicle license tax levied upon the operation of motor vehicles under the provisions of section 6291, General Code, for the operation of trucks used by it in connection with its business, where such operation consists merely of crossing such public highway at right angles, when passing from one part of its land to another.

Respectfully,

THOMAS J. HERBERT
Attorney General.