

1533.

MOTOR VEHICLE LICENSE TAX—IF VEHICLE PRIMARILY WELL DRILLING MACHINERY, EXEMPT—IF OCCASIONALLY USED FOR WELL CLEANING, EXEMPT—IF PRIMARILY WELL CLEANING MACHINERY, NOT EXEMPT, EVEN THOUGH OCCASIONALLY USED FOR WELL DRILLING—SEE SECTION 6290 (2) G. C.

SYLLABUS:

If a vehicle is primarily well drilling machinery, it is exempt from the motor vehicle license tax by virtue of Section 6290(2), General Code, even though such vehicle may occasionally be used for well cleaning purposes. However, if it is primarily well cleaning machinery, then it is not exempt from such tax, even though it may occasionally be used for well drilling purposes.

COLUMBUS, OHIO, December 7, 1939.

HON. CYLON W. WALLACE, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR: Your request for my opinion reads as follows:

“With further reference to an informal opinion which you rendered under date of March 21, 1939, concerning the status of ‘well cleaning machinery’ wherein you held that such machinery required license plate registration, will you please give us your further informal opinion as to the status of a machine that is used both for well drilling purposes and well cleaning purposes. Would such a machine require license plate registration?”

Section 6290(2), General Code, reads as follows:

“‘Motor Vehicle’ means any vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except road rollers, traction engines, power shovels and power cranes used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, threshing machinery, hay baling machinery and agricultural tractors and machinery used in the production of horticultural, agricultural and vegetable products.”

By virtue of Section 6291, General Code, all motor vehicles using the public highways are subject to the motor vehicle license tax. The answer to the question you have presented, therefore, depends on whether the

machine in question comes within the definition of "motor vehicles" as contained in Section 6290(2), *supra*.

It will be seen that well drilling machinery is expressly exempted from the statutory definition of "motor vehicles" and consequently, would not be subject to the motor vehicle license tax. However, well cleaning machinery is not exempted and would, therefore, be subject to such tax. You have stated that the vehicle in question is used both for well cleaning and well drilling. In 61 C. J. at page 402, the rule applicable to the instant situation is stated as follows:

"It is the primary as distinguished from an incidental use of the property that determines the question whether it is exempt from taxation * * *."

The general rule is also announced in the case of *People, ex rel. Carson v. Muldoon*, 306 Ill. 234, wherein it is stated in the third branch of the syllabus:

"In determining whether or not property falls within a tax exemption the primary use and not a secondary or incidental use will prevail."

At page 238, the court said:

"The primary use of a school house is for education and an occasional use for a lecture or social affair will not destroy the exemption. Primary use of a church building is public worship and its occasional use for some other purpose or a minor use for social functions will not render it liable to taxation."

Sufficient information has not been presented for me to determine whether the vehicle in question is used primarily for well drilling or well cleaning. If its primary use is for well drilling, then it is exempt from the motor vehicle license tax and the fact that it may incidentally be used for well cleaning does not destroy the exemption. However, if it is primarily a well cleaning machine, it is not exempt from such tax and the fact that it may incidentally be used for well drilling will not make it exempt from the motor vehicle license tax.

It has been suggested that the fact that the machine in question is rarely moved over the public highways or roads would affect the answer to the question you have presented. Section 6291, *General Code*, provides that:

"An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state,
* * *"

There are no exceptions to the provisions of Section 6291, *supra*, and consequently if a motor vehicle is operated on the highways of the state, then it is subject to the license tax. The Legislature has not differentiated between regular and occasional operation of a motor vehicle so far as the motor vehicle license tax is concerned.

In view of the above, I am of the opinion that if a vehicle is primarily well drilling machinery, it is exempt from the motor vehicle license tax by virtue of Section 6290(2), General Code, even though such vehicle may occasionally be used for well cleaning purposes. However, if it is primarily well cleaning machinery, then it is not exempt from such tax, even though it may occasionally be used for well drilling purposes.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1534.

LEASE—OFFICE SPACE, STATE WITH P. R. ENGLAND, FIRST FLOOR, 68 EAST MAIN STREET, ALLIANCE, STARK COUNTY, USE, BUREAU OF UNEMPLOYMENT COMPENSATION.

COLUMBUS, OHIO, December 8, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a certain lease executed to The State of Ohio acting through you as Director of the Department of Public Works for the Bureau of Unemployment Compensation by one P. R. England.

By this lease, which is one for a term commencing on the first day of November, 1939, and ending on the 31st day of December, 1940, and which provides for a stipulated rental of \$700.00 per year, and which sum is made up of a basic rental of \$600.00 per year, payable in quarterly installments of \$150.00 per quarter, there are leased and demised to the State for the use of the Bureau of Unemployment Compensation certain premises in the City of Alliance, Stark County, Ohio, and being known as "first floor of 68 East Main Street," containing approximately 410 square feet of floor space.

Upon examination of this lease I find the same has been properly executed by P. R. England and accepted by the State through you as Director of the Department of Public Works.

Contract encumbrance record No. 181, which accompanies this lease, has been properly executed and the same shows that there are moneys,