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MOTOR VEHICLE — USE, INTRASTATE AND INTERSTATE — OHIO, NEW YORK — OWNED BY OHIO CORPORATION — KEPT IN NEW YORK GARAGE — SUBJECT TO LICENSE TAX — SECTION 6291 ET SEQ. G.C.

SYLLABUS:

Motor vehicles, owned by an Ohio corporation which are kept and garaged in New York and used both for intrastate business in New York and interstate transportation between points in Ohio and New York are subject to the motor vehicle license tax imposed by Section 6291, *et seq., General Code.*

Columbus, Ohio, July 2, 1941.

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

Dear Sir:

This will acknowledge receipt of your recent request for my opinion as follows:

> "An Ohio corporation is engaged in the transporting of freight for hire as a common carrier. It is qualified to do business in the State of New York. It maintains terminals and garages both in Ohio and New York State. Certain of its motor vehicles

are kept and garaged in Ohio and certain other of its motor vehicles are kept and garaged in New York. The latter vehicles are used primarily for intrastate business in New York state but are also used periodically for interstate transportation between points in New York and Ohio.

Are the motor vehicles which are used primarily for intrastate business in New York subject to Ohio license plate registration if the same are operated at times in an interstate capacity between New York and Ohio?"

By virtue of Section 6291, General Code, an annual license tax is levied "upon the operation of motor vehicles on the public roads or highways of this state." Under the provisions of Section 6294, General Code, every owner of a motor vehicle is required to file annually an application for the registration of such motor vehicle, which application shall state inter alia the name, residence and business addresses of the owner and the township, city or village in which such owner resides. Generally speaking, therefore, every owner of a motor vehicle operating the same upon the roads or highways of this state must register such motor vehicle in accordance with Section 6291, et seq., General Code.

Exceptions to this general rule arise by virtue of Sections 6306 and 6306-1, General Code, which provide:

Section 6306, General Code:

"The owner of every motor vehicle which is duly registered in any state, district, country or sovereignty other than the state of Ohio shall be exempt from the foregoing sections of this chapter and the penal statutes relating thereto, provided the owner thereof has complied with the provisions of law in regard to motor vehicles in the state of his residence and complies with such provisions while operating and driving such motor vehicles upon the public roads or highways of this state, and further provided that such provisions of law of such other state make substantially like and equal exemptions to the owners of motor vehicles registered in this state. Reciprocal agreements between this and any other state, district or country necessary in administering the provisions of this section shall be made as provided in sections 6306-1 of the General Code."

Section 6306-1, General Code:

"The Attorney General, the director of highways and a member of the public utilities commission, designated by the commission for that purpose, are hereby authorized and empowered to enter into such reciprocal contracts and agreements

as they may deem proper or expedient with the proper authorities of adjoining states, regulating the use on roads and highways of this state, of trucks and automobiles and any other motor vehicles owned in such adjoining states, and duly licensed under the law thereof.

They are likewise authorized and empowered to confer and advise with the proper officers and legislative bodies of this and other states, and the District of Columbia with a view to promoting and to promote reciprocal agreements under which the registration of vehicles owned in this state, and the licenses of chauffeurs residing in this state, shall be recognized by such other states and federal districts."

The penal section applicable is Section 12618-3, General Code, which provides:

"Whoever, being the owner of a motor vehicle and a resident of this state, operates or drives such motor vehicle upon the highways of this state displaying thereon a distinctive number or identification mark issued by or under the authority of another state without complying with the laws of this state relating to the registration and identification of motor vehicles shall be fined twenty-five dollars and for a subsequent offense shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for sixty days or both."

It is obvious from the foregoing that every motor vehicle owned by an Ohio resident and operated upon the highways of this state must be registered in this state and bear Ohio license plates. Only a motor vehicle owned by a non-resident of this state is exempt from the Ohio motor vehicle tax laws and then only in accordance with the provisions of Sections 6306 and 6306-1, supra.

Your inquiry, therefore, resolves itself into this one question: Are motor vehicles which are kept and garaged in New York, but which are owned by an Ohio corporation and operated on the highways of Ohio in an interstate business, owned by an Ohio resident?

In Fletcher Cyclopedia Corporations, Permanent Edition, Vol. 8, at page 435, it is stated:

"The general rule is well settled that the home, domicile, habitat, citizenship or residence of a corporation is in that jurisdiction by which it was created, although its officers and stockholders may reside elsewhere, and though it may do business in other jurisdictions."

At page 443 of the same work, it is said:

> "Not only is the fact of the citizenship, habitancy and residence of a corporation settled beyond the point of refutation, but the courts, with but few dissenting voices, assent to the proposition, only occasionally attempted to be qualified, that such citizenship, domicile, residence, or habitancy as the case may be, can be only of or in the state or country by which the corporation was created."

Again on page 443, it is stated:

> "Furthermore, as the rule is often stated, a corporation is incapable of passing personally beyond the jurisdiction of the sovereignty which created it. It may not 'migrate' from state to state. It may do business and maintain agencies in another state if its charter permits, and that right is not denied by local law; its officers, directors and stockholders may reside therein; it may be denominated a domestic corporation, be vested with citizenship and be given a local residence by the statutes of such state, yet it continues to be a citizen, inhabitant and resident only of the state by which it was created except so far as the operation of local laws requires that it be regarded as having a local citizenship, habitancy, or residence, as the case may be; wherever it goes for business it carries its charter, as that is the law of its existence, and it must dwell at the place of its creation."

This same rule was announced in the case of Insurance Co. vs. Francis, 11 Wall. (U.S.) 210, wherein it was stated at page 216:

> "The declaration avers that the plaintiff in error (the defendant in the court below) is a corporation created by an act of the legislature of the State of New York, located in Aberdeen, Mississippi, and doing business there under the laws of the state. This, in legal effect, is an averment that the defendant was a citizen of New York, because a corporation can have no legal existence outside of the sovereignty by which it was created. Its place of residence is there, and can be nowhere else. Unlike a natural person, it cannot change its domicile at will, and, although it may be permitted to transact business where its charter does not operate, it cannot on that account acquire a residence there."

In the case of Bank of Augusta vs. Earle, 13 Pet. (U.S.) 519, Chief Justice Taney said that a corporation "must dwell in the place of its creation and cannot migrate to another sovereignty."

In the case of Hammond Beef Co. v. Best, 91 Me. 431, with reference to a situation where an Illinois corporation had a place of business in Portland, Maine, the court said at page 436:

> "If this corporation was ever a citizen of Maine, it was also a citizen of Illinois, at the same time, and therefore a citizen of both states simultaneously and that is a legal impossibility. After some vacillating decisions, it is now generally, if not universally, settled that a corporation is a resident and citizen of the state where it was created and can never so change its residence as to obtain citizenship elsewhere * * * ."

I am not unmindful of the fact that in many cases a foreign corporation doing business within a state has been held to be a resident of such state within the meaning of statutes relating to venue, attachment, etc. However, it must be remembered that in many states, it is required that in order for a foreign corporation to do business therein, such corporation must designate an agent in such state upon whom service of summons, etc. may be made. Obviously, in such cases, such corporation, for the purpose of suit, would be held to have a residence within such state. However, there are no comparable statutes applicable to the instant question.

A somewhat similar question was involved in Opinion No. 1825, Opinions of the Attorney General for the year 1933, Vol. III, page 1703, wherein it was ruled:

> "All motor vehicles operated on the highways of Ohio are subject to the 'motor vehicle license tax' imposed by Sections 6291 et seq., subject to such reciprocal agreements as might be legally entered into by 'the commission' with states other than Ohio, pursuant to the provisions of Section 6306-1, General Code."

In the foregoing opinion the following facts were presented:

> " 'An Ohio corporation located near the Pennsylvania border owns and operates a large fleet of trucks most of which are properly registered in this state. Some of the trucks are registered in Pennsylvania and are not registered in Ohio, although the same are operated on Ohio highways, the contention of the owner being that because the trucks in question are operated most of the time in Pennsylvania and only a comparatively small part of the time on the highways of this state Ohio registration is unnecessary. As a further contention the owner claims that the fact that a "situs," or place of business has been established in Pennsylvania has a direct bearing on the matter and that fact also exempts him from Ohio license plate registration'."

At pages 1704 and 1705, it was stated:

> "The provisions of the Ohio motor vehicle license law, in terms, applies not only to those vehicles used in intrastate enterprises but as well to those used in interstate commerce.
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> You state that the argument has been advanced to you by the taxpayer, that the place of business of the owner of the vehicle is in another state and for that reason the vehicles are not taxable under the Ohio license tax law. While I do find certain provisions in the statutes with reference to the allocation of motor vehicle license funds (Sec. 6309-2, G.C.) in which the place from which operated might be material in determining the allocation or disbursement of the tax funds, yet I have been unable to find any provision in such act which makes the place of business of the owner a determining element in the levy of the license tax on motor vehicles. * * *
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> In your request, you refer to the 'situs' of the motor vehicles in question for the purpose of the imposition of the tax in question. From the manner in which the word is used, it would appear that the taxpayer is confused as to the meaning of the word. 'Situs' when used in connection with the law of property taxation, means the place or location at which the property is legally required to be listed for taxation purposes."

From the foregoing it is apparent that the corporation here involved is a resident of Ohio and, therefore, no provisions or agreements as to exemption from registration can apply. All such provisions and agreements refer only to non-residents of Ohio.

I am not unmindful of the fact that the State of New York requires no registration in New York of motor vehicles owned by a New York corporation when such motor vehicles are garaged and licensed in Ohio. This, however, is true solely because of the provisions of Section 51 of the New York Vehicle and Traffic Law, which provides in part:

> "A corporation organized under the laws of this state having a place of business in a foreign country, state, territory or federal district and owning a motor vehicle, motor cycle or trailer used in connection with and garaged at such place of business which it is compelled to register in such foreign jurisdiction shall be deemed a resident of such foreign jurisdiction and a non-resident of this state within the meaning of this section for the purpose of enjoying the privilege of this section with respect to such vehicle."

Thus by legislative enactment the State of New York has adopted a different construction of the word "residence" than has been adopted generally by the courts as heretofore quoted. Obviously, if a provision similar to the New York statute was in the Ohio law my answer to your question would be different from the one here announced. However, in the absence of such a provision the pronouncement of the courts relative to the residence of a corporation is controlling.

Since the rendition of the 1933 opinion of the Attorney General, supra, the Legislature has convened on four different occassions but has not deemed it proper to amend the law. Such a provision can not be placed in the Ohio law by construction, but only by legislative enactment.

I believe it pertinent to point out that although no formal agreement has been entered into by the states of New York and Ohio under the provisions of Section 6306-1, General Code, yet by an exchange of correspondence, certain practices have been agreed upon and have been in effect since 1937. As a result of that correspondence full reciprocity is extended, subject to certain conditions to residents of each state by the other state. However, it was stipulated that the term "residence" should mean, in the case of a corporation, the state wherein such corporation was created. This construction is in conformity to the great weight of authority and the conclusion reached in this opinion.

In view of the foregoing, I am of the opinion that motor vehicles, owned by an Ohio corporation which are kept and garaged in New York and used both for intrastate business in New York and interstate transportation between points in Ohio and New York are subject to the motor vehicle license tax imposed by Section 6291, et seq., General Code.

Respectfully,

THOMAS J. HERBERT,

Attorney General.