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LIME SPREADERS—ATTACHED TO TRUCK CHASSIS—NOT "INHERENTLY MOTOR VEHICLE EQUIPMENT"—WEIGHT DETERMINATION—NOT ENTITLED TO EXEMPTION FROM PERSONAL PROPERTY TAX—SECTIONS 4503.04, 4503.08 RC.

SYLLABUS:

Lime spreaders attached to a truck chassis are not "inherently motor vehicle equipment" for purposes of weight determination under Section 4503.08, Revised Code, and therefore are not entitled to exemption from personal property tax by the provisions of Section 4503.04, Revised Code.

Columbus, Ohio, October 13, 1954

Hon. Stanley J. Bowers, Tax Commissioner, Department of Taxation
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"You are respectfully requested to give this department your official opinion relative to the following question which has arisen under the administration of the personal property tax laws of this state. The factual situation is as follows:

"The taxpayer who is required to file a personal property tax return has been informed by the Bureau of Motor Vehicles that lime spreaders which are attached to his trucks which he uses in carrying on his business must be included in the total weight of his motor vehicles for the purpose of determining his motor vehicle license fee. In the notification to the taxpayer, the Bureau of Motor Vehicles cited two opinions of the Attorney General. Both are found in Opinions of the Attorney General of 1940, the first being No. 2152, dated April 6, 1940 and the other is No. 3087, dated December 6, 1940.

"It has consistently been the position of this department since the case of Tejan v. Lutz, 31 N.P. (N.S.) 473, that only such equipment as enables the motor vehicle to accomplish its functions of transporting persons and property is part of the vehicle and exempt from the personal property tax under the provisions of Revised Code Section 4503.04. Seemingly, this position was strengthened by the Ohio Supreme Court's decision in the case of Taxicabs of Cincinnati v. Peck, 161 O.S. 508, wherein it was held that meters and radios were not "inherently motor vehicle equipment" under the provisions of Revised Code Section 4503.08, and by an opinion rendered by your predecessor found in Opinions of the Attorney General of 1942, No. 4964, dated March 27, 1942.

"Therefore, your opinion is requested as to whether a lime spreader attached to a truck is inherently motor vehicle equipment or personal property taxable as such under the applicable provisions of the Ohio law."

The question you have presented in your request resolves itself into a determination of whether lime spreaders attached to trucks are inherently motor vehicle equipment and included in the determination of the weight of

motor vehicles under the provisions of Section 4503.08, Revised Code, and therefore exempt from personal property tax by Section 4503.04, Revised Code, or whether such lime spreaders are to be excluded from the weight determination and taxed as personal property.

A lime spreader consists of a V-shaped hopper through the bottom of which runs a worm screw or auger to carry the lime from the hopper and at the end of the auger is a fan arrangement which blows the lime through the spreading apparatus. The hopper, together with the other equipment, is attached to the truck chassis. I have been informed by the Bureau of Motor Vehicles that the auger, fan and spreader bar are not included in the weight determination. Therefore, the only question remaining is whether the hopper is or is not "inherently motor vehicle equipment."

Prior to the amendment in 1939 of Section 6293, General Code, now Section 4503.08, Revised Code, Section 6293 read as follows:

> "The weight of all motor vehicles shall be the weight of the vehicle fully equipped as represented by the manufacturer or as named in the shipping bill, provided, that if this be not known or is not the actual weight, the actual weight as determined on a standard scale shall govern."

Under this statute several owners and operators of trucks of various designs brought an action in mandamus to compel the Registrar of Motor Vehicles to issue licenses for vehicles without including weight of equipment mounted on the vehicle in the weight determination. This case is known as State, ex rel. Tejan, et al., v. Lutz, 31 N.P. (N.S.), 473. The court held for the relators and interpreted the statute above quoted in the following manner at page 511 of the opinion:

> "These statutory definitions obviously exclude the conception that an object placed upon the truck *ipso facto* necessarily becomes a part of the truck. Such material or object must, in fact, become an inherent part of the truck, as such, and by such placement, purpose and use as to effectuate the contemplated end-result of motor vehicle transportation, that is, to carry merchandise or freight. If such addition to the truck chassis be a cab or body, it instantly becomes a part of the vehicle, and serves the purpose of promoting transportation of the load. But when equipment, apparatus, or machinery does not assist in effectuating the purposes of a motor vehicle, but serves other purposes *not inherently characteristic of a motor vehicle* nor related to its operative mechanism or operative purposes, it is clearly not subject to taxation under the motor vehicle license tax law. It is, in brief, personal

property of a different legal classification, subject to the appropriate *ad valorem* tax requirements.

"* * * It is the opinion of the court, therefore, that a rule of intelligent administration, based on the principles indicated, should result in correct distinction between vehicles of a commercial nature and the equipment, apparatus, and machinery placed on such vehicle for other than vehicular purposes."

(Emphasis added.)

Subsequent to the decision of the Tejan case, Section 6293, General Code, now Section 4503.08, Revised Code, was amended in 1939 to read in part:

"The weight of all motor vehicles shall be the weight of the vehicle fully equipped as determined on a standard scale, except the weight of any machinery mounted upon or affixed to a motor vehicle *and which is not inherently motor vehicle equipment shall not be included in the determination of the total weight.*"

(Emphasis added.)

The change in this section corresponds to the interpretation of the previous section by the court in the Tejan case. The amendment adopted the test in the Tejan case by adding the exception for machinery not inherently motor vehicle equipment.

Subsequent to the amendment the Common Pleas Court of Franklin County in the case of Burdett Oxygen v. Kauer, 66 Abs., 365, had before it the question of whether manifold compression cylinders, including all necessary tubing, valves, gauges, etc., mounted on trailers used in delivery and the use of compressed gases constituted motor vehicle equipment. The court held that the cylinders and accessories were not motor vehicle equipment for purposes of determining the weight of such vehicle for the purposes of taxation under Section 6293, General Code. The court approved and followed the Tejan case and Opinion No. 4029, Opinions of the Attorney General for 1941, page 666, and Opinion No. 4964, Opinions of the Attorney General for 1942, page 208.

The syllabus of the 1941 opinion reads:

"The question as to whether or not a demountable container which is placed on a truck chassis or semi-trailer, and held in place thereon by its own weight and by corner angle irons into which it fits, constitutes motor vehicle equipment, the weight of which is to be included in the total weight of the vehicle in determining the proper motor vehicle license tax, is a question of fact to be determined by the use to which such container is put."

In Opinion No. 4964 for 1942 the question for determination was whether a framework and drawers placed in a bakery truck to carry bakery products constituted motor vehicle equipment under the provisions of Section 6293, General Code. In holding that the above equipment was not motor vehicle equipment the following from the Tejan case was cited and followed:

> "In the Tejan case, supra, the Court said at pages 512 and 513:
>
> 'Apparent difficulty might seem to arise from the fact that many pieces of machinery and apparatus are placed on the truck in such a way as to be attached thereto, and usable only during the period the truck is used. This does not make it inherently truck equipment, nor an integral part of the truck. * * *
>
> 'Adaptation of use of a truck to a particular form of business may require the placement of machinery and apparatus on it to perform or accomplish the work of that particular purpose or business. * * * Obviously, apparatus which is usable both on the truck and off is not, generally speaking, *per se*, truck equipment, but is rather service or trade apparatus, device, equipment or machinery, for the particular work in which it is used.' "

In your letter you cite Opinion No. 3087 of the Opinions of the Attorney General for 1940, Volume II, page 1032, which was concerned with a tractor and trailer combination, the trailer being used to haul and spread lime. The opinion held that the trailer was not used principally for agricultural purposes and therefore subject to license tax. No consideration was given in this opinion to Section 6293, General Code, Section 4503.08, Revised Code, and it can not be determined from the opinion whether or not the weight of the lime spreading equipment was included in weight determination.

Opinion No. 2152 of the Opinions of the Attorney General for 1940, Volume I, page 352, referred to in your letter, merely decided that wheel mounts used to transport power crane or shovel were trailers. The question of added equipment was not present. Therefore, these two opinions are of little value in deciding the present issue.

Considering the question at hand we find that the hopper of the lime spreader performs a dual purpose in that it assists in load carrying as well as in the spreading of lime at the destination.

It is the primary use as distinguished from the incidental use of equipment that determines its tax status, Mead v. Glander, 153 Ohio St., 539.

The hopper transports the load and therefore performs one function of motor vehicle equipment in that it holds and contains the load, but on the other hand it is an integral part of the lime-spreading equipment. A simple dump body would serve to haul lime from the distributing point to point of use. In this connection the following was said in the Tejan case at page 516:

> "It appears to the Court that this complete equipment is a tar-spreading outfit, and while it does help convey the tar, there is more than conveyance accomplished. Mere conveyance could not result in the final effect, that is, uniform tar-spreading on the road surface. * * *"

The tar-spreading equipment would appear to be analogous to the lime-spreading equipment.

Another piece of equipment that was involved in the Tejan case was a concrete mixer which was attached to a truck chassis. The concrete mixer performed a dual function, that of load carrying and processing in transit. This mixer was also held not to be motor vehicle equipment per se. While in both instances the equipment was the device used to carry the load, the court held that by the inherent nature, the characteristics, and the primary purpose of the equipment, it was not equipment that should be included in the weight determination for license fees.

In view of the fact that subsequent to the decision in the Tejan case, Section 6293, General Code, was amended in such a manner as to adopt the theory of the Tejan case, I am of the opinion that this case should be applied. Therefore, I am of the opinion that although the hopper of the lime-spreader equipment is load-carrying equipment, taking it with its accessories it would appear from the characteristics of the lime spreader in its entirety that the primary purpose of the equipment is to effect a uniform and continuous spreading of lime and therefore is not inherently motor vehicle equipment.

In specific answer to your inquiry, it is my opinion that lime spreaders attached to a truck chassis are not "inherently motor vehicle equipment" for purposes of weight determination under Section 4503.08, Revised Code,

and therefore are not entitled to exemption from personal property tax by the provisions of Section 4503.04, Revised Code.

Respectfully,
C. WILLIAM O'NEILL
Attorney General