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AIRCRAFT—SUBJECT TO PERSONAL PROPERTY TAX FOR ANY YEAR THAT SUCH AIRCRAFT IS NOT REGISTERED AND LICENSE TAX NOT PAID—§§4561.17, 5709.01, R.C.

SYLLABUS:

An owner of an aircraft may not register and pay the license tax on such aircraft for any given year pursuant to Section 4561.17, *et seq.*, Revised Code, after that particular year has elapsed and such aircraft would, therefore, be subject to a personal property tax pursuant to Section 5709.01, Revised Code, for the year in question.

Columbus, Ohio, December 4, 1959

Hon. C. E. A. Brown, Chief, Division of Aviation
Ohio State University Airport, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“In the course of enforcement action taken by the Division of Aviation for nonpayment of 1958 aircraft license tax as set forth in Sections 4561.17 to 4561.22 of the Revised Code of the State of Ohio, it was discovered that the subject aircraft owner had also failed to pay his aircraft license tax for the years 1956 and 1957.

"It has been the understanding of the Division of Aviation that if the license tax is not paid on an Ohio aircraft for any particular year, the airplane in question is then subject for personal property taxes for years involved. In most cases, the personal property tax is much greater than the aircraft license fee. In view of this, the aircraft owner above-mentioned now wishes to pay his aircraft license fee for the years 1956 and 1957 and, in doing so, remove his obligations under the provisions of the personal property tax statutes.

"The purpose of this letter is to request an opinion from your office as to whether this aircraft owner, delinquent in state aircraft license taxes for 1956 and 1957, is presently liable for payment of the personal property taxes or the aircraft license taxes for the years in question."

Section 4561.17, Revised Code, to which you refer in your letter, reads as follows:

"For the purpose of providing revenue for paying the expenses of administering sections 4561.17 to 4561.22, inclusive, of the Revised Code relative to the registration of aircraft, for the surveying of and the establishment, checking, maintenance, and repair of aviation air marking and of air navigation facilities, for the acquiring, maintaining, and repairing of equipment necessary therefor, and for the cost of the creation and distribution of Ohio aeronautical charts and Ohio airport and landing field directories, an annual license tax is hereby levied upon all aircraft operating over the lands and waters of this state except the following:

"(A) Aircraft owned by the United States or any territory thereof;

"(B) Aircraft owned by any foreign government;

"(C) Aircraft owned by any state or any political subdivision thereof;

"(D) Aircraft operated under a certificate of convenience and necessity issued by the civil aeronautics board or any successor thereto;

"(E) Aircraft owned by any nonresident of this state whether such owner is an individual, partnership, or corporation, provided such owner has complied with all the laws in regard to the licensing of aircraft in the state of his residence;

"(F) Aircraft owned by aircraft manufacturers or aircraft engine manufacturers and operated only for purposes of testing, delivery, or demonstration;

"(G) Aircraft operated for hire over regularly scheduled routes within the state.

“Such license tax shall be at the rates specified in section 4561.18 of the Revised Code, and shall be paid to and collected by the director of commerce at the time of making application as provided in such section.”

Section 4561.18, Revised Code, requires applications for aircraft registration accompanied by payment of the license tax to be submitted to the director of aviation in January of each year or at such time as the aircraft is acquired. Section 4561.19, Revised Code, states that upon receipt of such application accompanied by the license tax, the director of aviation shall forward to the applicant a certificate of registration. Section 4561.22, Revised Code, prohibits the violation of the registration and license tax sections, and Section 4561.99, Revised Code, provides a penalty of a fine of not more than one hundred dollars or imprisonment up to thirty days or both.

Your question raises the issue of whether an owner of an aircraft not registered or licensed in any given year may pay the annual license tax for that year and become retroactively licensed after the year has ended, or whether that aircraft is subject for the year in which it was not registered to the personal property tax levied pursuant to Section 5709.01, Revised Code. This latter section imposes a personal property tax on all “aircraft belonging to persons residing in this state and not used in business wholly in another state, other than aircraft licensed in accordance with sections 4561.17 to 4561.21, inclusive, of the Revised Code, are subject to taxation.”

It will be noted that Section 5709.01, Revised Code, exempts only aircraft licensed pursuant to Sections 4561.17 to 4561.20, inclusive, of the Revised Code, and not merely those aircraft which are subject to being licensed. Thus, actual licensing is the criterion of exemption from the personal property tax.

We must then pass to the question you raise, i.e., may the director of aviation accept license tax payments for past years and retroactively license an aircraft for such years, and would this have the effect of exempting the aircraft from personal property taxation for the years in question. The answer does not appear to be spelled out specifically in the statutes but must be gleaned from the inoperative effect. Registration and the concomitant payment of the license tax is on an annual basis with required filing in January of the year of registration. No provision is made for late registration during the course of any year other than that found in Section 4561.18, Revised Code.

While it is not expressly stated in these statutes, it would appear that the underlying purpose of requiring registration of aircraft is to enable the state to control and properly supervise aviation activities within this state by maintaining accurate records of the type, number, and ownership of aircraft within Ohio. This purpose would obviously not be served by retroactive registration for past years, inasmuch as the time period within which the information secured by registration would be of value would have expired and retroactive registration would be a vain and useless act. As the legislature does not require state agencies to perform vain and useless acts, there appears to be no basis for construing Section 4561.17, Revised Code, *et seq.*, to authorize retroactive registration.

Turning now to the question of whether such plane unregistered in the month of January in any year is subject to personal property taxation in that year, Section 5711.03, Revised Code, must be examined. This statute reads, in pertinent part, as follows :

“Except as provided in sections 5711.01 to 5711.36, inclusive, of the Revised Code, all taxable property shall be listed as to ownership or control, valuation, and taxing districts as of the beginning of the first day of January, annually, except that taxable personal property and credits used in business shall be listed as of the close of business of the last day of December, annually, * * *”

Applying this section to your question it appears that unregistered aircraft are subject to personal property taxation if they are unregistered on the tax lien date of any year, *i.e.* December 31, if the aircraft are used in business, or January 1, if they are not. Thus, if the aircraft were owned by the prospective taxpayer during the preceding January but were not then registered, they would not be registered as of the tax lien date on the following December 31, or January 1, and would hence be subject to the personal property tax.

One further point should, however, be noted. That is in coming to this opinion I am of the belief that the fact that aircraft not registered in any given year are subject to personal property taxation does not mean that enforcement of the registration requirement is through the threat of imposition of the personal property tax. Imposition of this tax is merely a necessary result of the lack of registration. The enforcement of registration is provided for in Section 4561.22, Revised Code.

I am, therefore, of the opinion and you are accordingly advised that an owner of an aircraft may not register and pay the license tax on such aircraft for any given year pursuant to Section 4561.17, *et seq.*, Revised Code, after that particular year has elapsed and that such aircraft would, therefore, be subject to a personal property tax pursuant to Section 5709.01, Revised Code, for the year in question.

Respectfully,

MARK McELROY
Attorney General