

**OPINION NO. 80-081****Syllabus:**

1. Pursuant to R.C. 5728.13, commercial vehicles owned by the Transportation Research Board which are used for test purposes are exempt from the highway use tax established by R.C. 5728.06.
2. Commercial vehicles loaned to the Transportation Research Board for test purposes, which remain titled in the name of the lender, are subject to the highway use tax, even though they are not engaged in commercial enterprise and regardless of whether they carry commercial property. However, it is the owners of such vehicles, not the Transportation Research Board, who are responsible for payment of the tax.
3. Pursuant to R.C. 4503.16, the Transportation Research Board is entitled to permanent license plates, issued free of charge, for vehicles which it owns and uses for test purposes. On the contrary, the Transportation Research Board may not obtain special license plates, under any provision of R.C. Chapter 4503, for loaned vehicles which it tests on the highways.

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**To: Alfred G. Cochran, Chairman, Transportation Research Board, Transportation Research Center, East Liberty, Ohio**

**By: William J. Brown, Attorney General, December 2, 1980**

I have before me your request for my opinion, which raises the following questions:

1. Whether the Transportation Research Board of Ohio is entitled to a blanket exemption from the highway use tax for vehicles being tested at the Transportation Research Center, since the vehicles are being utilized for non-commercial reasons and the only load carried is for test ballast.
2. Whether the Transportation Research Board of Ohio, considering its nature and functions under R.C. Chapter 5507, is entitled to special license plates which are issued pursuant to R.C. Chapter 4503.

From information received by this office, it is my understanding that vehicles come into the possession of the Transportation Research Board (TRB) in either of two ways. In some instances the TRB purchases the vehicles outright, while in other instances they are loaned to the TRB by their owners for testing purposes. It is also my understanding that the only load carried by these vehicles while they are being tested is ballast and that they do not carry merchandise or freight.

The highway use tax, to which your first question refers, is established by R.C. 5728.06. That section provides, in pertinent part, as follows: "[T]here is hereby levied a highway use tax upon each commercial car with three or more axles, each commercial car used as a part of commercial tandem, and each commercial tractor used as part of a commercial tractor combination or commercial tandem. . . ." (Emphasis added.) By its terms, the highway use tax applies only to certain types of commercial vehicles. Therefore, as an initial step in determining whether vehicles tested by the TRB are subject to the highway use tax, it is necessary to determine whether a vehicle used for test purposes, and not primarily for the transportation of property for commercial reasons, is a "commercial car" or "commercial tractor" within the meaning of R.C. 5728.06.

For the purposes of R.C. Chapter 5728, "commercial cars" and "commercial tractors" are both defined in part by R.C. 5728.01 as vehicles used for conveying property. R.C. 5728.01(B) (defining "[c]ommercial car" in part as "any motor vehicle used for transporting property" (emphasis added)); R.C. 5728.01(C) (defining "[c]ommercial tractor" in part as "any motor vehicle designed and used to propel or draw a trailer or semi-trailer" (emphasis added)); R.C. 5728.01(D) (defining "[t]railer" in part as "everything on wheels which is not self-propelled. . . used for carrying property" (emphasis added)). See also R.C. 5728.01(E) (defining "[s]emi-trailer" in part as "everything on wheels which is not self-propelled. . . used for carrying property on a public highway" (emphasis added)). Since vehicles tested by TRB carry property only incidentally, if at all, in the form of ballast for test purposes and not for the purpose of transporting the property, it might be argued that such vehicles are not commercial vehicles within the meaning of R.C. 5728.01. However, this argument is not supported by a fair reading of R.C. 5728.01, particularly in light of related code sections.

In defining various categories of commercial vehicles, R.C. 5728.01 does not expressly require that the vehicles carry commercial property or that the vehicles be engaged in commercial enterprise. In contrast, for the purposes of R.C. Chapters 4501, 4503, 4505, 4507, 4509, 4511, 4513 and 4517, R.C. 4501.01(H) defines "noncommercial motor vehicle" as "any motor vehicle. . . designed by the manufacturer to convey a load of no more than three quarters of a ton and used exclusively for purposes other than engaging in business for profit." (Emphasis added.) Similarly, R.C. 4501.01(J) defines a commercial car as "any motor vehicle. . . designed and used for carrying merchandise and freight, or used as commercial tractor." (Emphasis added.) R.C. 5728.01, on the other hand, defines "commercial car" and "commercial tractor" only in terms of use for transporting property, without mentioning business purposes, merchandise, or freight. Had the legislature intended to exempt vehicles not engaged in commercial enterprises from R.C. 5728.06, it would have certainly used definitions similar to those in R.C. 4501.01. Since no intent to limit the tax to vehicles engaged in commercial enterprises appears in the statute, no such intent may be inferred.

That such a limitation was not intended may also be inferred from the fact that R.C. 5728.13 exempts state owned vehicles from the highway use tax. Such vehicles are not ordinarily used for commercial activities, and thus, this exemption would be superfluous if R.C. 5728.06 were applicable only to vehicles carrying commercial property which are engaged in commercial pursuits. Since the definitions of "commercial car" and "commercial tractor" do not require that the vehicles be used for commercial purposes, the fact that the vehicles in question are being operated on a public highway for testing purposes only does not remove them from the scope of the tax imposed by R.C. 5728.06.

This construction of the highway use tax statute is consistent with the purposes for which the tax was instituted. In discussing the constitutionality of the highway use tax, the Ohio Supreme Court in Alger Co. v. Bowers, 166 Ohio St. 427, 429, 143 N.E. 835, 837 (1957), noted:

The evident purpose of this tax is to allocate to the commercial users of the state highways their proportionate share of the cost of construction and maintenance of such highways. The tax is designated for and the proceeds go into highways. There cannot be any question that the use of heavy trucks on highways substantially increases the deterioration of such highways, and it is certainly a reasonable exercise of the taxing power to impose a special tax on the persons causing such increased deterioration.

In light of the purposes for which the tax was levied, it is not unreasonable to construe the tax as not applying only to vehicles carrying property of a commercial nature for commercial purposes. Regardless of the type of cargo carried or the purpose for which it is carried, the very nature of a cargo carrying vehicle, particularly when loaded, is such that it contributes heavily to the deterioration of the highways. Thus, it is only fair that the users of such vehicles should shoulder part of the cost of reconstructing the highways.

The fact that the vehicles tested by the TRB do not always carry a load is not a basis for avoiding the tax imposed by R.C. 5728.01 either. In 1954 Op. Att'y Gen. No. 3398, p. 4, one of my predecessors concluded that the language "used to carry property," as employed in the definitions under R.C. 5728.01 of the various commercial vehicles subject to the highway use tax, refers to a primary, general, or "dedicated" use rather than a current actual use. See also 1954 Op. Att'y Gen. No. 3399, p. 11. I concur in that conclusion. The fact that the tax imposed by R.C. 5728.06 is calculated on the basis of "each mile traveled on a public highway in Ohio," without reference to miles driven with or without cargo, is further support of this conclusion. Thus, it is my opinion that TRB test vehicles are subject to the highway use tax even though, at times, they are operated on the public highways without cargo.

Although the vehicles tested by the TRB are commercial vehicles within the meaning of R.C. 5728.01, the TRB may be exempt from the highway use tax by virtue of R.C. 5728.13, which sets forth certain statutory exceptions to the tax. In pertinent part, R.C. 5728.13 states: "The provisions of sections 5728.02 to 5728.12, inclusive, of the Revised Code, do not apply to motor vehicles, commercial cars, or commercial tractors owned and operated by the United States, this state, or any political subdivisions thereof." (Emphasis added.) It is my understanding that all vehicles owned by the TRB are titled in the name of the state. Accordingly, such vehicles clearly constitute state owned vehicles and qualify for tax-exempt status pursuant to R.C. 5728.13.

The exemption granted in R.C. 5728.13 does not extend to vehicles which are loaned to the TRB for test purposes and which remain titled in the name of the lender. As a statute which purports to grant a tax exemption, R.C. 5728.13 must be strictly construed and "an applicant seeking such exemption must affirmatively

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<sup>1</sup>Howard Sober, Inc. v. Porterfield, 30 Ohio St. 2d 245, 284 N.E.2d 166 (1972), is not to the contrary. In Sober, the court in passing commented that both R.C. 5728.01(B) and R.C. 5728.01(C) "contemplate actual use and transportation." Id. at 249, 284 N.E.2d at 170 (emphasis added). Read in context, however, it is apparent that the court was employing the term "actual use" to indicate that a vehicle must be capable of and generally engaged in transporting property and not that a vehicle must be continuously put to such use in order to be subject to the tax.

establish his right thereto." Wallover Oil Co. v. Ohio Water Pollution Control Board, 32 Ohio St. 2d 233, 235, 291 N.E.2d 469, 471 (1072); White Cross Hospital Assoc. v. Board of Tax Appeals, 38 Ohio St. 2d 199, 311 N.E.2d 862 (1974). Significantly, the statute grants an exemption only to vehicles which are "owned and operated" by the state. Inasmuch as a loaned vehicle is not owned by the state, even though it may be operated by the state for a public purpose, it is not exempted from the use tax by R.C. 5728.13. Thus, only the test vehicles owned by the TRB, and not those loaned to the TRB, qualify for tax-exempt status pursuant to R.C. 5728.13.

Although vehicles loaned to the TRB for test purposes are subject to the highway use tax, it is important to note that it is the individual owners of such vehicles, not the TRB, who are responsible for payment of the tax. Liability for payment of the tax is imposed by R.C. 5728.06 as follows:

The owner of each commercial car and commercial tractor subject to sections 5728.01 and 5728.16 of the Revised Code shall be liable for the payment of the full amount of the taxes levied herein, and any person who leases, rents, or otherwise acquires a right to use or operate a commercial car or commercial tractor which is subject to sections 5728.01 and 5728.16 of the Revised Code, shall be liable for the payment of taxes levied herein with respect to the miles traveled in operations under such lease, rental, or other agreement. The liability of the person leasing, renting, or otherwise acquiring a right to use or operate a commercial car or commercial tractor which is subject to section 5728.01 and 5728.16 of the Revised Code, and the liability of the owner of such commercial car or commercial tractor shall be joint and several with respect to the miles traveled in operations under such lease, rental, or other agreement. (Emphasis added.)

This section establishes joint and several liability between the owners and any person using a vehicle which is subject to the tax. However, the TRB is absolved from any liability it might have under R.C. 5728.06 as a user by virtue of R.C. 5507.07.<sup>2</sup>

R.C. 5507.07 in pertinent part provides: "[T]he board shall not be required to pay any taxes. . . upon any property acquired or used by the board provided the property owned or acquired has public use under Chapter 5507. of the Revised Code." The highway use tax levied on vehicles loaned to the TRB for test purposes falls within this provision as a tax on property used by the board for a public purpose. R.C. 5507.01 indicates that the carrying out of the TRB's purposes and the exercise of its powers under R.C. Chapter 5507 are "essential governmental functions and public purposes of the state." Pursuant to R.C. 5507.02, the TRB is required to engage in research relating to motor vehicles and such research is to be conducted "for the health, safety, and general welfare of all inhabitants of the state, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the state." Because vehicles loaned to the TRB for testing are put to a public use, R.C. 5705.07 relieves the TRB of responsibility for payment of any taxes on the vehicles.

<sup>2</sup>This opinion does not attempt to resolve the question of whether the TRB is a "person" within the meaning of R.C. 5728.06. R.C. 5701.01, for purposes of R.C. Title 57, defines "person" as including "corporations." Thus, it is open to question whether a body such as the TRB, which is both corporate and politic in character, would be encompassed by the language of R.C. 5728.06 with respect to vehicles it borrows, absent the exemption provided by R.C. 5507.07.

Therefore, in specific answer to your first question, it is my opinion that vehicles owned and operated by the TRB are exempt from the highway use tax. Vehicles loaned to the TRB for test purposes are subject to the use tax even though they are not engaged in commercial enterprise and regardless of whether they carry commercial property. However, it is the owners of such loaned vehicles, and not the TRB, who are responsible for payment of the use tax.

Your second question relates to whether the TRB is entitled, pursuant to R.C. Chapter 4503, to the issuance of special license plates for use on its test vehicles. The licensing of motor vehicles is governed by R.C. Chapter 4503. R.C. 4503.02 levies an annual license tax which is to "be paid to and collected by the registrar of motor vehicles or deputy registrar at the time of making application for registration." As is the case with respect to the highway use tax, the responsibility for payment of the license tax rests upon the owner of the vehicle, who must pay the tax in order to receive license plates each year. R.C. 4503.10. There are, however, provisions in R.C. Chapter 4503 for the issuance of special license plates under certain circumstances. Some of such license plates are issued free of charge, and others may be used on more than one vehicle.

Pursuant to R.C. 4503.16, license plates are to be issued free of charge for motor vehicles which are "acquired by the state or any of its political subdivisions" and "are used exclusively in the performance of the governmental or proprietary functions of the state." As discussed *supra*, vehicles are tested by the TRB pursuant to a statutory mandate and such testing is to be conducted "for the health, safety, and general welfare of all inhabitants of the state." R.C. 5507.02. Because the testing conducted by the TRB represents a governmental function and because the TRB titles its vehicles in the name of the state, it is my opinion that the TRB is entitled to free license plates for vehicles which it owns and uses exclusively for testing purposes or other governmental or proprietary functions of the state. The TRB is not, of course, entitled to the free plates issued pursuant to R.C. 4503.16 for vehicles which are merely loaned to it.

In one of your letters regarding this opinion request, you suggested that because the TRB is a state body, exercising essential governmental functions and operating for public purposes, it should be entitled to special license plates on the same priority that manufacturers, distributors and dealers are given under R.C. 4503.27. Although such an argument may be made from a standpoint of public policy, the legislature has not yet acted to grant the TRB such priority. Thus, I must conclude that under the present statutory framework, the TRB is entitled to special plates only for vehicles which it owns.

Accordingly, it is my opinion, and you are advised, that:

1. Pursuant to R.C. 5728.13, commercial vehicles owned by the Transportation Research Board which are used for test purposes are exempt from the highway use tax established by R.C. 5728.06.
2. Commercial vehicles loaned to the Transportation Research Board for test purposes, which remain titled in the name of the lender, are subject to the highway use tax, even though they are not engaged in commercial enterprise and regardless of whether they carry commercial property. However, it is the owners of such vehicles, not the Transportation Research Board, who are responsible for payment of the tax.
3. Pursuant to R.C. 4503.16, the Transportation Research Board is entitled to permanent license plates, issued free of charge, for vehicles which it owns and uses for test purposes. On the contrary, the Transportation Research Board may not obtain special license plates, under any provision of R.C. Chapter 4503, for loaned vehicles which it tests on the highways.