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TAXATION OF HOUSE TRAILERS AND COLLECTION AND USE OF PENALTY FEES FOR FAILURE TO REGISTER HOUSE TRAILERS—§§4501.01, R.C.—4503.06 (F) (2), (H), (F) (1), R.C.—5709.01 (F) (1), R.C.—4503.061, R.C.

SYLLABUS:

1. The definition of the term "house trailer" as found in Section 4501.01, Revised Code, applies to that term as used in Sections 4503.06 and 4503.061, Revised Code.

2. The tax on house trailers, levied by Section 4503.06, Revised Code, applies to all such trailers used or occupied in this state, and not specifically exempted by that section; and there is no requirement that the house trailer be used for human habitation before the tax will apply.

3. There is no set formula which may be applied to determine whether a house trailer is used exclusively for camping or other recreational purpose within the exemption provision of division (F) (2) of Section 4503.06, Revised Code, and each case must be considered under its particular facts to ascertain whether said provision is applicable.

4. A house trailer which is used on the public roads and highways is subject to the tax prescribed by Section 4503.04, Revised Code, and under that section is not subject to tax as personal property even though used in business. Thus, such a trailer does not come within the exemption provision of division (F) (1) of Section 4503.06, Revised Code, and is subject to the tax levied by that section provided no other exemption is applicable.

A house trailer which is used in business and is not used on the public roads or highways is subject to tax as personal property under Section 5709.01, Revised Code, and comes within the exemption of said division (F) (1).

5. The penalty for nonpayment of the tax levied by Section 4503.06, Revised Code, provided in division (H) of that section, should be computed by the county auditor and collected by the county treasurer.

6. Where pursuant to Section 4503.061, Revised Code, a certificate is transferred from one house trailer to another, by the owner, the owner is not required to pay any additional tax if the value of the second trailer exceeds that of the first, nor does he receive any credit for payment of tax if the value of the second trailer is less than the first; however, the section provides for a transfer fee of one dollar to be paid by the owner.

7. The last paragraph of Section 4503.061, Revised Code, providing a fine for failure to register a house trailer, is a criminal penalty which should be enforced by the filing of a criminal proceeding in a court of proper jurisdiction; and any fines collected in such proceedings should be distributed according to the statutes regulating the distribution of fines in the court where the prosecution is brought.

8. Funds received from the collection of penalties invoked pursuant to division (H) of Section 4503.06, Revised Code, and transfer taxes collected by the county treasurer for making transfers of certificates pursuant to Section 4503.06, Revised

Code, should be distributed in the manner provided by division (J) of that section for the distribution of taxes collected by the county treasurer pursuant to that section.

9. The thirty-five cent fee allowed the county treasurer pursuant to Section 4503.061, Revised Code, for making a transfer of a certificate, should be paid by the treasurer in accordance with the provisions of Section 325.31, Revised Code.

10. There is no requirement that a particular form be used in keeping the registered required by Section 4503.062, Revised Code, as effective January 1, 1962; but the county auditor may suggest a standard form to be used throughout the county.

Columbus, Ohio, December 19, 1961

Hon. Garver Oxley, Prosecuting Attorney  
Hancock County, Findlay, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Auditor and Treasurer of Hancock County, Ohio, have requested me to seek your opinion with reference to Ohio Revised Code Section 4503.06, et seq., effective January 1, 1962.

“Specifically, they would like your interpretation of O.R.C. 4503.06 (F) (2) with reference to the term ‘recreational’. We have, in this area, many house trailers that are located on quarries, lakes and borrow pits that are used only in the summer, on week-ends and vacation periods. The owners do not reside in the house trailers except for these occasions. Under these conditions would the house trailer be exempt from tax as recreational?

“Further, on and after January 1, 1962, is the tax assessed even though the trailer is not, nor intended to be, used for human habitation as provided in former Ohio Revised Code Section 4503.06, effective October 1, 1953?

“Pursuant to O.R.C. 4503.061, regarding transfer during the year of the certificate, we should like to know:

“(1) If the house trailer to which the certificate is to be transferred has a greater value, should the tax be recomputed and credit given for tax previously paid?

“(2) If the house trailer to which the certificate is to be transferred has a lesser value, should the tax be recomputed and a refund granted if the tax results in a lesser amount than that originally paid?

In addition to your request, I have received other requests for my opinion on various aspects of Sections 4503.06, 4503.061, and 4503.062,

Revised Code. I thus deem it advisable to treat all questions in this one opinion, the following summarizing all of the questions, including yours, in the order in which they will be considered.

1. What is the definition of a house trailer as that term is used in Sections 4503.06 and 4503.061, Revised Code?

2. Is the tax assessed under Section 4503.06, Revised Code, on and after January 1, 1962, applicable to house trailers whether or not they are used for human habitation?

3. Referring to the exemption provisions of division (F) (2) of Section 4503.06, Revised Code, under what circumstances is a house trailer exempt from taxation?

4. If a person uses a house trailer which he owns as a home and as a business office, what would he pay as tax in view of the provisions of division (F) (1) of Section 4503.06, Revised Code?

5. What officer imposes the fine of one dollar per day (to a maximum of twenty-five dollars) for each continuing day of nonpayment of the tax, said fine being imposed by division (H) of Section 4503.06, Revised Code?

6. (1) Where a certificate which had been issued under Section 4503.061, Revised Code, is to be transferred to another house trailer which has a value greater than the first, should the tax be recomputed with credit given for tax previously paid? (2) If the house trailer to which the certificate is to be transferred has a lesser value, should the tax be recomputed and a refund granted if the tax results in a lesser amount than that originally paid?

7. What officer imposes the fine provided by Section 4503.061, Revised Code, for failure to register a house trailer; and what is the disposition of a fine collected for such violation?

8. Into what funds do the following distribute:

- a. Penalty for nonpayment (Section 4503.06 (I))?
- b. Taxes and fees for transfers (Section 4503.061)?

9. Should a form be provided to be used in keeping the register required by Section 4503.062, Revised Code, and, if so, who should provide the form?

Section 4503.06, Revised Code, as effective on January 1, 1962, reads in part:

“(A) All house trailers in this state on the first day of January, except as otherwise provided, are subject to an annual tax, payable by the owner, for the privilege of using or occupying a house trailer in this state. The tax as levied in this section is for the purpose of supplementing the general revenue funds of the local subdivision in which the house trailer has its situs pursuant to the provisions of this section.

“(B) The year for which the tax is levied commences on the first day of January and ends on the following thirty-first day of December.

“(C) The situs of a house trailer used or occupied in this state is the local taxing district wherein the house trailer is located on the first day of January, except, when a house trailer, which is not located in this state on the first day of January, is acquired or first enters this state, the situs of such house trailer is the local taxing district wherein such house trailer is located immediately upon the expiration of a thirty day period commencing with the date of acquisition or entrance into this state.

“(D) The tax is collected by and paid to the county treasurer of the county containing the taxing district wherein the house trailer has its situs.

“(E) The tax shall be computed and assessed by the county auditor of the county containing the taxing district wherein the house trailer has its situs by multiplying the assessable value of the house trailer by the tax rate of the taxing district in which the house trailer has its situs, and shall be not less than eighteen dollars in any case.

“\* \* \*

\* \* \*

\* \* \*

“(F) A house trailer is not subject to the provisions of this section when:

“(1) It is taxable as personal property pursuant to the provisions of section 5709.01 of the Revised Code;

“(2) It is used in this state exclusively for camping or any other recreational purpose;

“(3) It bears a license plate issued by any state other than this state unless such house trailer is in this state in excess of an accumulative period of thirty days in any calendar year;

“(4) The owner has registered and paid the tax on a house trailer in this state for the current year.

“\* \* \*

\* \* \*

\* \* \*

“(H) If the payments of the tax are not made as provided in division (G) (1) or (G) (2) of this section, a penalty of one dollar a day for each continuing day of nonpayment to a maximum of twenty-five dollars shall be imposed and collected in addition to the tax due and owing.

“(I) If the owner of a house trailer fails to make payment of the tax within the time prescribed by division (G) (1) or (G) (2) the county treasurer in addition to any other remedy provided by law for the collection of taxes and penalties shall enforce collection of such taxes and penalties by civil action in the name of such treasurer against the owner for the recovery of the unpaid taxes.

“It is sufficient, having made proper parties to the suit, for the treasurer to allege in his bill of particulars or petition that the taxes stand chargeable on the books of the county treasurer against such person, that they are due and unpaid, and that such person is indebted in the amount of taxes appearing to be due the county. The treasurer need not set forth any other matter relating thereto.

“(J) The total amount of taxes collected shall be distributed semi-annually at the same time distribution is made of real estate and public utility taxes in the following manner: four per cent shall be allowed as compensation to the county auditor for his service in assessing the taxes; two per cent shall be allowed as compensation to the county treasurer for the services he renders as a result of the tax levied by this section. Such amounts shall be paid into the county treasury, to the credit of a general county fund, on the warrant of the county auditor. The balance of the taxes collected shall be distributed among the taxing subdivisions of the county in which the taxes are collected and paid in the same ratio as real estate and public utility taxes are distributed for the benefit of the taxing subdivision. The taxes levied and revenues collected under this section shall be in lieu of any general property tax and any tax levied with respect to the privilege of using or occupying a house trailer in Ohio except as provided in sections 4503.04 and 5741.02 of the Revised Code.

\* \* \* \* \*

As to the definition of the words “house trailer,” division (I) of Section 4501.01, Revised Code, reads:

\* \* \* \* \*

“(I) ‘House trailer’ means any self-propelled and nonself-propelled vehicle so designed, constructed, reconstructed, or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation whether resting on wheels, jacks, or other foundation and used or so constructed as

to permit its being used as a conveyance upon the public streets or highways.

“\* \* \*

\* \* \*

\* \* \*’

As Sections 4503.06 and 4503.061, *supra*, are parts of Chapter 4503., Revised Code, the above definition applies to the words “house trailer” as used in those sections.

I must confess some questions as to the intended meaning of the words of division (A) of Section 4503.06, *supra*, reading “for the privilege of using or occupying a house trailer in this state.” One interpretation might be that all house trailers, save those specifically exempted, are subject to the tax, regardless of whether or not they are used or occupied. The theory here would be that the tax is paid for the privilege to use or occupy, not the actual using or occupying. On the other hand, division (C) of the section refers to the “situs of a house trailer used or occupied in this state,” thus implying that the house trailer must be used or occupied in order to have a situs. Further, the title of Amended Substitute Senate Bill No. 127, which enacted the new house trailer tax, states the purpose of the bill as follows:

“To provide for the taxation and registration of house trailers used or occupied in this state \* \* \*.”

In view of the language of division (C) and of the title of the bill, I am constrained to conclude that only house trailers which are used or occupied should be taxed.

Thus, in answer to the second question, while under former Section 4503.06, Revised Code, the tax applied only when the house trailer was used for human habitation, the new tax applies to any use of the trailer, including occupation, excepting the uses specifically exempted.

The third question involves an interpretation of division (F) (2) of Section 4503.06, *supra*, exempting house trailers used exclusively for camping or any other recreational purpose from the tax imposed by that section.

The term “camping or other recreational purpose” as used in said division (F) (2), is, of course, not specific. The word “camping” is defined in Webster’s New International Dictionary, 3rd Edition, as:

“to live, usually temporarily, in a camp or outdoors, especially for recreation.”

The same volume defines "recreation" as:

"A means of getting diversion or entertainment."

If an owner utilizes a house trailer only on camping trips, there would appear to be no doubt but what the exemption should apply. Also, if the trailer is located at a recreational area and is used only occasionally on week ends and vacations for recreation, the exemption should apply. But if the house trailer were to be used as a summer home, even at a recreational area, the use would clearly be in excess of that allowed under the exemption clause.

In short, there is no set formula which may be used to determine whether the exemption should apply; and each case must be resolved upon the particular facts involved. Here it will be remembered that exemption provisions should be strictly construed against a tax exemption and in favor of the taxing authority (38 Ohio Jurisprudence, Section 114, page 852). Thus, the burden of establishing the right to an exemption is on the taxpayer, and the county auditor should carefully scrutinize each claim of exemption to see whether the house trailer involved is used *exclusively* for camping or recreation.

The fourth question pertains to the provision of division (F) (1) of Section 4503.06, *supra*, exempting a house trailer from the tax if:

"it is taxable as personal property pursuant to the provisions of section 5709.01 of the Revised Code.;"

Section 5709.01, Revised Code, above mentioned, reads in pertinent part:

"\* \* \* All personal property located and used in business in this state and \* \* \* are subject to taxation."

Also to consider is the fact that the owner of a house trailer which is used on the public roads or highways must, pursuant to Section 4503.04, Revised Code, pay a tax of five dollars each year. Here significant is the last paragraph of that section reading:

"Taxes at the rates provided in this section shall be in lieu of all taxes on or with respect to the ownership of such motor vehicles, except as provided in section 4503.06, Revised Code."

Thus, a person who pays the tax provided by Section 4503.04, *supra*, is not required to pay a personal property tax on the house trailer. It

follows, therefore, that the exemption of division (F) (1), *supra*, could not apply to such a house trailer.

Of course, a trailer which is not used on the public roads or highways is not subject to the tax imposed by Section 4503.04, *supra*. Thus, if such a trailer is used in business, it would be subject to personal property tax and be within the exemption of division (F) (1), *supra*.

Coming to the fifth question, under division (D) of Section 4503.06, *supra*, the tax is collected by and paid to the county treasurer, and under division (E) of that section the tax is computed and assessed by the county auditor. Accordingly, it follows that the auditor should compute the tax, including any penalty due, and the treasurer should collect any amount due.

Under division (I) of the section, a civil action for unpaid taxes may be brought by the treasurer against the owner of the trailer. Such civil action would be brought in the court having the proper monetary jurisdiction.

As to the sixth question, Section 4503.061, Revised Code, reads:

“All owners of house trailers having a situs in this state and subject to the tax as provided in section 4503.06 of the Revised Code must register such trailer with the county auditor of the county containing the taxing district wherein the house trailer has its situs on or prior to the date the tax is due and payable.

“Upon the registration of a house trailer on or before the thirtieth day of June, the county auditor shall issue an advance payment certificate to be presented to the county treasurer with the payment of the tax that is due.

“When a house trailer is registered and when one-half of the tax has been paid as required by division (G) (1) of section 4503.06 of the Revised Code, or when a house trailer is registered and when the total tax has been paid as required by division (G) (2) of section 4503.06 of the Revised Code, the county treasurer shall issue a certificate evidencing registration and such certificate is valid in any county in this state during the year for which the certificate is issued. Upon the transfer of ownership of a house trailer the certificate as to such trailer expires, and the original owner shall immediately remove such certificate from the trailer. Should the original owner make application for the registration of another trailer during the year for which the certificate was issued, he may file an application for transfer of the certificate accompanied by a transfer tax of one dollar. The treasurer shall be allowed a fee of thirty-five cents for making the transfer. The owner may at any time during the year for which the certificate



was issued procure a duplicate from the treasurer upon application and payment of a fee of thirty-five cents.

“No person who is the owner of a house trailer and who is required to register a house trailer as required by this section shall fail to display on the front of such house trailer the certificate issued by the county treasurer as provided in this section.

“When any house trailer, required to be registered by this section, is not registered, the owner of such house trailer shall be fined not less than twenty-five nor more than fifty dollars.” (Effective January 1, 1962.)

Under said Section 4503.061, when ownership of a house trailer is transferred, the certificate for *that* trailer expires. At the same time, the original owner may, in the same year, transfer the certificate which was issued on the first trailer to another trailer. Should such a transfer of certificate be made, the owner is not required to pay any additional tax, except the one dollar for transfer, even though the second trailer may be more valuable than the first. Also, there is no provision for giving the owner any credit for tax paid in the event the second trailer is less valuable than the first.

The seventh question deals with the last paragraph of Section 4503.061, *supra*, reading:

“When any house trailer, required to be registered by this section, is not registered, the owner of such house trailer shall be fined not less than twenty-five nor more than fifty dollars.”

Since this provision imposes a criminal penalty, a fine, in the event of failure to register, it should be enforced by the filing of a criminal proceeding in a court of proper jurisdiction. And the fine collected in such a proceeding should be distributed according to the statute regulating the distribution of fines in the court where the prosecution is brought.

I might add that the fine imposed pursuant to Section 4503.061, *supra*, the criminal penalty, would be in addition to the penalty of one dollar per day for nonpayment of taxes (division (H) of Section 4503.061, *supra*), the civil penalty.

The eighth question also concerns the distribution of money collected. As to penalties for nonpayment, Section 4503.061 (I), *supra*, such penalties are collected by the county treasurer in the same manner as the tax, and it is provided that all taxes and revenues collected under Section

4503.06, *supra*, are in lieu of any general property tax. Thus, it appears that funds received from penalties should be distributed as is the tax pursuant to division (J) of Section 4503.06, *supra*.

As to the one dollar fee for transfer of a certificate, Section 4503.061, *supra*, since the transfer is made by the county treasurer, the fee is paid to that officer. Further, I believe that the transfer tax, being a part of the tax collected on a house trailer, should be distributed under the provisions of division (J) of Section 4503.06, *supra*.

Regarding the thirty-five cent fee allowed the treasurer for making the transfer, Section 325.31, Revised Code, provides that the county treasurer shall, on the first business day of each month, "pay into the county treasury, to the credit of the general county fund \* \* \* all fees, costs, penalties, percentages, allowances, and perquisites collected by this office during the preceding month or part thereof for official services, except \* \* \*." It follows, therefore, that the fee collected should be paid by the county treasurer in accordance with said Section 325.31.

Considering the ninth question, Section 4503.062, Revised Code, reads :

"Every operator of a house trailer court or park, or every owner of property used for such purposes when there is no operator, shall keep a register of all house trailers which make use of the court, park, or property. The register shall set forth :

"(A) The name of the owner and all inhabitants of each house trailer ;

"(B) The ages of all inhabitants ;

"(C) The permanent and temporary post office addresses of all inhabitants ;

"(D) The license number of all units ;

"(E) The state issuing such licenses ;

"(F) The date of arrival and of departure of each house trailer.

"The register shall be open to inspection by the auditor, his agents, and all law enforcement agencies at all times.

"When any person, required by this section to keep a register of all house trailers, fails to comply with the provisions concerning such register he shall be fined not less than twenty-five nor more than one hundred dollars." (Effective January 1, 1962.)

It will be noted that this section is specific as to what should be included in the register. Also, no provision is made for the furnishing

of a form by an officer. Thus, I conclude that the owner or operator is not required to use any special form for keeping the register; but this would be no bar to the auditor suggesting a standard form to be used throughout the county, should he consider such to be advisable.

In conclusion, it is my opinion and you are advised:

1. The definition of the term "house trailer" as found in Section 4501.01, Revised Code, applies to that term as used in Sections 4503.06 and 4503.061, Revised Code, as effective January 1, 1962.

2. The tax on house trailers, levied by Section 4503.06, Revised Code, applies to all such trailers used or occupied in this state, and not specifically exempted by that section; and there is no requirement that the house trailer be used for human habitation before the tax will apply.

3. There is no set formula which may be applied to determine whether a house trailer is used exclusively for camping or other recreational purpose within the exemption provision of division (F) (2) of Section 4503.06, Revised Code; and each case must be considered under its particular facts to ascertain whether said provision is applicable.

4. A house trailer which is used on the public roads and highways is subject to the tax prescribed by Section 4503.04, Revised Code, and under that section is not subject to tax as personal property even though used in business. Thus, such a trailer does not come within the exemption provision of division (F) (1) of Section 4503.06, Revised Code, and is subject to the tax levied by that section provided no other exemption is applicable.

A house trailer which is used in business and is not used on the public roads or highways is subject to tax as personal property under Section 5709.01, Revised Code, and comes within the exemption of said division (F) (1).

5. The penalty for nonpayment of the tax levied by Section 4503.06, Revised Code, provided in division (H) of that section, should be computed by the county auditor and collected by the county treasurer.

6. Where pursuant to Section 4503.061, Revised Code, a certificate is transferred from one house trailer to another, the owner is not required to pay any additional tax if the value of the second trailer exceeds that of the first, nor does he receive any credit for payment of tax if the value of

the second trailer is less than the first; however, the section provides for a transfer tax of one dollar to be paid by the owner.

7. The last paragraph of Section 4503.061, Revised Code, providing a fine for failure to register a house trailer, is a criminal penalty which should be enforced by the filing of a criminal proceeding in a court of proper jurisdiction; and any fines collected in such proceeding should be distributed according to the statutes regulating the distribution of fines in the court where the prosecution is brought.

8. Funds received from the collection of penalties invoked pursuant to division (H) of Section 4503.06, Revised Code, and transfer taxes collected by the county treasurer for making transfers of certificates pursuant to Section 4503.06, Revised Code, should be distributed in the manner provided by division (J) of that section for the distribution of taxes collected by the county treasurer pursuant to that section.

9. The thirty-five cent fee allowed the county treasurer pursuant to Section 4503.061, Revised Code, for making a transfer of a certificate, should be paid by the treasurer in accordance with the provisions of Section 325.31, Revised Code.

10. There is no requirement that a particular form be used in keeping the register required by Section 4503.062, Revised Code, as effective January 1, 1962; but the county auditor may suggest a standard form to be used throughout the county.

Respectfully,  
MARK McELROY  
Attorney General