

OPINION NO. 80-020**Syllabus:**

A person purchasing a house trailer after January 1, which trailer was owned by the seller on January 1 and had a tax situs in this state on that day, is not subject to the tax imposed by R.C. 4503.06 for that calendar year, is not liable for either the current year's tax or any delinquent taxes, and may not, during that calendar year, be required to register the trailer pursuant to R.C. 4503.061.

To: Keith A. Shearer, Wayne County Pros. Atty., Wooster, Ohio
By: William J. Brown, Attorney General, May 6, 1980

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

A question has arisen as to whether the purchaser of a house trailer may be required to pay the trailer tax for the current year, or any previous years, in which the former owner failed to pay the tax required by Section 4503.06 of the Ohio Revised Code.

Assume a trailer is sold after January 31, 1979, and the owner had not paid the tax which was due by January 31. May the purchaser be required to pay the tax for that year (or any previous years in which the tax has not been paid) before the trailer can be registered under Section 4503.061 of the Revised Code[?]

The central statute providing for the levy of the trailer tax is set forth in R.C. 4503.06(A) and is as follows:

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 this section.

R.C. Chapter 4503 also provides for a "tax year" which commences on the first day of January, R.C. 4503.06(B); for the payment of the taxes to the county treasurer of the county in which the trailer has its situs, R.C. 4503.06(D); and for methods of

calculating the "assessable value of the house trailer" by resort to a formula which takes into account the number of years during which the particular payor has owned the trailer, R.C. 4503.06(E)(1) and (2). However, the formulae given in R.C. 4503.06(E)(1) and (2) apply only where the subject trailer has a tax situs in this state on the first day of January; R.C. 4503.06(E)(3) mandates the use of a proration formula where a trailer "which is not located in this state on the first day of January, is acquired or first enters this state."

Implicit in the provision of these alternative formulae is that trailers are thus classified for tax purposes by reference to their location or tax situs the first day of January. R.C. 4503.06(C) establishes the concept of tax situs in this fashion:

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. (Emphasis added.)

Tax situs is thus determined by the location of the trailer on the first of January; and a trailer which has a tax situs in this state on the first of January, by virtue of it being located in this state on that day, becomes on that day subject to assessment under R.C. 4503.06(A), which assessment is calculated pursuant to either R.C. 4503.06(E)(1) or (2). The tax then becomes due and payable, pursuant to R.C. 4503.06(G)(1), which states:

When a house trailer has a situs in this state, as provided in this section, on the first day of January the full amount of the pro rata tax is due and payable on or before the thirty-first day of January.

Finally, R.C. 4503.06 provides four exemptions from the payment of such tax. They are set forth in R.C. 4503.06(F) as follows:

- (F) A house trailer is not subject to this section when:
- (1) It is taxable as personal property pursuant to section 5709.01 of the Revised Code.
 - (2) It is a travel trailer, meaning a vehicular portable structure built on a chassis and not exceeding a gross weight of four thousand five hundred pounds when factory equipped for the road or an overall length of thirty feet and used as a temporary dwelling for travel, recreational, and vacation use.
 - (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 annual tax has been paid on the house trailer in this state for the current year.

Your question requires an analysis of the interrelationship between the statutes quoted above and the registration requirements contained in R.C. 4503.06L. The provisions of the latter statute are as follows:

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, 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 the total tax has been paid as required by division (G) 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.

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.

The duty to register under R.C. 4503.06 attaches only where the trailer has a tax situs in this state and the owner is "subject to the tax as provided in section 4503.06." Therefore, the answer to your cognate question concerning the purchaser's duty to register under R.C. 4503.061 will depend on whether he is, in fact, "subject to the tax" levied pursuant to R.C. 4503.06. If the purchaser is not "subject to the tax" within the meaning of R.C. 4503.06, he cannot by definition be required to register pursuant to R.C. 4503.061.

Therefore, the threshold inquiry is whether a person purchasing a house trailer after January 31 from a person who has not paid the tax is "subject to the tax" under R.C. 4503.06(A). Two related questions are involved:

1. Are the unpaid taxes, either current or past, properly treated as a kind of lien on the trailer itself; and
2. Is the purchaser directly liable for annual taxes under R.C. 4503.06(A)?

For the purposes of my analysis, I have made two assumptions: first, that the subject trailer had a tax situs in this state, as defined by R.C. 4503.06(C), on January 1; and second, that the trailer is not otherwise exempt from taxation under R.C. 4503.06(F). Given these assumptions, the former owner would have become liable for the trailer tax on January 1, R.C. 4503.06(A), and would have had to pay same on or before January 31, R.C. 4503.06(G)(1).

A trailer tax of some type has been in force in this state since April 1, 1951, on which date G.C. 6292-2, 1949-1950 Ohio Laws 518 (Am. Sub. H.B. No. 460, eff. April 1, 1951), the predecessor of R.C. 4503.06, became effective. In its original form, G.C. 6292-2 levied an annual tax of \$18.00 on the owners of house trailers, which tax became due and payable upon the occupancy for human habitation of the house trailer. G.C. 6292-2(4). Moreover, that section also provided for the filing of a civil action by the county auditor against any person who failed to pay the tax. In 1952 Op. Att'y Gen. No. 1383, p. 312, one of my predecessors considered the nature of the tax imposed under G.C. 6292-2, and opined that until the tax was paid, it remained a "continuing obligation outstanding against the owner." That opinion also stated:

It is a necessary consequence of the nature of the obligation of the taxpayer and of the provisions of Section 6292-2, General Code, that the yearly tax due constitutes one entire annual demand. Inasmuch as every yearly tax is an independent demand, the claims for two or more years are separate and severable. City of Baltimore v. Fine, 129 A. 356, 148 Md. 324.

I am mindful that the trailer tax law has undergone numerous changes since the issuance of Op. No. 1383 and that courts have differed in their characterization of the nature of the tax imposed thereunder. See Rapa v. Haines, 64 Ohio L. Abs. 535, 101 N.E.2d 733 (C.P. Montgomery County 1951), aff'd, 64 Ohio L. Abs. 543, 113 N.E.2d 121 (Ct. App. Montgomery County), appeal dismissed, 158 Ohio St. 275, 108 N.E.2d 833 (1952) (tax levied on house trailers used for human habitation is an excise tax and does not constitute a specific tax on property without regard to the value thereof in violation of Ohio Const. art. XII, §2). But see Stary v. City of Brooklyn, 162 Ohio St. 120, 130, 121 N.E.2d 11 (1954), appeal dismissed, 348 U.S. 923 (1955). ("It is manifest that the tax prescribed by Section 6292-2 is in the nature of a property tax and not a license fee for the privilege of occupying a house trailer."); 1962 Op. Att'y Gen. No. 3028, p. 397 (the tax imposed on house trailers by R.C. 4503.06 is a tax in the nature of a personal property tax rather than an excise tax).

In my opinion, the more important inquiry concerns the nature of the liability created by the tax rather than the theoretical nature of the tax itself. In Op. No. 1383, supra, one of my predecessors considered the nature of the liability created by the imposition of the tax, and stated:

This tax constitutes a burden which is imposed as an obligation for the protection and benefits given to the owner in his enjoyment of the use of his property during each year. An involuntary obligation has been created through the imposition of this tax which is a claim that can be enforced and collected if not satisfied. In the absence of provision to the contrary, an unpaid tax accrues and remains as a subsisting claim which the political subdivision imposing the tax has against the taxpayer and does not expire at the termination of the tax year. To hold otherwise would be to penalize unjustly those taxpayers who met their obligations and to encourage tax evasion.

Op. No. 1383 at 314-15 (emphasis added).

In answer to the specific question posed in Op. No. 1383, my predecessor then opined that the county auditor was obligated to accept a payment of the current tax from the owner of a trailer, and to issue a certificate of registration for said trailer even though the preceding year's tax was unpaid, stating that delinquent taxes were to be collected through the institution of a civil action against the owner. Accord, 1955 Op. Att'y Gen. No. 5577, p. 332 (approving and following Op. No. 1383) (where owner disputes liability for delinquent taxes but tenders payment for current taxes, the county auditor is obligated to accept payment for current taxes and to pursue payment of the delinquency in a civil action).

The statutory language which provides for the filing of a civil action to collect delinquent taxes has thus been interpreted by one of my predecessors to mean that the liability which accrues for said unpaid taxes is a personal liability of the owner rather than a liability which attaches in rem to the house trailer itself. My consideration of R.C. 4503.06 compels the same conclusion for several reasons. In R.C. 4503.06(I), the following language appears:

(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) of this section 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. (Emphasis added.)

R.C. 4503.06(I) is unambiguous; when a person who is the owner of a house trailer fails to pay the applicable taxes within the prescribed time period, the county treasurer "shall enforce collection . . . by civil action . . . against the owner for the recovery of the unpaid taxes" by a petition stating that "such person is indebted" (emphasis added). Significantly, R.C. 4503.06(I) does not provide for the creation of a tax lien against the property itself, even though statutory creation of liens against property for unpaid taxes is common. See, inter alia, R.C. 5721.10 (lien against real property for unpaid taxes, assessments, and penalty); R.C. 5731.37 (lien against all taxable property in decedent's estate for unpaid estate taxes); R.C. 5733.18 (lien against all property in this state of a corporation for unpaid taxes); and R.C. 5727.52 (lien against all property in this state of a public utility for unpaid excise or franchise taxes).

It is my opinion, therefore, that the tax imposed pursuant to R.C. 4503.06 was intended to create a liability which operates in personam against the owner rather than in rem against the property. That being the case, the next question requires a determination of when said liability attaches. I believe that under the facts given in your request, the liability must attach at the time the tax is levied; and because the facts given above describe a situation within the ambit of R.C. 4503.06(G)(1), quoted above, I must conclude further that the liability to pay the annual tax accrued on January 1, 1979. It follows, then, that the person owning the trailer on January 1, 1979 is liable for the tax, notwithstanding whether any sale or other disposition of the trailer is made during that same calendar year.

This conclusion is not only mandated by the language of divisions (A), (B), (C) and (G)(1) of R.C. 4503.06, but it is also a natural consequence of the method of assessment set down in R.C. 4503.06(E)(1) and (2). In each case, the assessment is calculated with reference to the greater of the cost to the owner or the market value of the trailer, which amount is multiplied by the percentage figure which corresponds to the number of years during which the trailer was owned by the person made subject to the tax. Therefore, if one concludes that the new owner is liable for the taxes left unpaid by the old owner, the method of tax calculation is unclear. In theory, the tax could be calculated with reference to either the percentage multiplier applicable to the former owner's length of ownership or the percentage multiplier applicable to that of the new owner. The two different calculations would not necessarily result in identical assessments, however, because the latter calculation would always be premised on the percentage applicable to an owner during the first calendar year of ownership. As the amount of the proper assessment is derived from a calculation based on the length of time the taxpayer has owned the trailer and the greater of its market value or purchase price, the creation of a tax liability personal to the individual who owns the trailer on January 1 was clearly intended. See 1962 Op. Att'y Gen. No. 3394, p. 888 (the number of years during which the current owner has owned the trailer found to be controlling for the purpose of calculating the amount of the assessment).

In your request, you directed my attention to 1964 Op. Att'y Gen. No. 892, p. 2-89, as authority for the proposition that the tax "attached" to the trailer, and that payment of any current tax and the former owner's delinquent tax was therefore prerequisite to registration of the trailer by the present owner. In Op. No. 892, one of my predecessors was called upon to consider whether a person who purchases a house trailer during the calendar year for which the former owner has already paid the annual assessment is nonetheless liable to pay the tax in order to register the trailer under R.C. 4503.061. The syllabus of that opinion reads as follows:

When an owner sells a house trailer upon which the annual tax levied by Section 4503.06, Revised Code, has been paid, that trailer is not subject to the provisions of Sections 4503.06 and 4503.061, Revised Code, for the remainder of the year for which said tax has been paid, and the purchaser may not be required to pay said tax during the remainder of said year.

Op. No. 892 at 2-89.

In my opinion, the conclusion reached in Op. No. 892 was correct. However, I believe that it is inapposite to the question you have raised. The conclusion reached in Op. No. 892 relied on the existence of R.C. 4503.06(F)(4), which states that "[a] house trailer is not subject to this section when: . . . [t]he annual tax has been paid on the house trailer in this state for the current year." Concerning the effect of R.C. 4503.06(F)(4), my predecessor then said:

[I]t is apparent that the intention of the legislature in amending subdivision (F)(4) of Section 4503.06, Revised Code, is clear. Its effect is to eliminate the requirement that the "owner has registered and paid the tax" in order to bring the exemption into operation. Under the present statute the exemption is applicable if the "annual tax has been paid on the house trailer in this state for the current year." Thus, clearly, the legislature has abandoned the concept that the tax shall be paid only once in a given year by a single owner and has substituted therefore [sic] a concept that the tax shall be paid only once in any given year as to a given house trailer. From this it follows that after the annual tax has been paid on a specific house trailer that house trailer is, for the balance of that year, not subject to the tax as provided in Section 4503.06, Revised Code.

Op. No. 892 at 2-93 (emphasis added).

While I believe that my predecessor's articulation of the concept—that the tax shall be paid only once in any given year as to a given house trailer—is correct, I do not agree that Op. No. 892 is determinative as to which person must pay the tax. This latter question is answered by R.C. 4503.06(A), Op. No. 1383, and Op. No. 5577, which, as stated hereinbefore, compel the conclusion that the person who owns a house trailer which has a tax situs in this state on January 1 is the person "subject to the tax" under R.C. 4503.06 and the person to whom the tax liability absolutely accrues. Consequently, that person's sale of the trailer after January 31, which is the situation you have posited, cannot alter that preexisting tax liability. It follows that since the former owner is "subject to the tax" within the meaning of R.C. 4503.06, the person purchasing the trailer after January 31 cannot be; this is the point for which Op. No. 892 is authoritative.

As I have answered your central question in a way which rebuts the existence of any liability of the purchaser under the facts given, I believe that a brief consideration of the cognate question concerning registration under R.C. 4503.061 will suffice. The first sentence of R.C. 4503.061 provides the answer to your question as to whether the unpaid tax liability must be satisfied prior to the new owner's registration of the house trailer, for it provides that "[a]ll 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"

Clearly, in order to be required to register a trailer, the proposed registrant must meet two criteria: he must own a house trailer with a tax situs in this state and he must be "subject to the tax." Under the facts given, and consistent with the opinion expressed above, the purchaser herein is not "subject to the tax." Therefore, the registration provision is presently inapplicable and the purchaser need not register under R.C. 4503.061 during the calendar year in which the trailer is purchased. Cf. Op. No. 892, supra.

Therefore, it is my opinion, and you are advised, that a person purchasing a house trailer after January 1, which trailer was owned by the seller on January 1 and had a tax situs in this state on that day, is not subject to the tax imposed by R.C. 4503.06 for that calendar year, is not liable for either the current year's tax or any delinquent taxes, and may not, during that calendar year, be required to register the trailer pursuant to R.C. 4503.061.