

**OPINION NO. 73-001**

**Syllabus:**

Where the sale of a motor vehicle is consummated prior to the effective date of the county permissive use tax act, R.C. 5741.021, and where the certificate of title to the motor vehicle is not delivered to the clerk of the common pleas court for transfer until after that date, the county permissive use tax does not apply.

---

**To: Richard E. Bridwell, Muskingum County Pros. Atty., Zanesville, Ohio**  
**By: William J. Brown, Attorney General, January 9, 1973**

Your request for my opinion asks the following question:

Is the sale of a motor vehicle or similar item subject to the Sales Tax, which sale is consummated prior to the effective date of said Sales Tax, but the Certificate of Title for the item sold is not delivered to the Clerk of the Common Pleas Court for transfer until after the effective date of the Sales Tax.

From the materials submitted with your request, it appears that you are concerned with the permissive sales and use taxes which the counties may levy in addition to those already levied by the state. These "piggy back" county sales and use taxes are provided for in R.C. 5739.021 and 5741.021. Amendments to both of these Sections, which became effective on May 1, 1970 (133 Ohio Laws, 2695-2703), greatly limit the right of a county to tax motor vehicles and similar items. R.C. 5739.021, as amended, provides in pertinent part:

For the purpose of providing additional general revenues for the county and paying the expenses of administering such levy, any county may levy a tax at the rate of one-half of one per cent in addition to that imposed by section 5739.02 of the Revised

Code upon every retail sale, except sales of motor vehicles, made in the county. \* \* \*  
(Emphasis indicates new material.)

And R.C. 5741.021, as amended, states in part:

For the purpose of providing additional general revenues for the county and paying the expenses of administering such levy, any county which levies a tax pursuant to section 5739.021 of the Revised Code shall levy a tax at the same rate levied pursuant to section 5739.021 of the Revised Code on the storage, use, or other consumption in the county of motor vehicles acquired on or after the effective date of this act by a transaction subject to the tax imposed by section 5739.02 of the Revised Code and, in addition to that imposed by section 5741.02 of the Revised Code, on the storage, use, or other consumption in the county of tangible personal property which is subject to the tax levied by this state as provided in section 5741.02 of the Revised Code. \* \* \* (Emphasis indicates new material.)

Consequently, a county may no longer levy a "piggy back" tax on the sale of motor vehicles. The county may, however, levy a "piggy back" use tax on motor vehicles stored or used in the county, if the transaction is subject to the state use tax under R.C. 5741.02. The two resolutions adopted by your board of county commissioners on February 10, 1971, are consistent with these recent amendments.

If a motor vehicle or any other similar item is purchased in one county in Ohio, and the state sales tax paid thereon, the subsequent storage of that motor vehicle or other similar item by the purchaser in any of the other counties of Ohio, would not give rise to the state use tax liability, because of the specific exemption in R.C. 5741.02. In pertinent part, that Section provides:

(C) The tax does not apply to the storage, use, or consumption in this state of the following described tangible personal property, nor to the storage, use, or consumption in this state of tangible personal property purchased under the following described circumstances:

(1) When the sale of property in this state is subject to the excise tax imposed by section 5739.01 to 5739.31, inclusive, of the Revised Code, provided said tax has been paid:

\* \* \*

\* \* \*

\* \* \*

(Emphasis added.)

Thus, if a motor vehicle or any similar item is purchased in Ohio, and the state's sales tax is paid thereon, the subsequent storage or use of the vehicle in any county in Ohio would not be subject to state or county use taxation. See, generally, Opinion No. 69-106, Opinions of the Attorney General for 1969.

There will, however, be instances in which the county use tax will apply to motor vehicles, for example, where no state sales tax has been paid on the vehicle. Your question is whether the incidence of such tax occurs upon consummation of the sale of the motor vehicle, or at the time the buyer requests the issuance of a

new certificate of title, pursuant to the provisions of R.C. Chapter 4505. The practical importance of this question stems from the fact that some purchasers acquired their vehicles before the effective date of the "niggy back" use tax in your county, but applied for new certificates of title after that date.

As I noted recently in another context (Opinion No. 72-044, Opinions of the Attorney General for 1972) there has been some uncertainty as to the exact point of time at which, under the provisions of R.C. Chapter 4505, the title to a motor vehicle passes from the seller to the buyer. Compare Casualty Co. v. Gall, 15 Ohio St. 2d 261 (1968), with Commercial Credit Corp. v. Pottmeyer, 176 Ohio St. 1 (1964). But here, as in Opinion No. 72-044, *supra*, it is unnecessary to deal with that issue, for your question assumes that a sale has been consummated by the assignment of the seller's certificate of title and the delivery of the motor vehicle to the purchaser. R.C. 1302.42 (B); Commercial Credit Corp. v. Schreyer, 120 Ohio St. 568 (1929); U.S. v. Birns, 395 F. 2d 943, 947 (CA6, 1968). Opinions of the Attorney General for 1963. The only question is whether the county's use tax falls due at, or before, consummation of the sale, or whether it falls due only upon the buyer's application for issuance of a new title.

Under R.C. 5741.021, the county use tax applies to the use, etc., of "motor vehicles acquired on or after the effective date of this act \* \* \*." I understand that the meaning of the term "acquired" is questioned, because of R.C. 4505.04, which reads as follows:

"No person acquiring a motor vehicle from the owner thereof, whether such owner is a manufacturer, importer, dealer, or otherwise, shall acquire any right, title, claim, or interest in or to said motor vehicle until such person has had issued to him a certificate of title to said motor vehicle, or delivered to him a manufacturer's or importer's certificate for it; nor shall any waiver or estoppel operate in favor of such person against a person having possession of such certificate of title, or manufacturer's or importer's certificate for said motor vehicle, for a valuable consideration. (Emphasis added.)"

The argument can be made that, under R.C. 4505.04, the buyer does not "acquire" the motor vehicle for purposes of R.C. 5741.021, until he acquires the legal title to that vehicle. However, the legislature clearly meant to impose the tax when the buyer acquires possession, not legal title. R.C. 5741.01 (D) states that "[p]urchase" means acquired for a consideration, whether such acquisition was effected by a transfer of title, or of possession, or of both, \* \* \*." And R.C. 5741.04 requires the seller to collect or charge the use tax, at or prior to the time of delivery of possession, as follows:

Every seller engaged in the business of selling tangible personal property in this state for storage, use, or other consumption in this state, to which section 5741.02 of the Revised Code applies, or which is subject to a tax levied pursuant to section 5741.021 of the Revised Code, shall, and any other seller who is authorized by rule or regulation of the tax commissioner to do so may, collect from the consumer the full and exact amount of the tax

payable on each such storage, use, or consumption, in the manner and at the times provided as follows:

(A) If the price is, at or prior to the delivery of possession of the thing sold to the consumer, paid in currency passed from hand to hand by the consumer, or his agent, to the seller, or his agent, the seller or his agent shall collect the tax and at the same time as the price;

(B) If the price is otherwise paid or to be paid, the seller or his agent shall, at or prior to the delivery of possession of the thing sold to the consumer, charge the tax imposed by, or pursuant to section 5741.02 or 5741.021 of the Revised Code to the account of the consumer, which amount shall be collected by the seller from the consumer in addition to the price. Such transaction shall be reported on and the amount of tax applicable thereto shall be remitted with the return for the period in which the same occurred, and the amount of the tax shall become a legal charge in favor of the seller and against the consumer. (Emphasis added.)

I can see no reason why this language would not apply to the sale of motor vehicles. Since the seller must collect or charge the tax at or before the time of delivery of possession, it follows that the incidence of taxation arises at that time, rather than at the later time of the buyer's application for a certificate of title. Otherwise, the seller in question would have been required to collect a tax which may or may not have been due, depending on the delay before the buyer applied for a certificate of title. Such a construction of the statute is unreasonable, and should be avoided. I conclude that, in the fact situation your question presents, the sale does not result in liability for the county use tax, because the buyer acquired possession of the motor vehicle prior to the effective date of that tax.

The foregoing conclusion is not inconsistent with R.C. 4505.04, which refers to the buyer's acquisition of legal title to the motor vehicle, because the incidence of the use tax arises upon the buyer's acquisition of mere possession of the vehicle, rather than legal title. Cf. Opinion No. 72-044, *supra*; and Opinion No. 70-092, Opinions of the Attorney General for 1970.

In specific answer to your question it is my opinion, and you are so advised that, where the sale of a motor vehicle is consummated prior to the effective date of the county permissive use tax act, R.C. 5741.021, and where the certificate of title to the motor vehicle is not delivered to the clerk of the common pleas court for transfer until after that date, the county permissive use tax does not apply.