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1. TRACTOR, COMMERCIAL—WHERE USED BY MANUFACTURER OF SEMI-TRAILERS—IN COMBINATION TO DELIVER THEM TO DEALERS AND DISTRIBUTORS OF MANUFACTURER—TRACTORS REGISTERED UNDER SECTION 4503.27 RC—MANUFACTURER FORBIDDEN BY LAW TO TRANSPORT PROPERTY IN SEMI-TRAILERS DURING DELIVERY—TRACTOR NOT "USED AS PART OF A COMMERCIAL TRACTOR COMBINATION"—OPERATIONS NOT SUBJECT TO TAX IMPOSED BY SECTION 5728.06 RC.

2. TRACTOR, COMMERCIAL—WHERE REGULARLY OPERATED IN COMBINATION WITH TRAILERS AND SEMI-TRAILERS—COMMERCIAL TRACTOR COMBINATIONS OR COMMERCIAL TANDEMS—OCCASIONALLY OPERATED ALONE—COMMONLY DESIGNATED "BOB-TAIL" TRACTOR—SUCH TRACTOR DURING TIME IT IS OPERATED ALONE CAN NOT BE DEEMED TO BE "USED AS PART OF A COMMERCIAL TRACTOR COMBINATION OR COMMERCIAL TANDEM"—"BOB-TAIL" OPERATION NOT SUBJECT TO TAX IMPOSED IN SECTION 5728.06 RC.

SYLLABUS:

1. Where a commercial tractor is used by a manufacturer of semi-trailers solely in combination with such semi-trailers for the purpose of delivering them to dealers and distributors of such manufacturer, such tractors being registered under the provisions of Section 4503.27, Revised Code, and such manufacturer thus being forbidden by law to transport property in such semi-trailers during such delivery, such tractor is not being "used as part of a commercial tractor combination" within the meaning of Section 5728.06, Revised Code, and such operations are not subject to the tax imposed in such section.

2. Where a commercial tractor is regularly operated in combination with trailers and semi-trailers in commercial tractor combinations or in commercial tandems, but on occasion is operated alone as what is commonly designated as a "bob-tail" tractor, such tractor during the time it is thus operated alone can not be deemed to be "used as part of a commercial tractor combination or commercial tandem" within the meaning of Section 5728.06, Revised Code, and such "bob-tail" operation is not subject to the tax imposed in such section.

Columbus, Ohio, January 11, 1954

Hon. John W. Peck, Tax Commissioner of Ohio
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

> "You are respectfully requested to give this Department your official opinion relative to the following question which has arisen under the administration of the highway use tax law, Section 5728.01, et seq., Revised Code. The factual situation is as follows.
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> "A corporation manufactures semi-trailers as that term is defined in Section 5728.01, Revised Code. This corporation owns commercial tractors as that term is defined in Section 5728.01, Revised Code, and uses such tractors in combination with semi-trailers when such semi-trailers are being delivered to the purchasers of the semi-trailers and to dealers and distributors of the manufacturing corporation. No property is carried in these semi-trailers which are being delivered to customers and distributors of the manufacturer.
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> "The vehicular combination which is formed by the tractor furnishing the motive power and the semi-trailer which is being delivered to a customer or to a distributor traverses the public highways of this state. The question presented is whether this vehicular combination constitutes a commercial tractor combination as that term is defined in Section 5728.01, Revised Code, so as to subject the owner thereof to the highway use tax levied by Section 5728.06, Revised Code."

The highway use tax is imposed under the provisions of Amended Substitute House Bill No. 619, 100th General Assembly, enacted in 1953 and subsequently codified as Section 5728.01, et seq., Revised Code. The specific language imposing the levy is found in Section 5728.06, Revised Code, which, to the extent here pertinent, provides:

> "* * * there is hereby levied a highway use tax upon * * * each commercial tractor used as a part of a commercial tractor combination * * * at the following rates * * *."

The primary question raised by this language in application to the facts stated in your inquiry is whether the tractors involved are "used as part of a commercial tractor combination," and in this connection it is assumed that they are never used for any other purpose than that described in your inquiry.

The term "commercial tractor combination" is defined in paragraph (G) of Section 5728.01, Revised Code, as follows:

> " 'Commercial tractor combination' means any commercial tractor and semi-trailer when fastened together and used as one unit;"

This definition can not be made clear without resort to the definition of the term "semi-trailer," as set out in paragraph (E) of Section 5728.01, Revised Code, in the following language:

> " 'Semi-trailer' means everything on wheels which is not self-propelled, except vehicles or machinery not designed for or employed in general highway transportation and except vehicles whose total weight excluding load is less than three thousand pounds, designed and used for carrying property on a public highway when being propelled or drawn by a commercial tractor when part of its own weight or the weight of its load, or both, rest upon and is carried by a commercial tractor;"

The exception in this definition relating to vehicles not designed for or employed in "general highway transportation" is indicative of a legislative intent to include in the category of vehicles "designed and used for carrying property on a public highway" all those which were so designed and used in the course of "general highway transportation" operations. This latter term is not defined in the statute and it is appropriate, therefore, to consider that the expression is here employed in its usual and ordinary sense. Although such usual meaning may not readily be stated with absolute precision, it is fair to suppose that this language was intended to exclude vehicles which were only casually or in isolated instances used in highway transportation. This term may fairly be supposed also to indicate the legislative intent to include in the definition such vehicles as are generally used in highway transportation, regardless of their current actual use, since it is a matter of common knowledge that cargo carrying vehicles used generally in highway transportation of property are, at times, operated over the highways without cargo.

This notion that the expression "designed and used," as employed in

this statutory definition of "semi-trailer," signifies a general, or primary, or "dedicated" use, rather than a current actual use, is supported by the reference in the definition to the partial support of the weight of the vehicle, or its load, or both, by a commercial tractor. This reference makes it clear that a vehicle may fall within the definition where "part of its own weight" rests upon a commercial tractor, regardless of whether any part of its load is thus supported. It is difficult to conceive of an arrangement whereby a part of a loaded vehicle could be supported by another without its load being similarly supported, and this indicates the legislative intent not to exclude vehicles from the definition during such times as they are being operated on the public highways without cargo.

This concept of the meaning of the term "designed and used," as employed in this definition, is in harmony also with the ordinary and usual meaning of the word "designed." The verb "designed" is defined in Webster's New International Dictionary, Second Edition, as follows:

> "2. To assign, or set apart, as for a purpose or end; to destine. * * * Also, to intend; to mean; as designed for one's good."

These definitions would indicate that the word "designed," as here employed, refers not to a mere structural or engineering design, but to the general use to which the owners concerned intend or purpose to put the vehicle in question.

For these reasons, I conclude that the words "designed and used," as employed in the definition of "semi-trailer," as set out in Section 5728.01, Revised Code, refer to vehicles where (1) the owners concerned intend to use them, or permit their use by others, for carrying property on a public highway in general highway transportation, and (2) they are generally and primarily so used even though they may, on occasion, be operated without actually carrying property as cargo.

Your inquiry indicates that the vehicles here in question are operated on the public highways in the course of delivery by their manufacturer-owner. In recent conversations with representatives of your department, I understand it to be conceded that such vehicles are so operated under favor of the special registration provisions of Section 4503.27, Revised Code, and that under the provisions of Section 4503.30, Revised Code, the manufacturer-owner is permitted to operate such vehicles under favor of such registration only "in transit from a manufacturer to a dealer," and

where such vehicles are not "being used for delivery, hauling, transporting, or other commercial purpose."

Thus, in the case here under consideration, the owner may not lawfully devote such vehicles to a current actual use in carrying property. What is more pertinent to our present inquiry, however, is that the legal disability above noted will prevent such owner from devoting such vehicles to a primary use in carrying property in general highway transportation. Such being the case, it would clearly appear that the vehicles here in question are not so "designed and used for carrying property" as to fall within the statutory definition of "semi-trailer." From this it follows that the delivery of such vehicles by the manufacturer could not involve the operation on the highways of a "commercial tractor combination," as such term is defined by statute.

The levy for which provision is made in Section 5728.06, Revised Code, is applicable, as noted above, to only such commercial tractors as are "used as a part of a commercial tractor combination or commercial tandem." Accordingly, indulging the assumption that the tractors here in question are not used for any purpose other than the delivery of vehicles by the manufacturer to a dealer, it would not appear that such tractors are subject to the highway use tax levy.

I have also for consideration a further request for my opinion regarding the application of the highway use tax, as follows:

> "The owner of a commercial tractor, as that term is defined in Section 5728.01, Revised Code, has been issued a highway use permit under the provisions of Section 5728.02, Revised Code, authorizing such commercial tractor to be operated as part of a commercial tractor combination with a maximum of four axles. At times this commercial tractor is operated alone in traveling on the public highways and not as part of a commercial tractor combination or in any other vehicular combination.
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> "Contention has been made to this Department that the mileage traveled by the commercial tractor when such tractor is operated alone and not as part of a commercial tractor combination is not subject to the highway use tax levied by Section 5728.06, Revised Code. The argument made to substantiate this contention is that the applicable portion of Section 5728.06, Revised Code, levies the tax upon each commercial tractor used as part of a commercial tractor combination at specified rates. It is further claimed that the tax is only levied upon a commercial tractor which is used as part of a commercial tractor combination as that

term is defined in Section 5728.01, Revised Code. This claim is made despite that portion of Section 5728.06, Revised Code, which provides for graduated tax rates for various commercial tractor combinations based upon the maximum number of axles set forth in the highway use permit issued for the commercial tractor. As previously stated, the commercial tractor in question has been issued a highway use permit authorizing it to be operated as part of a commercial tractor combination with a maximum of four axles.

"The specific question hereby presented is whether the owner of a commercial tractor for which has been issued a highway use permit authorizing such commercial tractor to be operated as part of a commercial tractor combination with a maximum of four axles, shall report and pay the tax at the rate of one and one-half cents for each mile traveled on a public highway in Ohio by such commercial tractor when operated alone and not in any vehicular combination and obtain a refund as prescribed in Section 5728.06, Revised Code, or are the miles traveled by a commercial tractor when operated alone and not in any vehicular combination not subject in the first instance to the tax levied by Section 5728.06 of the Revised Code?"

Here, again, we are initially concerned with the language of Section 5728.06, Revised Code, by which the levy is imposed. This language, to the extent here pertinent, is as follows:

"* * * there is hereby levied a highway use tax upon * * * each commercial tractor used as part of a commercial tractor combination or commercial tandem * * * at the following rates * * *."

In the situation at hand, the first question presented is whether a tractor operated alone, sometimes referred to as a "bob-tail tractor," falls within the statutory definition of "commercial tractor." A second question is whether the word "used" in the language quoted above from Section 5728.06 refers to (a) a current actual use, or (b) a general, or primary, or "dedicated" use.

The term "commercial tractor" is defined in Section 5728.01, Revised Code, as follows:

" 'Commercial tractor' means any motor vehicle designed and used to propel or draw a trailer or semi-trailer or both on a public highway without having any provision for carrying loads independently of such trailer or semi-trailer;"

Here, again, the key words are "designed and used." It seems clear

that the tractors here in question are "designed," in every possible sense, for propelling and drawing trailers and semi-trailers. Certainly they are structurally so designed, and we may safely assume that the owners, or other persons lawfully in possession and control, intend and purpose to employ such tractors for such purpose to the fullest extent possible, and to keep its "bob-tail" operations to a minimum.

This brings us to the interpretation of the word "used," as employed in the definition. We have reached the conclusion hereinbefore that this word, as employed in the definition of "semi-trailer," a definition set out in the same section here under consideration, should be deemed to refer to a general, or primary, or "dedicated" use, rather than to a current actual use. The fact that the same word is employed several times in the same section in the definition of various vehicles would indicate that the same construction was intended in each case. State, ex rel. Bohan v. Industrial Commission, 146 Ohio St., 618.

Moreover, in the language in Section 5728.06, supra, imposing the levy, reference is made to a "commercial tractor used as a part of a commercial tractor combination." This language implies the possibility of a vehicle falling within the definition of "commercial tractor" without being "used as a part of a commercial tractor combination." This, of course, clearly suggests that the word "used," as employed in the definition of "commercial tractor," refers to a general, or primary, or "dedicated" use. For these reasons it may be concluded that a tractor operated alone, i.e., as a "bob-tail," does fall within the definition of "commercial tractor."

We now come to the question of whether a "bob-tail" tractor can be deemed to be one which is "used as part of a commercial tractor combination," as this language is employed in Section 5728.06, Revised Code. Here, again, the question presented is the meaning to be accorded the word "used."

As already noted, a "commercial tractor," by definition, is a vehicle which is "used to propel or draw a trailer or semi-trailer." Thus, when this term is followed in Section 5728.06, Revised Code, by the language "used as part of a commercial tractor combination or commercial tandem," we are confronted with an instance in which the word "used" is twice employed, in effect, in one phrase. That is to say, such word appears *directly* therein, and is also employed *indirectly* therein by virtue of its appearance in the definition. Accordingly, if the word "used," as employed

directly in this instance is to be given any meaning at all it must be deemed to refer to a current actual use. In this situation it becomes clear that a tractor operated alone, i.e., as a "bob-tail," its use is not subject to the levy.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. Where a commercial tractor is used by a manufacturer of semi-trailers solely in combination with such semi-trailers for the purpose of delivering them to dealers and distributors of such manufacturer, such tractors being registered under the provisions of Section 4503.27, Revised Code, and such manufacturer thus being forbidden by law to transport property in such semi-trailers during such delivery, such tractor is not being "used as part of a commercial tractor combination" within the meaning of Section 5728.06, Revised Code, and such operations are not subject to the tax imposed in such section.

2. Where a commercial tractor is regularly operated in combination with trailers and semi-trailers in commercial tractor combinations or in commercial tandems, but on occasion is operated alone as what is commonly designated as a "bob-tail" tractor, such tractor during the time it is thus operated alone can not be deemed to be "used as part of a commercial tractor combination or commercial tandem" within the meaning of Section 5728.06, Revised Code, and such "bob-tail" operation is not subject to the tax imposed in such section.

Respectfully,
C. WILLIAM O'NEILL
Attorney General