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TRACTOR — TOWNSHIP TRUSTEES MAY LEASE — RIGHT NOT AFFECTED BECAUSE NO SALES TAX PAID BY FARMER OWNER—NO LICENSE PLATES REQUIRED ON TRACTOR—SECTION 6290, PARAGRAPH 2, G. C.

SYLLABUS:

1. *Township trustees may, for the purpose of doing work on township highways under force account, lease an agricultural tractor from the farmer who is the owner of such tractor.*

2. *The fact that no sales tax was paid by the farmer when he purchased the tractor does not affect the right or authority of township trustees to lease the same from the owner.*

3. *When an agricultural tractor is leased by township trustees for road repair work, motor vehicle registration is not required because such vehicle constitutes "equipment used in construction work" under the provisions of paragraph 2, Section 6290, General Code.*

Columbus, Ohio, June 13, 1940.

Honorable Hugh A. Staley, Prosecuting Attorney,
Greenville, Ohio.

Dear Sir:

This will acknowledge receipt of your communication as follows:

"I would like your opinion as to whether or not the township trustees, when work is being done on township highways under force account, may lease the tractor of a farmer, which tractor has been purchased by the farmer for use in agricultural pursuits only, and on which no sales tax has been paid, this tractor bearing no license plate of any kind."

Authority for township trustees to lease machinery for road work is contained in Section 3373 of the General Code, which reads in part as follows:

"Township trustees are hereby authorized to purchase or lease

such machinery and tools as may be deemed necessary for use in maintaining and repairing roads and culverts within the township."

You state in your communication that the tractor was purchased by the farmer for use in agricultural pursuits only. Obviously, if the tractor is leased to township trustees for road purposes, it is not being used for agricultural purposes. Whether or not the purchase of a tractor so used is exempt from the sales tax depends, of course, upon the provisions of law with respect thereto.

Section 5546-2, General Code, which imposes a tax on retail sales, reads as follows:

"For the purpose of providing revenue with which to meet the needs of the state for poor relief in the existing economic crises, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, and for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this act, an excise tax is hereby levied on each retail sale made in this state of tangible personal property on and after the first day of January, 1935, with the exceptions hereinafter mentioned and described as follows: * * *"

A retail sale is defined in Section 5546-1, General Code as follows:

" 'Retail sale' and 'sale at retail' include all sales excepting those in which the purpose of the consumer is * * * to use or consume the thing transferred directly in the production of a tangible personal property for sale by manufacturing, processing, refining, mining, production of crude oil and natural gas, farming, horticulture, or floriculture, * * *."

Rule 42, promulgated by the Department of Taxation, reads as follows:

"Sales of articles to be used or consumed by farmers, horticulturists, or floriculturists, directly in producing tangible personal property for sale, are not subject to the tax.
* * *

All implements and articles used in cultivation or used to stimulate the growth of crops or flowers, which are to be sold, are deemed to be used directly in the production of tangible personal property and the sales thereof to farmers, horticulturists, and floriculturists, are not subject to the tax."

From the above, it is apparent that unless farm implements are to be used for cultivation or to stimulate the growth of crops which are to be sold, the sale of such implements would be subject to the tax levied under Section 5546-2, General Code. It would appear, therefore, that a tax should be collected on the sale of a tractor which is to be used part of the time for road repair work by township trustees.

However, whether the tax due was paid by the consumer at the time of purchase of said equipment would in no way affect the right or power of township trustees to lease the same. If an assessment were made by the Department of Taxation, it would be made against the owner and not against the township trustees.

You also state in your communication that the tractor in question bears no number plates. Paragraph 2 of Section 6290, General Code, provides:

“‘Motor vehicle’ means any vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except road rollers, traction engines, power shovels, power cranes and other equipment used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, threshing machinery, hay baling machinery and agricultural tractors and machinery used in the production of horticultural, agricultural and vegetable products.”

Paragraph 3 of Section 6290, General Code, provides:

“‘Agricultural tractor’ and ‘traction engine’ means any self-propelling vehicle designed or used for drawing other vehicles or wheeled machinery but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes.”

By the terms of Section 6291, General Code, an annual license tax is “levied upon the operation of motor vehicles on the public roads and highways of this state”. Furthermore, Section 6298, General Code, provides that, upon payment of the tax, the registrar of motor vehicles shall issue to the applicant two number plates which shall be displayed on the motor vehicle.

Section 12613, General Code, provides:

“Whoever, being the owner of a motor vehicle, trailer or semi-trailer, the manufacturer thereof, or dealer therein fails to have

the distinctive number and registration mark, furnished by the director of highways for such motor vehicle, trailer or semi-trailer, displayed on the front and rear thereof, except in the case of trailers and semi-trailers, which class of vehicles shall display on the rear only, as an identification mark, securely fastened so as not to swing, shall be fined not more than fifty dollars.”

Summarizing the preceding sections, all motor vehicles operated on the public highways of this state, must have displayed thereon number plates. Unless such plates are so displayed, the owner of the motor vehicle may be prosecuted under Section 12613, General Code.

Consequently, the question arises as to whether the tractor in the instant situation is a “motor vehicle” when it has been leased to the township trustees for road repair work. At the outset it appears that it is unnecessary to determine whether a tractor that was purchased for agricultural purposes and which is leased for a short time to township trustees for road repair work is still an “agricultural tractor” as that term is defined in paragraph 3, Section 6290, *supra*. Obviously, such vehicle would constitute “equipment used in construction work” under the provisions of paragraph 2, Section 6290, General Code, and would, therefore, not require registration.

In view of the above, I am of the opinion that:

1. Township trustees may, for the purpose of doing work on township highways under force account, lease an agricultural tractor from the farmer who is the owner of such tractor.
2. The fact that no sales tax was paid by the farmer when he purchased the tractor does not affect the right or authority of township trustees to lease the same from the owner.
3. When an agricultural tractor is leased by township trustees for road repair work, motor vehicle registration is not required because such vehicle constitutes “equipment used in construction work” under the provisions of paragraph 2, Section 6290 of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.