Note from the Attorney General's Office:

1975 Op. Att'y Gen. No. 75-043 was overruled by
1983 Op. Att'y Gen. No. 83-046.

OPINION NO. 75-043

Syllabus:

A vehicle, commercially known as the "Big A", when owned and operated by a supplier for the purpose of delivering and applying fertilizer to farms qualifies as a motor vehicle pursuant to R.C. 4501.01(B) and, as such, is subject to the license tax imposed by R.C. 4503.02.

To: Curtis Andrews, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William J. Brown, Attorney General, June 19, 1975

You have requested my opinion as to whether a piece of machinery commercially known as the "Big-A" should be registered as a motor vehicle and licensed accordingly. You state that the supplier, not the farmer-customer, owns and uses the machine which appears to be a farm vehicle by design to transport and spread

fertilizer on farm land. In determining my response to your question I gave consideration to the manufacturer's advertising information which you supplied with your request.

R.C. 4503.02 provides that an annual license tax shall be levied upon the operation of motor vehicles on the public roads or highways. Inasmuch as the foregoing tax is levied upon the operation of motor vehicles, proper disposition of your question depends upon whether or not the item in question can be properly defined as a motor vehicle.

R.C. 4501.01, which sets forth definitions for various terms used in R.C. Chapter 4503, provides in part as follows:

> "As used in Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517., of the Revised Code, and in the penal laws, except as otherwise provided:
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> "(B) 'Motor vehicle' means . . . any vehicle propelled or drawn by other than musuclar 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, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour, or less, threshing machinery, hay baling machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products."
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> ". . .
>
> "(P) 'Farm machinery' means all machines and tools used in the production, harvesting, and care of farm products, including trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour or less."
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> (Emphasis added.)

Thus, it must be determined whether the vehicle in question is a motor vehicle subject to the annual tax or whether it is an item of farm machinery exempt from the license fee pursuant to R.C. 4501.01(R).

It will be noted at the outset that there is no presumption favorable to the exemption of property from taxation. Any exemption of property from taxation must be clearly and expressly stated in the statute. Cullitan v. Cunningham Sanitarium, 134 Ohio St. 99 (1938). Any doubt in the application of the statute, therefore, should be resolved in a manner that would favor the imposition of a tax on the vehicle in question.

It would, at first impression, appear that the vehicle under consideration clearly qualifies as farm machinery and is, accordingly,

exempt from the license tax. It is, in theory, neither designed for nor employed in general highway transportation. It is a three-wheeled vehicle with over-sized tires. An advertised maximum field speed of only twenty miles per hour presumably renders it unsuitable for general highway travel. The intended use of the vehicle is to aid in the production of agricultural products.

The fact that this vehicle by design qualifies as farm machinery, however, is not conclusive in determining its true nature. It is conceded that a supplier delivers and spreads fertilizer in this machine at the request of a farmer. The farmer is neither the owner nor the operator of the vehicle. Under similar circumstances, a predecessor concluded in 1932 Op. Att'y Gen. No. 3932, p. 30, that when a farmer or group of farmers purchases a a truck chassis and equips it with farm apparatus to be used in his or their farm enterprises, such device is not subject to the license tax provided by R.C. 4503.02. If, however, the same equipment is operated by an individual or corporation as his or its principal business in rendering such service to farmers for hire, such apparatus is a motor vehicle within the purview of R.C. 4503.02. In so concluding, it was stated at p. 34 as follows:

> "While the ownership of a vehicle is not determinative of the character of, or purpose of a piece of machinery, it is entitled to consideration for the purpose of determining such fact. And when a machine is owned by a person engaged exclusively in agricultural or farming purposes, there is a presumption that such machine is to be used by him in his business. This is not an irrefutable presumption, and, if he should change his business to some entirely distinct type of business he would no longer be a farmer.
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> "The test as to whether any piece of machinery is farm machinery, is whether such machinery is used principally or chiefly for agricultural or farming purposes, that is for purposes usually pursued by farmers.

The same reasoning was applied once again in 1940 Op. Att'y Gen. No. 3087 p. 1032. In concluding that equipment consisting of a tractor and vehicle constructed from the chassis of a truck, which is used for transporting lime from warehouses to farmers and for spreading such lime on their fields, is subject to the license tax levied upon the operation of a motor vehicle, my predecessor stated as follows:

> "The spreading of lime on the fields is no doubt efficacious in the production of crops and a tractor, when employed in such operation is without question being used for an agricultural purpose, and if such tractor is transported over the highways from one farm to another, there to be used for such purpose, said tractor would still be used principally for agricultural purposes. However, if such tractor is used by the owner thereof solely to haul lime from the seller to farms, it certainly could not be said in such case that a tractor is being used for agricultural purposes. Whether or not after the delivery of the lime transported, the tractor is also used for the spreading of such lime, in my opinion makes very little difference.

The reasoning contained in the foregoing opinions is directly applicable to the instant situation. The owners and operators of the machines in question are not engaged in farming either primarily or incidentally. They are, rather, engaged in a business which consists of the sale and application of fertilizer. The mere fact that, in carrying on such a business, these operators offer a necessary service to farmers does not justify finding that the equipment used is farm machinery under R.C. 4501.01.

In conclusion, therefore, it is my opinion and you are so advised that a vehicle, commercially known as the "Big A", when owned and operated by a supplier for the purpose of delivering and applying fertilizer to farms qualifies as a motor vehicle pursuant to R.C. 4501.01(B) and, as such, is subject to the license tax imposed by R.C. 4503.02.