

1825.

MOTOR VEHICLES—ALL MOTOR VEHICLES OPERATED ON HIGHWAYS OF OHIO SUBJECT TO MOTOR VEHICLES LICENSE TAX—SUBJECT TO RECIPROCITY AGREEMENTS.

SYLLABUS:

All motor vehicles operated on the highways of Ohio are subject to the "motor vehicle license tax" imposed by Sections 6291 et seq., subject to such reciprocal agreements as might be legally entered into by "the commission" with states other than Ohio, pursuant to the provisions of Section 6306-1, General Code.

COLUMBUS, OHIO, November 4, 1933.

Department of Highways, Bureau of Motor Vehicles, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for my opinion concerning the following:

"Will you kindly give us your opinion as to whether or not this bureau is right in its contention in imposing Ohio license plate registration upon all motor vehicles owned by residents of Ohio and operated upon the highways of this state?"

The question has presented itself in the following concrete case:

An Ohio corporation located near the Pennsylvania border owns and operates a large fleet of trucks most of which are properly registered in this state. Some of the trucks are registered in Pennsylvania and are not registered in Ohio, although the same are operated on Ohio highways, the contention of the owner being that because the trucks in question are operated most of the time in Pennsylvania and only a comparatively small part of the time on the highways of this state Ohio registration is unnecessary. As a further contention the owner claims that the fact that a 'situs', or place of business has been established in Pennsylvania has a direct bearing on the matter and that fact also exempts him from Ohio license plate registration."

Section 6291, General Code, uses the following language in levying the annual license tax on motor vehicles:

"An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state * *"

I do not find, upon examination, any language in this or other sections of the so-called "motor vehicle license law" which grants any specific exemption of any motor vehicle using the highways of the state of Ohio, from the provisions of this tax, whether such vehicles are owned by citizens or residents of Ohio, or otherwise. It is always to be presumed that the provisions of a tax law act uniformly on all subjects within its terms, unless there is language in the act which clearly exempts certain property or persons therefrom, or otherwise clearly indicates a different intent. *Hoge vs. Railroad Co.*, 99 U. S., 348; *South Carolina vs. Commissioner of Internal Revenue*, 59 Fed. (2D) 742, 744; *Bank of Commerce vs. Tennessee*, 161 U. S. 134, 136.

It might be urged that the state of Ohio does not have the right to tax motor vehicles which are used in interstate commerce. Such question has been before the Supreme Court of the United States on numerous occasions and that court has consistently held that a license tax levied upon motor vehicles, reasonable in amount, the proceeds of which are used for the construction and/or maintenance of highways and the enforcement of the motor vehicle law is valid even though such tax is levied on vehicles using the highways of the state whether engaging in interstate commerce as well as on those engaging in purely intrastate enterprises. See *Sproul vs. City of South Bend*, 277 U. S. 163; *Sage vs. Baldwin*, 65 Fed. (2D) 968; *Morris vs. Doby*, 274 U. S., 135; *Michigan P. U. C. vs. Duke*, 266 U. S. 570; *Kane vs. New Jersey*, 242 U. S. 160; *Interstate Transit Inc. vs. Lindsey*, 283 U. S. 183; *Interstate Busses Corp. vs. Blodgett*, 276 U. S. 245; *Interstate Busses Corp. vs. Holyoke St. Ry. Co.*, 273 U. S., 44; *Clark vs. Poor*, 274 U. S. 554; *Sanger vs. Lukens*, 24 Fed (2D) 226.

The provisions of the Ohio motor vehicle license law, in terms, applies not only to those vehicles used in intrastate enterprises but as well to those used in interstate commerce.

You state that the argument has been advanced to you by the taxpayer, that the place of business of the owner of the vehicle is in another state and for that reason the vehicles are not taxable under the Ohio license tax law. While I do find certain provisions in the statutes with reference to the allocation of motor vehicle license funds (Sec. 6309-2, G. C.) in which the place from which operated might be material in determining the allocation or disbursement of the tax funds, yet I have been unable to find any provision in such act which makes the place of business of the owner a determining element in the levy of the license tax on motor vehicles.

The only provision that I am able to find in the "motor vehicle license tax law" under which a motor vehicle, licensed in another state, might be exempted or excused from the registration and tax provided therein, is contained in Section 6306-1, General Code, the first paragraph of which section reads:

"The attorney general, the director of highways and a member of the public utilities commission, designated by the commission for that purpose, are hereby authorized and empowered to enter into such reciprocal contracts and agreements as they may deem proper or expedient with the proper authorities of adjoining states, regulating the use, on the roads and highways of this state, of trucks and automobiles and any other motor vehicles owned in such adjoining states, and duly licensed under the law thereof."

I am informed that, as yet, no such agreement has been entered into. I, therefore, express no opinion herein as to the nature of the agreement contemplated by such section.

In your request, you refer to the "situs" of the motor vehicles in question for the purpose of the imposition of the tax in question. From the manner in which the word is used, it would appear that the taxpayer is confused as to the meaning of the word. "Situs" when used in connection with the law of property taxation, means the place or location at which the property is legally required to be listed for taxation purposes.

I realize that under my opinion as herein expressed, the motor vehicle in question may be subjected to two or more taxes, yet it must be borne in mind

that the "motor vehicle license tax" is an excise or privilege tax. When the tax is paid on a motor vehicle for the privilege of operating it on the highways of Pennsylvania no privilege would thereby be purchased for its operation on the highways in Ohio. The elements of double taxation are therefore not present. Even if such elements were present, the law is specific, and there is no constitutional inhibition either state or federal, against double taxation.

Specifically answering your inquiry it is my opinion that all motor vehicles operated on the highways of Ohio are subject to the "motor vehicle license tax" imposed by Sections 6291 et seq., subject to such reciprocal agreements as might be legally entered into by "the commission" with states other than Ohio, pursuant to the provisions of Section 6306-1, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1826.

APPROVAL, BONDS OF LIVERPOOL TOWNSHIP RURAL SCHOOL DISTRICT, MEDINA COUNTY, OHIO, \$11,303.43.

COLUMBUS, OHIO, November 4, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1827.

APPROVAL, LEASE TO CANAL LAND IN THE CITY OF DELPHOS, ALLEN COUNTY, OHIO.

COLUMBUS, OHIO, November 4, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval a certain canal land lease in triplicate, executed by you to one C. J. Winston of Delphos, Ohio. By this lease, which is one for a term of fifteen years and which provides for an annual rental of eighteen dollars, payable semi-annually, there is leased and demised to the lessee above named the right to occupy and use for lawn and business purposes that portion of the berm embankment of the abandoned Miami and Erie Canal which is located in the city of Delphos, Allen County, Ohio, and which is more particularly described as follows:

Beginning at the point of intersection of the easterly line of said canal land and the northerly line of Fifth street in said city and being the southwest corner of Lot No. 28, in said city, and running thence westerly with the northerly line of Fifth Street twenty (20') feet, more or less, to the top water line of said canal; thence northerly parallel