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THE CIVIL AIR PATROL IS NOT EXEMPT FROM THE ANNUAL MOTOR VEHICLE LICENSE TAX—§4503.16, R.C., OPINION 6467, OAG, 1943, §202, FEDERAL CODE 36, §9441, FEDERAL CODE 10, OPINION 1019, OAG, 1951.

SYLLABUS:

The Civil Air Patrol is not an agency, department or office of the federal government and is not entitled to an exemption from the annual license tax on motor vehicles under the provisions of Section 4503.16, Revised Code.

Columbus, Ohio, July 13, 1962

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

In your request for my opinion you ask whether the Civil Air Patrol is exempt from paying a registration fee on its motor vehicles.

Section 4503.16, Revised Code, provides in part:

“Every owner of a commercial car, before operating or driving such motor vehicle upon the public roads or highways, or permitting the same to be driven, shall file an application for registration.

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“Title to motor vehicles acquired by the state or any of its political subdivisions, whether used for either governmental or proprietary functions, shall be registered. *Such vehicles which have been registered and which are used exclusively in the performance of the governmental or proprietary functions of the state or any political subdivision thereof shall not be subject to charge of any kind;* but this provision does not exempt the operation of such vehicles from any other provision of Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4515., and 4517., of the Revised Code, and the penal laws relating thereto.

“The registrar of motor vehicles shall accept any application to register a motor vehicle owned by the federal government which may be made by any officer, department, or grant of such government.

“The registrar shall issue permanent license plates for motor vehicles acquired by the state or any of its political subdivisions, which have been registered and which are used exclusively in the performance of the governmental or proprietary functions of the state or any political subdivision thereof. The registrar shall also issue permanent license plates for motor vehicles owned and registered by the federal government. Such permanent license plates if lost, stolen or destroyed shall be replaced gratis with another permanent number.

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(Emphasis added)

Section 4503.16, Revised Code, provides an exemption from the annual license tax and other charges on motor vehicles acquired by the state or any of its political subdivisions when used for governmental or proprietary functions.

One of my predecessors in Opinion No. 6467, Opinions of the Attorney General for 1943, page 594, construed the language of this exemption, then found in former Section 6295, General Code, as it applied to certain government agencies, including a defense plant corporation created under the Reconstruction Finance Corporation Act (15 U.S.C.A., Section 6066), and ruled:

“1. The federal government, or any agency thereof which is exercising governmental functions, is entitled to have a motor vehicle registered without charge under the provisions of Section 6295, General Code, provided such vehicle is publicly operated and used exclusively for public purposes.”

Starting at page 599 of said Opinion No. 6467, *supra*, it is stated:

“In considering present Section 6295, it might appear at first blush that in the use of the word ‘state’ it was intended to refer to those vehicles owned by the state of Ohio. But this cannot be the situation in view of the provisions of Section 6290, General Code, which states in part that:

‘Definition of terms, as used in this chapter and in the penal laws, except as otherwise provided: * * *

16. ‘State’ includes the territories and federal districts of the United States, and the provinces of the Dominion of Canada.’

“As I read this language, a vehicle owned by any one of the other states of the Union is entitled to registration without charge, provided it is used exclusively for public purposes. Likewise, vehicles owned by the several provinces that constitute the Dominion of Canada come within the provisions thereof. To say that the federal government, a union of all the sovereign states, created by the adoption of a federal constitution—is not within the purview of the statute seems to me to lead to an absurd conclusion. Legislation should never receive such a construction.

“It is noteworthy that when Section 6295, *supra*, was enacted into its present form, the General Assembly did not omit that provision thereof to the effect that an application to register a motor vehicle owned by the federal government should be accepted. This concluding paragraph of the section, standing alone, does not provide that such a vehicle shall be used exclusively for public purposes. Nor does it say that registration should be without charge. If it were not intended that a motor vehicle of the federal government should come within the exemption provision, then what purpose could have been served by permitting this concluding paragraph to remain in the section under consideration? Certainly it has some meaning. I must conclude, therefore, in the light of the legislation as it previously existed and as interpreted by my aforementioned predecessors, that motor vehicles owned by the federal government are within the purview of Section 6295, *supra*. Such a construction permits the giving of effect to this last paragraph which would otherwise seem to be surplus language.

“We might consider for a moment what would be the situation if it could be said that Section 6295, *supra*, does not authorize the exempting of motor vehicles owned by the federal government. I think it is well established that the means or agencies selected by the federal government as necessary or convenient to the exercise of its functions cannot be subjected to the taxing power of the states. It seems likewise settled that the

federal government cannot tax the agencies of a state, or the means necessary to the exercise of its sovereign functions. Any attempt to tax vehicles owned by the federal government would necessarily result in a deviation from these principles. I am of course aware of the fact that Section 6291, General Code, which provides in part that 'An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state' is an excise rather than a property tax. See *Calerdine v. Frieberg*, 129 O.S. 453, wherein the court, as page 457, said:

'At the threshold of this discussion it is of importance to observe that there is no dispute as to the precise nature of this tax. Both the Court of Common Pleas and the Court of Appeals held it to be an excise rather than a property tax. Counsel have so considered it in their briefs and oral arguments. Clearly this is correct.'

"However, I cannot bring myself to the view that by the change in the wording of Section 6295, *supra*, it was thereby intended that the taxing power of this state should thus be extended to place what might be considered a burden upon the federal government in the exercise of its functions. But whether such a tax would or would not be a burden, I need not here decide. Suffice it to say that an effort to impose such a tax might be seriously doubted."

Opinion No. 6467, *supra*, was cited and approved in Opinion No. 933, Opinions of the Attorney General for 1946, page 319, in regard to the question of whether busses leased by the federal government to certain universities to transport veterans attending college under the "G.I." Bill were exempt under the provisions of the then existing Section 6295, General Code.

The provisions of former Section 6295, General Code, now Section 4503.16, Revised Code, have been amended since Opinion No. 6467, *supra*, however the language in regard to vehicles of the state or its political subdivisions has remained constant.

In 1959 (128 O.L. 173), Section 4503.16, Revised Code, was amended to provide for the issuance of permanent plates to the state and federal government and the replacement of such plates free of charge when lost or destroyed. Thus, in providing for the issuance of permanent plates to federal vehicles the legislature has apparently recognized and adopted the construction placed on former Section 6295, General Code, now Section 4503.16, Revised Code, in Opinion No. 6467, and the question now before me requires that I determine whether motor vehicles owned by the Civil

Air Patrol are vehicles of an office, department, or agent of the federal government and are used exclusively for governmental or proprietary functions.

The Civil Air Patrol is a federally chartered nonprofit, non-stock corporation created by act of congress (60 Statutes, at page 346, F.C.A. 36 Sections 201 to 208).

The purposes of the Civil Air Patrol are set forth In Federal Code Annotated 36, Section 202, as follows :

“(a) To provide an organization to encourage and aid American citizens in the contribution of their efforts, services, and resources in the development of aviation and in the maintenance of air supremacy, and to encourage and develop by example the voluntary contribution of private citizens to the public welfare ;

“(b) To provide aviation education and training especially to its senior and cadet members ; to encourage and foster civil aviation in local communities and to provide an organization of private citizens with adequate facilities to assist in meeting local and national emergencies.”

Further, Federal Code Annotated 10, Section 9441, provides :

“(a) The Civil Air Patrol is a volunteer civilian auxiliary of the Air Force.

“(b) To assist the Civil Air Patrol in the fulfillment of its objectives as set forth in section 202 of title 36, the Secretary of the Air Force may, under regulations prescribed by him with the approval of the Secretary of Defense—

“(1) give, lend, or sell to the Civil Air Patrol without regard to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.) (40 Sec. 471 et seq.)

“(A) major items of equipment, including aircraft, motor vehicles, and communication equipment ; and

“(B) necessary related supplies and training aids ; that are excess to the military departments ;

“(2) permit the use of such services and facilities of the Air Force as he considers to be needed by the Civil Air Patrol to carry out its mission ;

“(3) furnish such quantities of fuel and lubricants to the Civil Air Patrol as are needed by it to carry out any mission assigned to it by the Air Force ;

“(4) establish, maintain, and supply liaison offices of the Air Force at the National, State, and Territorial headquarters, and at not more than eight regional headquarters, of the Civil Air Patrol;

“(5) detail or assign any member of the Air Force or any officer or employee of the Department of the Air Force to any liaison office at the National, State, or Territorial headquarters, and at not more than eight regional headquarters, of the Civil Air Patrol;

“(6) detail any member of the Air Force or any officer or employee of the Department of the Air Force to any unit or installation of the Civil Air Patrol to assist in the training program of the Civil Air Patrol; and

“(7) in time of war, or of national emergency declared after May 27, 1954, by Congress or the President, authorize the payment of travel expenses and allowances, in accordance with the Travel Expense Act of 1949 (5 U.S.C. 835 et seq.) (5 Sec. 835 et seq.) to members of the Civil Air Patrol while carrying out any mission specifically assigned by the Air Force.

“(c) The Secretary may use the services of the Civil Air Patrol in fulfilling the noncombat mission of the Department of the Air Force. (Aug. 10, 1956, c. 1041, Sec. 1, 70 A Stat. 572.”

The question of whether the Civil Air Patrol is an agency of the federal government was considered by the United States Circuit Court of Appeals, 10 Cir. in *Larry Dean Pearl v. United States of America*, 230 Fed. 2, 243, in regard to the application of the federal tort claims act, and the court stated at page 245:

“But there are other circumstances tending to support such conclusion. That the Civil Air Patrol is not a wholly owned government corporation of the type listed in the Act of December 6, 1945 c. 557, 59 Stat. 597 and the amendments thereto, whose financial transactions and operations are kept under annual scrutiny by the Congress, is beyond cavil. Nor is it a ‘mixed-ownership government corporation’ whose financial transactions are required to be audited annually by the General Accounting Office, a typical example of which is the Federal Deposit Insurance Corporation. The control of the Congress over this corporation is only such as is common to virtually all private corporations granted federal charters—merely requiring the transmittal to Congress each year of a report of its proceedings and activities for the preceding calendar year. The fact that it was listed in the codification with the American National Red Cross, Daughters of the American Revolution and more than twenty such organi-

zations is probably nugatory; but however that may be, the conclusion is inescapable that the Civil Air Patrol under its charter, should not be classified as a corporation 'primarily acting as (an) instrumentality of the United States.' Since it is not a part of the executive department nor an 'independent establishment of the United States' it is not a federal agency."

This opinion was cited and followed in *United States of America v. Stewart M. Alexander, Jr.*, 234 Fed. 2d, 861.

It is an accepted principle of law that statutes which grant an exemption from taxation must be strictly construed and those claiming the exemption must fall squarely within the provision of the exemption. *State ex rel. Church of the Nazarene v. Togo*, 150 Ohio St., 45.

The Civil Air Patrol is an auxiliary of the U. S. Air Force, however, this in itself does not support the conclusion that it is an agency or department of the federal government.

The Civil Air Patrol is not supported by appropriations from the Congress and is not subject to the direct control of the United States Air Force. The Air Force may utilize its services to perform non-combat missions and in time of war personnel are entitled to travel expenses when carrying out a mission for the Air Force. Federal Code Annotated, Sec. 204 (B) authorizes the Civil Air Patrol to adopt bylaws, a constitution, and regulations to govern and control the organization to achieve the purposes set forth in Federal Code Annotated 36, Sec. 202. The Civil Air Patrol has the authority to determine who shall become a member of the organization and has all of the necessary corporate powers to achieve the purposes set forth in the law.

There is no question that the Civil Air Patrol is a non-profit charitable corporation impressed with a commendable public purpose. The Patrol is, however, a separate entity created for the purpose of encouraging the development of aviation, the maintenance of air supremacy, providing aviation education and fostering civil aviation in local communities. The mere fact that Congress has declared that this organization should act in the capacity of an auxiliary to the U. S. Air Force does not change or alter the primary purpose of the corporation or create an entity which must be considered an arm of the federal government.

It is true that at times this organization acts in behalf of the United States government and receives special treatment in regard to the lease

or loan of equipment, and personnel. However, one of my predecessors in Opinion No. 1019,, Opinions of the Attorney General for 1951, page 862, considered the question of whether the American Red Cross was entitled to an exemption from payment of motor vehicle fuel tax under former Section 5527 (D) General Code, present Section 5735.05 (D), Revised Code, and ruled that such organization was not an agency of the federal government. The then attorney general set forth at page 864 of his opinion the following criteria:

“As you have indicated, this question was considered by one of my predecessors in office in Opinion No. 1283, Opinions of Attorney General for 1937, p. 2200, the syllabus in which is quoted in your letter of inquiry. From an examination of the discussion in that opinion, it appears that the writer was led to the conclusion therein reached by two principal considerations. First, it was noted that the American Red Cross operates wholly with funds raised by voluntary contributions and enjoys no allowance of public funds raised by taxation. Second, except for the auditing of its accounts as disclosed in its annual fiscal report filed with the War Department, the government exercises no immediate control over the functions of the American National Red Cross and the organization enjoys wide discretion in the choice of activities, within the scope of its powers, to which its efforts and funds will be devoted.”

Although the Civil Air Patrol has a closer relationship with the federal government than the American Red Cross, it appears that the federal government does not appropriate funds to support the organization, and exercises only limited control over the activities of the Civil Air Patrol. The Civil Air Patrol organizes its own program, selects its own members, its own leaders and operates essentially as a separate and distinct entity.

Answering your specific question, therefore, it is my opinion and you are advised that the Civil Air Patrol is not an agency, department or office of the federal government and is not entitled to an exemption from the annual license tax on motor vehicles under the provisions of Section 4503.16, Revised Code.

Respectfully,
MARK McELROY
Attorney General