

the trustees of the township, the same should be treated as a part of the compensation, damages, costs and expenses of the improvement, apportioned and assessed as such, and the trustees thereby reimbursed for the original expenditure.

Yours respectfully,

C. C. CRABBE,
Attorney General.

336.

COMMERCIAL CAR—VEHICLE DESIGNED FROM TRACTOR AND SEMI-TRAILER OPERATED AS UNIT—SUBJECT TO TAX AS COMMERCIAL TRUCK.

SYLLABUS:

A vehicle designed from a tractor and semi-trailer in such manner as to be operated as a unit and designed to be used as a commercial car or truck, is subject to a tax as a commercial truck.

COLUMBUS, OHIO, May 12, 1923.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This department is in receipt of your recent communication as follows:

“Submitted herewith are two photographs covering two types of Fordson Tractors; together with semi-Trailmobile trailers, each designed to be operated on the highways as a unit.

“An opinion is requested as to whether these vehicles come within the classification of commercial cars or trailers under the provisions of Sec. 6292 G. C. A complete description of each vehicle is given on the reverse side of each photograph.”

An examination of the photographs accompanying your letter shows that the vehicle in question is a Fordson tractor to which is attached what is called a semi-Trailmobile so designed as to be operated on the highways as a unit. As I take it, your question is whether the whole unit can be classified as a commercial car and subject to a tax as such, or whether it is to be classified as a tractor with a trailer attached, and subject only to the trailer tax.

Section 6290, General Code, provides in part:

“As used in this chapter and in the penal laws, except as otherwise provided:

1. ‘Motor Vehicle’ means any vehicle, propelled or drawn by power other than muscular power and not operated exclusively upon rails or tracks, except road rollers, traction engines, tractors, trailers designed to be drawn by animal power and used principally for agricultural purposes, public ambulances, and vehicles belonging to any police department, municipal fire department, volunteer fire company or salvage company, organ-

ized under the laws of Ohio, or used by such department or company in the discharge of its functions.

2. 'Tractor' and 'traction engine' mean any self-propelled vehicle designed or used for drawing other vehicles or wheeled machinery, but having no provision for carrying loads independently of such other vehicles.

* * * * *

4. 'Commercial car' means any motor vehicle having motive power, designed and used for carrying merchandise or freight, or for carrying more than seven persons.

* * * * *

Section 6291, General Code, provides:

"An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles and of maintaining and repairing public roads and highways and streets. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the secretary of state at the time of making application for registration as herein provided."

Section 6292, General Code, provides:

"Each owner of a motor vehicle shall pay or cause to be paid taxes as follows:

For each motor bicycle or motorcycle, two dollars and fifty cents; and for each side car, one dollar and fifty cents.

For each passenger car having twenty-five horse-power or less, eight dollars; for each such car having more than twenty-five and not more than thirty-five horse-power, twelve dollars; for each such car having more than thirty-five horse-power, twenty dollars.

For each commercial car, the same tax based on horse-power, and in the same classifications as are herein provided for passenger cars, and in addition thereto twenty cents for each one hundred pounds gross weight of vehicle and load, or fractional part thereof.

For each trailer, the same tax based on gross weight of vehicle and load, herein provided for commercial cars.

The minimum tax for any vehicle having motive power other than a motor bicycle or a motorcycle shall be eight dollars; and for each trailer, two dollars and fifty cents.

Each manufacturer or dealer shall pay or cause to be paid a tax of twenty dollars for each place of business in this state."

Section 6293, General Code, provides in part:

"In determining the gross weight of vehicle and load, in the case of commercial cards, designed and used for carrying passengers, the weight of passengers shall be computed at one hundred and twenty-five pounds for each passenger, according to the number of seats for adults actually provided, and such weight so computed added to the weight of the vehicle fully equipped. In determining the gross weight of vehicle and load in

the case of motor trucks and trailers, the manufacturer's rated carrying capacity shall be added to the weight of the vehicle fully equipped."

It will be noted in the definition of motor vehicle in section 6290, the following words are used:

"'Motor vehicle' means any vehicle, propelled or drawn by power other than muscular power."

Section 6292 names among other motor vehicles, trailers and side cars which may be properly classified among the motor vehicles which are drawn by power other than muscular power.

Section 6290 defines tractor as "any self-propelled vehicle designed or used for drawing other vehicles or wheeled machinery, but having no provision for carrying loads independently of such other vehicles". The same section excepts from the definition of "motor vehicles", "tractors" and "trailers designed to be drawn by animal power and used principally for agricultural purposes". A reading of the entire act discloses that there was a plain intent to exempt from taxation all vehicles such as tractors, traction engines, trailers and road rollers used for agricultural purposes and for the building of highways.

Section 6291 provides that the annual license is levied upon the operation of motor vehicles on the public roads and highways for the purpose of enforcing and administering the laws relative to registration and operation of such vehicles and of maintaining and repairing public roads, highways and streets.

The schedule of rates is based upon horse-power and weight of vehicle plus the load on the theory that the speed and weight of a vehicle are factors in the damage of such highway or street and therefore, should bear an additional burden of maintenance.

Traction engines, tractors and road rollers are excepted for the reason that their use on the highways and streets are only incidental to their primary use as distinguished from the vehicle classed as "motor vehicles" under this act, such as motorcycles, passenger cars, commercial cars and trucks which are to be operated primarily on the highways and streets.

In *Graves v. Janes, et al.*, 2 App. Rep., p. 383, the court says:

"The exemption of traction engines is particularly complained of. The court will take judicial notice that these engines are generally used for power purposes in threshing grain and the like and that their use of the highways is merely incidental. Their speed is low and the total mileage of travel small. A touring car will travel almost as many miles of highway in a single day as the traction engine will travel in the course of an entire season. Besides the very useful purpose of the traction engine and its relation to the production of food supplies for the citizens of the state may furnish grounds for legislative classification. This feature is fully discussed by Speer, J., in the case of *Marmet v. State*, supra."

It will be necessary to consider the definition of motor vehicles, tractors and commercial cars together in order to determine whether this vehicle is to be classed as a motor vehicle. It is not enough to take the definition of tractor alone,

as defined in this act, but we must take the intent of the legislature as shown by the other parts of said act.

At the time of the passage of this act, tractors were a comparatively new thing and the general use was for agricultural purposes, as shown by the use of the words "wheeled machinery" as used in section 6290. The use of such on the highways was only incidental to its real use and on account of the slowness of speed the total mileage on the highway as compared with touring cars and trucks would be low. This is a combination of a vehicle in itself exempted from taxation, with a vehicle subject to taxation, designed so as to be used as a commercial car or truck.

This vehicle is unquestionably designed not for the usual work or use as a tractor, but to be operated as a single unit as a commercial car or truck.

Paragraph 4 of section 6290 defines a "Commercial car" as "any motor vehicle having motive power, designed and used for carrying merchandise or freight, or for carrying more than seven persons."

It is apparent from the photographs that this is not strictly a trailer, but is a semi-trailer, and is equipped with a hand brake which operates on the wheels of the semi-trailer; that it is attached to the tractor in such a manner as to become for all intents and purposes one complete vehicle. It is also apparent that the use is not for the purpose of agriculture primarily, but is to be used as a commercial car or truck and it is to be operated on the highways and streets.

It is therefore the opinion of this department that such vehicle is to be classed as a commercial car and subject to a tax as such.

Respectfully,

C. C. CRABBE,

Attorney General.

337.

STATUS OF TITLE, CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO,
LOTS NOS. 1 AND 2, SOUTH HALF OF SOUTH HALF OF LOT NO.
278, AGRICULTURAL COLLEGE ADDITION.

COLUMBUS, OHIO, May 12, 1923.

Board of Trustees of The Ohio State University, Columbus, Ohio.

Attention: Mr. Carl E. Steeb, Secretary.

DEAR SIR:—You have submitted an abstract which was last continued April 20th, 1923, by C. H. Shapman, and requested my opinion as to the status of the title to the following described premises, as disclosed by said abstract, situated in the County of Franklin, State of Ohio, and City of Columbus, and being Lots Nos. 1 and 2 of the South half of the South half of Lot No. 278 of R. P. Woodruff's Agricultural College Addition to said city as the same are numbered and delineated in Plat Book No. 36, page 421 of the Recorder's Office, Franklin County, Ohio.

After an examination it is the opinion of this department that said abstract with the numerous continuations thereto show a sufficient title to said premises to be in the name of Anna D. Laynaugh, free from incumbrances excepting the taxes for the year 1923, which constitute a lien upon said premises although the amount thereof is as yet undetermined.