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1. MOTOR VEHICLE—TAX LEVIED, SECTIONS 4921.18, 4923.11 RC IS IMPOSED ON EACH MOTOR VEHICLE DESCRIBED—USED BY MOTOR TRANSPORTATION COMPANY OR CARRIER—HAS CERTIFICATE OR PERMIT FROM PUBLIC UTILITIES COMMISSION.
2. MOTOR VEHICLE—REPLACED BY ANOTHER MOTOR VEHICLE—ANNUAL TAX IMPOSED—PUBLIC UTILITIES COMMISSION DOES NOT HAVE POWER TO WAIVE PAYMENT OF TAX FOR REMAINDER OF TAX YEAR ON LATTER VEHICLE.

SYLLABUS:

1. The tax levied by Sections 4921.18 and 4923.11, Revised Code, is imposed on each motor vehicle therein described that is used by a motor transportation company or carrier which has a certificate or a permit from the Public Utilities Commission.

2. When a motor vehicle for which the annual tax imposed by Section 4921.18 or 4923.11, Revised Code, is replaced by another motor vehicle, the Public Utilities Commission does not have the power to waive the payment of the tax for the remainder of the tax year on the latter vehicle.

Columbus, Ohio, February 2, 1956

Public Utilities Commission, State of Ohio
Columbus, Ohio

Gentlemen :

I have before me your request for my opinion which reads as follows :

“Under the provisions of Sections 4921.18 and 4231.11, Revised Code, a tax is levied on the motor vehicle equipment used by motor transportation companies operating in this State.

“This tax is payable annually to the Public Utilities Commission. When the tax is paid by the motor transportation company the Commission issues a decal, as evidence of the payment of the tax, to be placed on each vehicle for which the tax is paid.

“Recently the Commission has had some inquiries concerning the replacement of the decal issued for a motor vehicle when that vehicle is replaced by another unit. The companies want the Commission to issue a substitute decal and waive the payment of the tax for the balance of that year on the newly acquired equipment. In essence, the companies desire to transfer the payment of the tax from one vehicle to another.

“Your opinion is requested on the question of whether the Commission has authority to issue a substitute decal to a motor transportation company, when the motor vehicle for which the tax has been paid is replaced by another vehicle, thus waiving the payment of the tax for the balance of that year on the new motor vehicle.”

Section 4921.18, Revised Code, reads as follows:

“(A) Every motor transportation company or common carrier by motor vehicle operating in this state shall, at the time of the issuance of a certificate of public convenience and necessity to it and annually thereafter on or between the first and the fifteenth days of July of each year, pay to the public utilities commission, for and on behalf of the treasurer of state, the following taxes for the expense of the administration and enforcement of sections 4921.02 to 4921.32, inclusive, 4925.07 inclusive, of the Revised Code, to pay the interest, principal, and charges on bonds issued pursuant to section 5528.01 of the Revised Code, and for the maintenance and repair of the highways of the state;

“(1) For each motor-propelled or motor-drawn vehicle used for transporting persons, multiply the normal number of passengers that can be seated at one time in each such vehicle by four dollars:

“(2) For each commercial tractor, as defined in section 4501.01 of the Revised Code, used for transporting property, thirty dollars;

“(3) For each motor truck transporting property, twenty dollars;

“(4) For each motor-propelled vehicle used for transporting both persons and property simultaneously, the tax shall be

computed on the basis of either property transportation or passenger capacity, and the basis which yields the greater revenue shall apply.

“(B) A trailer used by a motor transportation company or common carrier by motor vehicle shall not be taxed under this section.

“(C) The annual tax levied by this section does not apply in those cases where the commission finds that the movement of agricultural commodities or food-stuffs produced therefrom require a temporary and seasonal use of vehicular equipment for a period of not more than ninety⁷ days. In such event the tax on such vehicular equipment shall be twenty-five per cent of the annual tax levied by this section. If any vehicular equipment is used in excess of such ninety-day period the annual tax levied by this section shall be paid.

“(D) Any motor-propelled or motor-drawn vehicle used for transporting persons, commercial tractor as defined in section 4501.01 of the Revised Code, or motor truck used for the transportation of property, with respect to which the tax imposed by this section has been paid, may be used by another motor transportation company or common carrier, or by a private motor carrier or contract carrier, without further payment of the tax imposed by this section or by section 4923.11 of the Revised Code.

“(E) Mutual exemptions in taxation and regulation of motor transportation companies, based upon the use of the public highway, may be authorized under reciprocal agreements with other states as provided in section 4503.37 of the Revised Code.

“(F) The commission shall account for the taxes collected pursuant to this section, and shall pay such taxes to the treasurer of state on or before the fifteenth day of each month for the taxes collected in each preceding month.

“(G) All taxes levied upon the issuance of a certificate to any motor transportation company or common carrier by motor vehicle shall be reckoned as from the beginning of the quarter in which such certificate is issued or the use of equipment under any existing certificate began.”

Section 4923.11, Revised Code, contains substantially the same provisions as Section 4921.18, *supra*, except that it levies a tax on the same type of motor vehicles used by private motor carriers or contract carriers by motor vehicle.

Subparagraphs (1) through (4) of Division (A) of these sections

specify the types of motor vehicle equipment subject to the tax imposed, and read, in part, as follows:

- “* * * (1) For each motor-propelled or motor-drawn vehicle * * *
- “(2) For each commercial tractor * * *
- “(3) For each motor truck * * *
- “(4) For each motor-propelled vehicle * * *”

The tax levied by these sections is imposed on *each* motor vehicle therein described that is used by a motor transportation company or carrier which has a certificate or a permit from the Public Utilities Commission. The language of these sections shows clearly that the company or carrier must pay the tax on each of the motor vehicles used by it during the annual period prescribed, instead of paying the tax for the number of vehicles used by it during that period.

That this is the meaning of these sections is further demonstrated by the language of Divisions (D) and (G). Division (D) of Section 4921.18, *supra*, provides that “Any motor-propelled or motor-drawn vehicle * * * or motor truck * * * with respect to which the tax imposed by this section, has been paid, may be used by another motor transportation company * * * without further payment of the tax imposed by this section or by section 4923.11 of the Revised Code.” Thus, once the annual tax has been paid for a particular motor vehicle it may be used by another company without further payment of the tax.

Division (G) of Section 4921.18, *supra*, provides that “All taxes levied * * * shall be reckoned as from the beginning of the quarter in which * * * the use of equipment under any existing certificate began.” This portion of the section indicates that if a motor transportation company or a carrier acquires a new unit of equipment and begins to use it after the beginning of the annual tax period the tax must be paid for the new unit of equipment.

There is no provision of any section of the Revised Code which specifically provides for the transfer of a “credit” for the tax imposed by Section 4921.18 or 4923.11, *supra*, from one motor vehicle to another. It should also be noted that there is no statutory provision for the issuance of a decal as evidence of the payment of this tax. As a practical matter the use of such decals may be essential for the administration and

enforcement of the taxing provisions. However, there is no provision for the transfer of a decal issued when the tax is paid for a motor vehicle, or for the issuance of a substitute decal to be placed on a motor vehicle acquired to replace a motor vehicle for which the tax has been paid.

In view of the plain language of Sections 4921.18 and 4923.11, *supra*, it would appear that the annual tax imposed by these sections for the use of certain motor vehicles is levied for the use of a particular motor vehicle and that another motor vehicle may not be used to replace that vehicle without the payment of the tax for the use of the latter vehicle.

Prior to 1949 Section 614-94, General Code, now Section 4921.18, *supra*, contained the following paragraph:

“The taxes for regularly listed or additional substituted or emergency motor propelled vehicles, authorized or used, for limited or seasonal periods, shall be fixed by the commission in such reasonable amounts as may be prescribed by general rule or temporary order.”

At that time Section 614-112, General Code, now Section 4923.11, *supra*, contained a similar provision. It may be that the paragraph quoted above authorized the Commission to make special provision for the taxes imposed by these sections when one motor vehicle was substituted for another by a motor transportation company or carrier. However, in 1949, Sections 614-94 and 614-112, General Code, were amended, 123 Ohio Laws, 449, and the above paragraph was deleted from each section. Thus, whatever power the Commission may have had with respect to waiving the payment of the tax for substituted vehicles prior to the 1949 amendment, it is clear that under the present provisions of Sections 4921.18 and 4923.11, *supra*, a motor vehicle may not be substituted for another by a motor transportation company or carrier without paying the tax imposed by these sections.

In specific answer to the question presented by your request it is my opinion that the tax levied by Sections 4921.18 and 4923.11, Revised Code, is imposed on each motor vehicle therein described that is used by a motor transportation company or carrier which has a certificate or a permit from the Public Utilities Commission. When a motor vehicle for which the annual tax imposed by Section 4921.18 or 4923.11, Revised Code, is replaced by another motor vehicle, the Public Utilities Commis-

sion does not have the power to waive the payment of the tax for the remainder of the tax year on the latter vehicle.

Respectfully,
C. WILLIAM O'NEILL
Attorney General