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May 19, 1954
Opinion No. 54-72

TO: C. L. Lane, Superintendent
Motor Vehicle Division
Arizona Highway Department
Phoenix, Arizona

ATTENTION: Earl Standage, Supervisor
Motor Carrier Division

RE: Interpretation of Section
66-401a, A.C.A. 1939, as
amended, and Section 66-
225, A.C.A. 1939, as amended.

QUESTIONS: Do the following require
straight interstate regis-
tration (plate and weight fee),
or just interstate plate fee,
or are they subject to 66-401a
and required to pay plate,
weight and lieu tax fee?

1. When a salesman, or repre-
sentative of a company, who owns
his own passenger car, properly
registered in the home state,
enters Arizona for the purpose
of taking orders only, does not
carry samples, or make deliver-
ies?

2. When a salesman, or repre-
sentative of a company, who owns
his own station wagon properly
registered in the home state,
travels in Arizona, and his
vehicle is loaded with samples,
but he does not deliver? When
he does deliver?

3. When either of the above
travels in Arizona in a company-
owned vehicle?

4. When a salesman, either in
company-owned or personal vehicle,
properly registered in the home
state, travels in Arizona with
display materials?

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5. When a salesman, under any of the above circumstances, merely stops overnight in the various localities and moves on to another state?

6. When a salesman, under any of the above circumstances, remains in the state for several months each year?

7. When a man travels in his own personal car within the state for the purpose of conducting his business?

It is believed that a general interpretation of the hereinafter set forth statutory provisions affecting automobile registration would be of greater value to the department than discussing in detail each of the more than twenty fact situations presented to us by the aforesaid questions. Before proceeding with this discussion, however, we should like to point out that Section 66-225, A.C.A. 1939, as amended by laws of 1954, chapter 131, and upon which we shall base our opinion, does not become effective until July, 1954. The only change, however, resulting from the enactment of the Laws of 1954, chapter 131, amending Section 66-225, A.C.A. 1939, as amended, is the provision providing for one, two or three months nonresident registration.

Section 66-225, A.C.A. 1939, as amended by laws of 1954, chapter 131, provides as follows:

"66-225. Registration of vehicles of nonresidents.

(a) Except as hereinafter provided, every foreign vehicle owned by a nonresident and operated in the state for the transportation of passengers or property for compensation or in the business of a nonresident carried on in this state, or for the transportation of property, shall be registered and licensed in the same manner as is required in the case of motor vehicles, trailers or semi-trailers, not theretofore registered or licensed.

(b) In case it is desired to operate any such vehicle in this state for a period less than the full registration year, if such vehicle is duly registered and licensed under the laws of any other state or country, the owner may make application to the vehicle division in the manner and form prescribed, for the registration and licensing of such vehicle for

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periods of one, two or three months. A thirty-day registration and license application shall be accompanied by an amount equal to twelve and a half per cent of the full annual registration and unladen weight fees. A sixty-day registration and license application shall be accompanied by an amount equal to twenty-two per cent of the full annual registration and unladen weight fees. A ninety-day registration and license application shall be accompanied by an amount equal to thirty per cent of the full annual registration and unladen weight fees. The full annual registration and unladen weight fees shall be those applicable to the applicant's vehicle prescribed by section 66-256. The minimum fee for such licensing and registration shall be three dollars fifty cents (\$3.50). No application will be accepted for a fraction of any of the periods set forth above, but such licenses may be issued without restriction as to number or sequence.

(c) The vehicle division, if satisfied as to the facts stated in the application, shall register and license the vehicle for the period named and assign an appropriate certificate or license, which shall at all times be displayed upon the vehicle in the manner prescribed by the division, while the same is being operated or driven upon any highway of the state.

(d) If any nonresident owner of a foreign vehicle is apprehended while operating such vehicle in this state beyond the period specified in his certificate or license, without application for renewal thereof, no further thirty, sixty or ninety-day certificate or license will be issued such person during the registration year in which the violation took place, and such nonresident owner shall apply for, and obtain, the registration of the vehicle and pay the fees for the registration year.

(e) A nonresident owner of a foreign vehicle registered and licensed in a state adjoining Arizona, being used in this state for other than the transportation of passengers or property for compensation or in the business of a nonresident carried on in

this state, shall not be required to pay the registration and unladen weight fees prescribed in section 66-256, provided the nonresident owner and vehicle are domiciled within twenty-five miles of the Arizona border, and that the state in which the owner has his residence and in which such vehicle is registered exempts from the payment of registration and unladen weight fees like vehicles from this state.

(f) An owner seeking exemption as provided in subsection (3) shall apply to the motor vehicle division for a special registration permit, setting forth that the vehicle is to be used within this state for other than the transportation of passengers or property for compensation or in the business of a nonresident carried on in this state, and supplying such other information as the division may require, and shall make affidavit thereto. If satisfied that the applicant is entitled to exemption, the motor vehicle division shall issue a special permit to operate, which shall be distinctive in form, show the date issued, a brief description of the vehicle, and a statement that the owner has procured registration of such vehicle as a nonresident. Said permit shall be valid for the period for which the registration plate was issued by the state of which the owner is a resident.

(g) Every foreign vehicle owned by a nonresident and operated in this state other than for the transportation of passengers or property for compensation, or for the transportation of property, or in the business of a nonresident carried on in this state, shall be registered within ten days after the beginning of operation in the state in like manner as vehicles owned by residents, and no fee shall be charged for such registration, nor shall any number plates be assigned to such vehicle, but the vehicle division shall issue to such nonresident owner a permit distinctive in form, containing the date issued, a brief description of the vehicle and a statement that the owner has procured registration of the vehicle as a nonresident. No such nonresident owner shall operate any such vehicle upon the highways of this state, either before or while it is registered as provided

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in this section, unless there be displayed thereon the registration number plates assigned to the vehicle for the current calendar year, by the state or country of which the owner is a resident, nor unless the permit prescribed by this subsection is displayed on the windshield of the vehicle in the manner prescribed by the division. Such permit shall be valid for the period for which the registration plate was issued by the state of which the owner is a resident."

Section 66-401a, A.C.A. 1939, as amended, provides as follows:

"66-401a. Resident. (a) Resident for the purpose of registration and operation of motor vehicles, shall include but not be limited to the following:

- (1) Any person, except a tourist, or out-of-state student, who owns, leases or rents a place within the state and occupies same as a place of residence, or any person who, regardless of domicile, remains in the state for a consecutive period of six (6) months or more.
- (2) Any person who engages in a trade, profession, or occupation in this state or who accepts employment in other than seasonal agricultural work.
- (3) Any person placing children in a public school without the payment of non-resident tuition.
- (4) Any person who declares himself to be a resident of Arizona for purposes of obtaining at resident rates any state license or tuition fees at any educational institution, maintained by public funds.
- (5) Any individual, partnership, company, firm, corporation or association which maintains a main office, branch office, or warehouse facilities in the state, and which bases and operates motor vehicles in the state.
- (6) Any individual, partnership, company, firm, corporation or association which operates motor vehicles in intrastate haul.

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(b) Nonresident. Every person who is not a resident of this state as defined in (a)."

Unladen weight fees are provided for in Section 66-256, A.C.A. 1939, as amended. The pertinent part of such section is as follows:

"(b) In addition to the required registration fee, there shall be paid at the time of application for registration an unladen weight fee on each motor vehicle, trailer or semi-trailer designed, used or maintained primarily for the transportation of passengers for compensation, or for the transportation of property, including hearses, ambulances and other vehicles used by a mortician in the conduct of his business, and motor vehicles rented without drivers, when such vehicles are equipped wholly with pneumatic tires, in accordance with the following schedule."

Insofar as the vehicle license tax, herein referred to as lieu tax, is concerned, such tax is provided for in the Arizona Constitution, Article 9, Section 11, as follows:

"§ 11. (Assessment law-Registered vehicle license tax.) The manner, method, and mode of assessing, equalizing and levying taxes in the state of Arizona shall be such as is prescribed by law.

Beginning January 1, 1941, a license tax is hereby imposed on vehicles registered for operation upon the highways in Arizona, which license tax shall be in lieu of all ad valorem property taxes on any vehicle subject to such license tax. Such license tax shall be collected annually by the registering officer at the time of application for and before registration of the vehicle each year and shall be (a) at a rate equal to the average ad valorem rate for all purposes in the several taxing districts of the state for the preceding year, but in no event to exceed a rate of four dollars on each one hundred dollars in value, and (b) during the first calendar year of the life of the vehicle upon a value equal to sixty per cent of the manufacturer's list price of such vehicle, and during each succeeding calendar year upon a value twenty-five per cent less than the value for the preceding calendar year.

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In the event application is made after the beginning of the registration year for registration of a vehicle not previously registered in the state, the license tax for such year on such vehicle shall be reduced by one-twelfth for each full month of the registration year already expired.

The legislature shall provide for the distribution of the proceeds from such license tax to the state, counties, school districts, cities and towns."

In view of the above statutory and constitutional provisions, it is apparent that the first fact to be determined in all questions of registration is that of residence. In any case wherein a citizen of the State of Arizona, a person domiciled therein, or a person classified a resident under the provisions of Section 66-401a, supra, owns a motor vehicle to be used on Arizona highways, that person is required to secure Arizona registration and pay all registration, license plate, unladen weight fees, where applicable, and lieu tax fees for such vehicle. The provisions of Section 66-401a, supra, defining "resident" for purpose of registration and operation of motor vehicles, are self-explanatory and require no interpretation except 66-401a (a) (2) which provides:

"(2) Any person who engages in a trade, profession, or occupation in this state or who accepts employment in other than seasonal agricultural work."

We are thus faced with the following question: When is a person engaging in a trade, profession or occupation in the State of Arizona? The words "trade", "occupation" and "profession" are synonymous. It has been held that the term "occupation" is a general one meaning that which is the principal business of one's life; vocation; employment; calling; trade. UNION MUTUAL ACCIDENT ASSOCIATION vs FROHARD, 25 N.E. 642, at page 643, 134 Ill. 228. Hence, a person or corporation is engaging in a trade, profession or occupation in the State of Arizona within the meaning of this section, which transacts some substantial part of its ordinary business in Arizona. R. J. BROWN CO. vs GROSJEAN, 180 So. 634, at page 636, 189 La. 778. Mere casual or occasional transactions carried on in Arizona by a person or corporation would not make such person or corporation a resident of Arizona for purposes of registration and operation of motor vehicles.

In the case of COM. vs WHITE (1927) 260 Mass. 300, 157 N.E. 597, the court indicated that the phrase "engaged in the business" means that the business shall be carried on as a regular occupation or constant employment, as distinguished from a single isolated act.

If, in the individual case, it is determined that the owner of the motor vehicle involved is not a resident under the provisions of Section 66-401a, supra, or not an Arizona citizen, then Section 66-225, supra, providing for the registration of vehicles of nonresidents becomes controlling. Pursuant to the provisions of Section 66-225, supra, nonresidents are divided into two main classes, 1. Those owning and operating a foreign vehicle in the state for the transportation of passengers or property for compensation or in the business of a nonresident carried on in the state, or for the transportation of property in the state, and, 2. Those owning and operating a foreign vehicle in the state for other than the transportation of passengers or property for compensation, or in the business of a nonresident carried on in the state, or for the transportation of property in the state.

The second class of nonresident owner is more easily disposed of and for that reason will be considered first here. If such nonresident owner of the foreign vehicle is domiciled in a state adjoining Arizona, within twenty-five miles of the Arizona border, and if the state of such domicile and in which such vehicle is registered exempts like vehicles of this state from the payment of registration, license plate and unladen weight fees, then such foreign owner may make application for and secure a special registration permit to that effect without paying any registration, license plate or unladen weight fees. This special registration permit will be valid as long as the registration plate for such vehicle issued by the state of the owner's residence is valid. (See Section 66-225 (e) and (f), supra.)

All other nonresident owners must apply for and be registered within ten days after entering the State of Arizona and such registration shall be evidenced by nonresident permit issued by the Vehicle Division and no charge or fee will be assessed for such registration, nor shall any license plate be assigned to such vehicle. However, such nonresident owners of foreign vehicles must have registered the vehicle in the state or country of which the owner is a resident and the nonresident permit shall be valid for the period for which the registration plate was issued by the state or country of the owner's residence. (See Section 66-225 (g), supra.)

We now consider the other class of nonresident owner wherein such foreign vehicle owned by a nonresident and operated in Arizona must register and license his vehicle in the same manner as is required in

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the case of motor vehicles not theretofore registered or licensed. Whenever it is desired to operate any foreign vehicle in the State of Arizona, which vehicle is owned by a nonresident and is used for the transportation of passengers or property for compensation or in the business of a nonresident carried on in Arizona, or for the transportation of property in Arizona, the owner must make application to the Vehicle Division for an Arizona registration and Arizona license plates and must pay the registration, license plate and unladen weight fees, if any, for the registration year. (See Section 66-225(a), supra.)

The nonresident owner, however, of the foreign motor vehicle may apply to the Vehicle Division for the registration and licensing of such foreign vehicle for periods of one, two or three months whenever it is desired to operate any such vehicle in this state for any period less than a year. These thirty, sixty or ninety day registrations and licensing may be issued without restriction as to number or sequence. (See Section 66-225b, supra.)

Once it has been ascertained that the owner of a foreign vehicle is a nonresident for purposes of registration and the operation of motor vehicles within the state, it is then imperative that we determine whether such a vehicle owned by the said nonresident owner is being operated in Arizona for the transportation of passengers or property for compensation or in the business of a nonresident carried on in Arizona or for the transportation of property in Arizona. In making this determination it may be necessary to define what is meant by that phrase in Section 66-225a, supra,

"Every foreign vehicle owned by a nonresident
and operated in the state*****in the business
of a nonresident carried on in the state,*****"

The word "business" denotes the employment or occupation engaged in by a person to procure a living or obtain wealth. In the case of a corporation, "business" has been defined as the activities in which the tangible things of the corporation are employed. SHAW vs HOLLISTER, 135 P. 965, at page 966, 166 Cal. 257. The business of a corporation has also been defined as those activities and endeavors of the corporation for which it was organized to transact and to engage in. KYTENN OIL & GAS CO. vs PARKS, 227 Ill. App. 95. Whenever any part of the business of the nonresident is carried on in Arizona and the foreign vehicle is operated in Arizona in such business the vehicle must be registered and licensed in the same manner as in the case of motor vehicles not previously registered or licensed, either in Arizona or elsewhere.

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The request for our opinion requires a discussion of the matter of lieu tax liability resulting from the operation of motor vehicles on our highways. The lieu tax provided for in Article 9, Section 11 of the Arizona Constitution as amended in 1941 must be assessed against, and paid by, any Arizona resident applying to register a motor vehicle for use upon our highways. The assessment of lieu taxes against non-resident owners of motor vehicles applying for registration in Arizona presents some difficulty.

Our Supreme Court in the case of *LEBECK vs STATE OF ARIZONA*, (1945), 62 Ariz. 171, 156 P. 2, 720, held that the said tax being in lieu of all ad valorem property taxes on motor vehicles registered for operation upon the highways of Arizona, can be imposed only on those classes of motor vehicles which were subject to ad valorem taxes prior to the enactment of the Constitutional Amendment.

"Mobilier sequuntur personam", the doctrine that personal property was taxable at the domicile of the owner, regardless of where it was situated, no longer applies to taxation of tangible personalty. In the case of *UNION REFRIGERATION TRANSIT CO. vs KENTUCKY*, 199 U.S. 194, 50 L. Ed. 150, 26 S. Ct. 36, the Supreme Court of the United States first enunciated the rule that jurisdiction to tax tangibles is founded only upon the actual presence within the territorial limits of a state of the tangibles to be taxed. The law seems well settled today that tangible property has a situs for personal taxation in the locality in which it is situated, even though owned by a nonresident of the state. Therefore, any motor vehicle used in Arizona and remaining therein more than just temporarily or transiently, enjoying the protection of the laws of Arizona, is subject to the lieu tax upon motor vehicles, even though owned by a nonresident.

We would like to suggest a more definite criterion for determining whether or not a motor vehicle has acquired a taxable situs within Arizona so as to be taxable under the lieu tax provision of our Constitution. However, in most cases the question is one of fact. The difficulty arises from trying to determine whether or not a motor vehicle owned by a nonresident is situated within the State of Arizona so as to acquire a taxable situs therein. If the motor vehicle of a nonresident is merely temporarily or transiently within the limits of the state, it is not subject to a lieu tax, but if it has been sent into the state by a nonresident to be used or employed permanently, it must bear its fair share of the burden of taxation. Permanence, so far as the establishment of a situs for a motor vehicle is concerned, does not mean absolute permanence. It means a more or less permanent location at the time the tax is assessed or due and owing. Temporary absence of the vehicle from the state does not detract from that degree of permanency required.

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