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} Concurred

February 2, 1962  
Opinion No. 62-12

REQUESTED BY: State Highway Commission, Motor Vehicle Division  
Honorable G. O. Biles, Representative.

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTIONS:

1. Does failure to file an affidavit in compliance with A.R.S. §28-206.01 preclude the owner from recovering fees paid which would otherwise not be due, if the affidavit had been filed at the time of registration?
2. Can an owner haul his own personal canopy without paying unladen weight fees on one-half ton pick-ups?
3. Are jeeps exempt from unladen weight fees prescribed by A.R.S. §28-206?

CONCLUSIONS:

1. Yes.
2. Yes, provided the registered owner of the vehicle files a proper affidavit required by A.R.S. §28-206.01 at time of registration.
3. Yes, provided the jeep is not used for transportation of persons or property for compensation.

"§28-206.01. Exemption from unladen weight fee; affidavits, penalties

Notwithstanding the provisions of §28-206, the owner of a vehicle commonly known as a station wagon or ranch wagon, or a vehicle commonly known as and referred to by manufacturers' rating as one-half ton or less pick-up trucks, may file an affidavit, under oath, with the vehicle division at the time of registration, stating that the vehicle will not be used for transportation of passengers for compensation, or for transportation of property in the furtherance of a commercial enterprise. Upon filing of the affidavit, the owner of the vehicle shall not be subject to the unladen weight fee, but shall pay the regular fees and in lieu taxes required for passenger vehicles."

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The assessments here are denominated unladen weight fees. Are these fees taxes? This question has been answered by Opinion No. 57-139 of the Attorney General to the effect that the unladen weight fee is a tax. Reference was made to two Arizona cases that distinguished fees from taxes.

Stewart v. Verde River Irr. & Power Dist.,  
49 Ariz. 531, 68 P.2d 329 (1937).

O'Neil v. United P. & C. Co-operative,  
57 Ariz. 295, 113 P.2d 645 (1941).

Generally, as noted below, claims of exemptions from taxes are construed strictly. The individual who claims the exemptions must clearly show that he falls within a class which is given an exemption and secondly, he must comply with the procedure set out to claim and obtain the exemption.

A claim of exemption from taxation is construed strictissimi juris. Oglesby v. Poage, 45 Ariz. 23, 40 P.2d 90 (1935).

Exemptions from taxations are also provided for in A.R.S. §42-271 through §42-277. A.R.S. §28-206.01 is an additional exemption from taxation not provided for in Title 42. A.R.S. §42-274 is a similar provision to A.R.S. §28-206.01

Where a veteran failed to file claim for exemption from taxation for particular year as required by §42-274 and §42-272 to §42-275 there was a waiver or loss of right to exemption from taxation as provided by §2, Article 9, Constitution for such year. State v. Allred, 67 Ariz. 320, 195 P.2d 163 (1948). Other pertinent cases cited therein:

"By law it is made the duty of the State Tax Commission to fix the state tax rate, and of the County Board of Supervisors to fix county and district tax rates (which rates are necessarily based upon the total assessed valuation of property within their respective areas) so that there will be a yield sufficient to defray the cost of government as estimated in the budgets. If the veterans' and widows' exemption is an absolute right requiring no action upon their part to make it effective, there can be no stability or certainty on the assessment rolls as the total assessable valuation would be constantly changing as belated exemptions were asserted." State v. Allred, (supra).

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Unladen weight fees are part of the State Highway Fund. A.R.S. §18-131. The State Highway Department shall operate strictly under a budget provided and authorized by the legislature. A.R.S. §18-133. The department is required to conform in all respects to the state budget system. A.R.S. §18-135. Budget estimates cannot be accurately constructed if uncertain withdrawals can later be made.

Whether an owner can haul his own personal goods on a one-half ton pick-up without paying the unladen weight fees depends on whether he has filed an affidavit at the time he registers the vehicle and pays the registration fee.

Jeeps are not exempt under A.R.S. §28-206.01. A pick-up truck has been defined as a light delivery car with a cab on the front part covering the driver's seat, and back of this and open platform with sides and drop end. Smith v. Maryland Casualty Co., 63 N.D. 99, 246 N.W. 451. (1933). This definition excludes jeeps, panel trucks, platform trucks and other vehicles not coming within the definition.

The war time jeep was primarily a passenger vehicle and was not a freight vehicle; it was in many respects an all-purpose car and the fact that the Army called it a truck was not controlling in view of the fact that it was used by all soldiers as a passenger car. Union Pac. R. Co. v. United States, 91 F. Supp. 762, 117 Ct. Cl. 534. (1950).

Unlike a pick-up truck it is not clear whether the jeep is ". . . designed, used or maintained primarily . . . for transportation of property . . . as required by the language set out in A.R.S. §28-206."

The Arizona Registration card of the Motor Vehicle Division includes the following question: "Will this vehicle be operated for transportation of persons or property for compensation?" A non-fraudulent YES answer to this question determines whether the unladen weight fee should be paid or not. Whether the tailgate is or is not welded up is of no consequence. Since pick-up trucks are primarily used as commercial vehicles the legislature prescribed under A.R.S. §28-206.01 that an affidavit and oath filed at time of registration is required to obtain exemption for one-half ton or less pick-up trucks.

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