

Yes
12/21/51

December 19, 1951

Op. No. 51-325

David H. Palmer, Jr.
County Attorney
Yavapai County Courthouse
Prescott, Arizona

Dear Mr. Palmer:

You have by letter of December 4, 1951, asked our opinion on the following:

"Can the assessor place on the unsecured personal property tax roll a house trailer which is licensed in another state but which is parked either in an established trailer court or other location and which is used as the regular domicile of a family who are able to establish a residence for the privilege of voting, sending children to school and partaking of the general accommodations of a community such as light, water, sewer, streets, etc?"

Can the assessor place on the tax roll of the county an unlicensed house trailer under any of the conditions as stated above without being in conflict with the motor vehicle code?

What length of time can the owner or operator of a house trailer park within the limits of the State of Arizona with immunity from purchasing an Arizona trailer license or be vulnerable to assessment under the property laws of the state?"

Subject to certain statutory and constitutional exceptions with which we are not here concerned, all property shall be subject to taxation. Personal property means and includes property of every kind, tangible and intangible, not included in the term "real estate", which term is defined as "ownership of, or claim to, or possession of, or right of possession to, any land or patented mine" Sections 73-201 et seq., ACA 1939.

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Sections 73-1820, et seq., ACA 1939 Supplement, (Laws 1945, Chapter 94) detail the method of assessment of personal property of any person not owning real estate within the county of \$200.00 value. Such property is to be entered on the unsecured personal property tax roll. The duty of the county assessor to assess such property continues throughout the year. It is not required that such property be in the county on the first day of the year. Packard Contracting Co. v. Roberts, 70 Ariz. 411, 222 P. 2d 791. Section 73-1836 dealing with property in transit is presumed not here applicable.

Article 9, Section 11, Constitution of Arizona, as amended November 5, 1940, provides in part:

" * * * 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.

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." (Emphasis supplied)

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The requirements of registration of vehicles for operation on the highways of Arizona are found in Chapter 66 of the 1939 Code. Section 66-204 requires that the owner of a motor vehicle, trailer or semi-trailer before the same is operated upon any highway in this state shall apply to the Vehicle Division for a certificate of title thereto and the registration thereof. The section expressly excepts owners permitted to operate a vehicle under specific provisions relating to nonresidents, among others. Section 66-225, Supplement in part provides:

"(e) 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 (10) 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 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."

Appropriate definitions are found in Section 66-401, Supplement, including "vehicle" and "trailer":

"'Vehicle' means any device in, upon, or by which any person or property is or may be transported or drawn upon a public highway; but does not include devices moved by human power or used exclusively upon stationary rails or tracks, except that, for the purposes of the laws relating to the operation of vehicles and rules of the road, a bicycle or ridden animal shall be deemed to be a vehicle;

* * * * *

"'Trailer' means any vehicle without motive power, designed for carrying property or passengers wholly on its own structure, and for being drawn by a motor vehicle;"

It is apparent that the foregoing provisions relating to registration of vehicles with the Motor Vehicle Division and the lieu tax provided for in Article 9, Section 11, Constitution are aimed at vehicles operated upon the highways of the state. The connotation is clearly that of "rolling stock", as it were, or of something capable of being moved over and actually being used (to a greater or lesser extent) upon the highways of the state. The mere ownership of a vehicle without its operation upon the highways would not seem to invoke the application of the registration provisions or the lieu tax. Thus, if a house trailer is a vehicle by definition only and is not in fact used or operated upon the highways of the state but has by the manner of its use been converted so as to gain the characteristics of ordinary personal property having a "settled" taxable Arizona situs, the general ad valorem property tax provisions would be applicable. Particularly strong illustrations of such a situation would be those cases where a trailer was "blocked up" or had otherwise been physically altered by addition of trellises, rooms, etc. If, however, such a vehicle as defined retains its identity as a vehicle in truth and purpose, as well as in name only, the provision of the law relating to registration of vehicles would be applicable and the tax imposed by Article 9, Section 11, Constitution would be exclusive, being in "lieu of all ad valorem property taxes on any vehicle subject to such license tax". Whether a particular house trailer belongs in one class or the other is peculiarly a fact question for determination by the county assessor.

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The question of residency or nonresidency of the owner of a house trailer, insofar as relevant to the ad valorem sections, is not necessarily determinative. What is necessary is that the particular personal property have a taxable situs in Arizona. Again the question is in a large measure a factual one to be resolved by a consideration of the relevant circumstances of the particular case. 51 Am. Jur., Taxation, Sections 451 et seq., states the applicable general rules:

* * * * It has become universally recognized that tangible personal property may be taxed in the state where it has an actual situs--where it is physically located--although the owner resides in another jurisdiction. The modern rule is that the actual situs of visible tangible personal property and not the domicile of its owner determines the place of taxation. For purposes of taxation, rights in tangibles are regarded as localized at the place where the tangible itself is located. This is upon the basis of the sound theory that inasmuch as the property enjoys the protection of the state where it is located, it should be made to contribute to the expenses incident to its protection in the state, in common with all other property within the jurisdiction. * * *" Section 452, *ibid.*

"Before tangible personal property may be taxed in a state other than the domicile of the owner, it must have acquired a more or less permanent location in that state, and not merely a transient or temporary one.

* * * * *

A criterion is whether the property is

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there for an indefinite time or some considerable definite time, and whether it is used or exists there to be used in much the same manner as other property is used in that community." Section 453, *ibid.*

"It is difficult to define the idea of 'permanency' as used in the rule that property, to acquire a taxable situs, must have a more or less permanent location as distinguished from a transient or temporary one; the term clearly does not convey the idea of the characteristics of the permanency of real estate or embrace the idea that the owner, upon bringing the property within the state, has no present intention of ever removing it. Permanence in these senses is not essential to the establishment of a taxable situs for tangible personal property. It means a more or less permanent location for the time being. The ownership and uses for which the property is designed, and the circumstances of its being in the state, are so various that the question is often more of a question of fact than of law. In the final analysis, the test perhaps is whether or not property is within the state solely for use and profit there." Section 454, *ibid.*
(Emphasis supplied)

The answer to your first question would therefore appear to be "yes", if upon a survey of all available facts and circumstances the county assessor is satisfied that the trailer has a taxable situs in the state and county and if for the particular year the lieu tax under Article 9, Section 11, Constitution has not been imposed or paid. It is recognized that there may be circumstances where a

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conflict might arise as to the application of the lieu tax on one hand and the duties of the county assessor as to unsecured personal property under Sections 73-1820 et seq., on the other. Such a conflict cannot be resolved by generalization. The mere fact alone that a trailer is licensed in another state would not relieve it from taxation under our statutes.

The answer to your second question is "yes," a fortiori, upon a consideration of all available facts and circumstances and with a view to the application of the provisions of the motor vehicle registration statutes as hereinbefore indicated.

Your third question cannot be answered with definiteness. The problem is such that no single yardstick can be used as a precise measure. All the relevant facts and circumstances must be considered and if at a particular time it can be concluded that the property has gained a situs in Arizona for ad valorem tax purposes and if not so operated and used as to invoke the provisions of the Motor Vehicle Code and the constitutional lieu tax, then the county can properly tax it as unsecured personal property.

We trust the foregoing will prove helpful.

Very truly yours,

FRED O. WILSON
Attorney General

RICHARD C. BRINEY
Assistant Attorney General

RCB:d

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