

December 21, 1937.

Anna M. Engels
Fallon County Treasurer
Baker, Montana

Dear Madam:

You have submitted the question as to whether or not license and tax for motor vehicles should be collected in the county in which the motor vehicle would be on January 1, 1938, or should it be taxed in the county which the applicant claims as his residence on said date, his residence being in a different county than where the vehicle would be situated.

Section 2006 provides that the assessor may examine any person in relation to any statement furnished to him, or which discloses property **which is assessable in his county.**

Section 2010 provides:

“Property situated in another county. The assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same by mail to the assessor of the proper county, who must assess the same as other taxable property therein.”

Section 2013 provides that the property of every firm and corporation must be assessed in the county where the property is situated.

Section 2015 provides that the capital stock and franchises of corporations and persons must be taxed in the county where the principal place of business of such corporation is located.

Section 2016 provides that the personal property belonging to the business of a merchant must be listed in the town where the business is carried on.

Sections 2017 to 2022, inclusive, provide where the property of other and different character of business must be taxed.

So much of Section 2023, as is applicable herein, provides: “All other taxable property must be assessed in the county, city, or district in which it is situated.” Automobiles are included in the above quoted provisions.

The court said in the case of *Flowerree v. Lewis and Clark County*, 33 Mont. 32, at page 37:

Opinion No. 215.

**Taxation—Automobiles—Situs
for Taxation.**

HELD: Automobiles must be assessed for taxation in the county where they have a permanent location on January 1, regardless of the residence or domicile of the owner thereof.

"We are firmly of the opinion that the idea running through our assessment laws is that property shall be assessed in its home county, for to that county it owes the duty of helping to bear the burden of county government. And this was evidently contemplated by the legislature, for it made provision in the sections above referred to, as in others, for determining the actual home of the particular species of property."

In determining where the automobile is situated on January 1, the actual situs of the property shall govern. The old rule, as declared by the maxim, "mobilia sequuntur personam," has not been adopted by the State of Montana. The rule used to be that the situs of the property was presumed to be at the domicile of the owner. Such rule has not been adopted by our state legislature, nor approved of by our court.

State ex rel. Rankin v. Harrington, 68 Mont. 1.

A person may be domiciled in one county and his automobile and other property may be situated in another county. The county where the automobile is situated, regardless of the owner's domicile, shall be the determining criterion. If the automobile is temporarily in your county, and merely passing through the same, and is in your county on January 1, it does not mean that it is situated there, or that it can be taxed therein. In order to be taxed in your county on January 1, the automobile must be situated there with permanent characteristics. The court said in the case of Coburn Cattle Co. v. Small, 35 Mont. 288, at page 294:

"While in some instances the meaning of the lawmakers may be somewhat obscure, we are of opinion that what was intended was this: that all property shall be assessed in the county which is its home. If the property be real estate, its actual situs determines the question of its home; if personal property belonging to a merchant, the county where the merchant's business is conducted determines the home of such property; and likewise, if the property be range stock, its home is its accustomed range—in this case, Teton county.

Any other construction would lead to the greatest possible confusion and open the door to tax dodging, for it was never intended that the county within which the particular personal property may chance to be, casually or in a transitory sense, on the first Monday of March shall be the county entitled to assess and collect the taxes upon it."

It is a question more or less of fact for the county assessor to determine in deciding which county the automobile is actually situated in, and each case will have to be independently decided upon the facts in that particular case, and subject to the application of the rules of law, which we have generally and briefly outlined herein.