

CORPORATIONS - Tax situs for personal property of;
PROPERTY, PERSONAL - Tax situs of, for individual and
business;
TAXATION AND REVENUE - Tax situs of personal property
owned by individual or business;
MONTANA CODE ANNOTATED - Sections 15-8-402, 15-8-404,
61-3-301;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No.
139 (1978).

- HELD: 1. Personal property owned by an individual
acquires its tax situs by reference to the
residence of its owner absent specific
statutory direction.
2. Personal property of a partnership or
corporation acquires its tax situs primarily
by the location of the property. If the
current location is temporary or transitory,
the tax situs becomes the principal place of
business of the organization.

13 February 1986

John LaFaver, Director
Department of Revenue
Room 455
Sam W. Mitchell Building
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Dear Mr. LaFaver:

You have requested my opinion on the following
questions:

1. With respect to personal property owned by an individual, is the proper tax situs for purposes of personal property taxation the county in which the personal property is situated on January 1 of the tax year or the county in which the owner of the property maintains his domicile or residence?
2. With respect to personal property owned by a partnership or corporation, is the proper tax situs the county where the property is situated on January 1 of the tax year or the county in which the partnership or the corporation has its principal place of business?

Under Montana law tax situs is established by statute for certain specific types of personal property such as automobiles, mobile homes, airplanes, and livestock, etc. For instance, section 61-3-301, MCA, provides that automobiles shall be licensed in "the county of his [applicant's] permanent residence at the time of application for registration," and this has been extended to school districts. 37 Op. Att'y Gen. No. 139 (1978).

Your question relates to those types of personal property which are not addressed specifically by statute. With respect to personal property owned by an individual, the ancient maxim "mobilia sequuntur personam" retains its force today. Absent statutory direction, it remains a first principle of personal property taxation that, as the phrase translates, the situs of personal property follows the residence of the owner. See 71 Am. Jur. 2d State and Local Taxation § 658 (1973); Cooley, Taxation § 440, ch. 9. Therefore, it is my opinion that, absent specific statutory direction, the residence of the owner determines the situs of personal property of an individual for purposes of taxation.

The answer to your second question, concerning the tax situs of personal property owned by a partnership or corporation, is more complex. With respect to all property (real and personal) held by a business enterprise, Montana law provides:

The property of every firm and corporation must be assessed in the county where the property is situate and must be assessed in the name of the firm or corporation.

§ 15-8-402, MCA.

More specifically, as to personal property, section 15-8-404, MCA, states in pertinent part:

(1) The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where his business is carried on.

These statutes establish that the actual physical location of business property is of primary importance in establishing its tax situs. However, "situated" means a presence in the county which is more than transitory or temporary. See generally 39 Words and Phrases 463 "situated" (and pocket supplement). One of the cases cited in the foregoing reference involved a statute similar to Montana's about which the Missouri court said:

The provision that tangible personal property "shall be taxable in the county in which such property may be situated" on a stated day is not the same as providing that the property shall be taxable where "physically present" on that day. In its application to personal property, the word "situated" as used in a statute authorizing or directing the taxation of property, connotes a more or less permanent location or situs. [Citations omitted.]

Buchanan County v. State Tax Commission, 407 S.W.2d 910, 914 (Mo. 1966).

If it is unclear where the personal property of a business is "situated," then the principal place of business becomes the tax situs. The general rule is stated in American Jurisprudence 2d:

Under the usual statutory provisions relating to the taxation of the property of corporations, such organizations, whether domestic or foreign, are, as between different

political subdivisions within a particular state, to be regarded as residents of the municipality or county in which is located their principal office or place of business, and are prima facie taxable on their personal property in such county or municipality.

71 Am. Jur. 2d State and Local Taxation § 680 (1973).

THEREFORE, IT IS MY OPINION:

1. Personal property owned by an individual acquires its tax situs by reference to the residence of its owner absent specific statutory direction.
2. Personal property of a partnership or corporation acquires its tax situs primarily by the location of the property. If the current location is temporary or transitory, the tax situs becomes the principal place of business of the organization.

Very truly yours,

MIKE GREELY
Attorney General