

Opinion No. 81**Motor Vehicles—Taxation, Motor
Vehicles—Registration, Original,
Motor Vehicles.**

Held: A motor vehicle, whether old and used or wholly new and unused, not taxable in Montana on January 1st, is not taxable thereafter in the current year as a condition for original registration.

Nov. 20, 1947

Mr. Sam D. Goza, Chairman
State Board of Equalization
Capitol Building
Helena, Montana

Dear Mr. Goza:

You have requested my opinion concerning taxation of motor vehicles in connection with original registration, where a motor vehicle has been imported into this state, or has been acquired from a tax exempt owner subsequent to January 1st of any year.

I have been informed that in some instances motor vehicles owned by the United States have been sold within the State of Montana to private individuals; and in other instances wholly new and unused motor vehicles, and some old and used, have been imported into this state, after the time for assessing motor vehicles, January 1st.

Because of certain ambiguous language in Section 1759, Revised Codes of Montana, 1935, as amended by Chapter 72, Laws of 1937, questions have arisen as to whether all such motor vehicles must be taxed as a condition precedent to original registration for the year of registration, or whether all are non-taxable for such year, or if wholly new and unused motor vehicles are exempt, while all old and used motor vehicles are required to be so taxed.

Section 2002, Revised Codes of Montana, 1935, originally required motor vehicles, along with other property, to be assessed on the first Monday of March in each year. By Chapter 72, Laws of 1937, said section was amend-

ed so that all motor vehicles are now specifically required to be assessed on the 1st day of January of each year. Said Section 2002(2), as so amended, reads:

"The assessor must ascertain and assesses all motor vehicles in his county subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at twelve o'clock m. on the first day of January in each year."

It is apparent—from the foregoing provision—it is only motor vehicles "in his county subject to taxation as of January 1st in each year" which are subject to assessment. There is no express provision motor vehicles not within the assessor's county on the assessment day are thereafter to be assessed as a condition for original registration.

It is by reason of the incongruous statements contained in Section 1759, Revised Codes of Montana, 1935, as amended by Chapter 72, Laws of 1937, that such questions arise. Those ambiguous statements are, in part, as follows:

"Before filing such application with the county treasurer, the applicant shall submit the same to the county assessor . . . and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said automobile for the year for which said application for registration is made.

" . . . and shall also at such time (2) pay the taxes assessed against said motor vehicle for the current year of registration (unless the same shall have been theretofore paid for said year).

" . . . subsequent registration, if any, of the same vehicle in the same year not being subject to payment of taxes.

"The applicant for original registration of any wholly new and unused motor vehicle acquired by

original contract after the first day in January of any year, and such vehicle shall not be subject to assessment and taxation for said vehicle until the first day in January of the year next succeeding.

"Upon accepting application for registration or re-registration of any motor vehicle which is subject to taxation in this state on January 1st in any year, and upon payment of taxes, the county treasurer shall stamp on said application: 'Taxes on this vehicle due January 1st of current year paid by applicant, . . .'"

It would appear, by inference, that all vehicles acquired after date of assessment, except new vehicles, are subject to taxation as a condition for original registration; but there is no express provision to that effect. At most, the inference creates a doubt whether such after-acquired motor vehicles are taxable. The provision that "any motor vehicle which is subject to taxation in this state on January first in any year" is an express provision that controls over any inference. A rule of statutory interpretation, well-established in this state, is that "where special and general statutes relate to the same subject matter, the special Act will prevail as far as the particular subject matter comes within its provisions." (In re Wilson's Estate, 102 Mont. 178.) Since the legislature has specified the time for assessing such property, the time for assessing after-acquired property of the same kind cannot be extended by inference. The rule of "inclusio unius est exclusio alterius" applies in such instances.

Changing time for assessment of property does not change the rule with respect to property not within a county on assessment day.

The facts in *Ford Motor Co. v. Linnane*, 102 Mont. 325, show the county assessor of Cascade County attempted to assess a trainload of motor vehicles which did not arrive in his county till three days after assessment day, and thus had no situs within the county on assessment day. The Supreme Court said:

"What ever may be said of its

vast character and sweeping extent, the power of taxation, of necessity must be limited to subjects within the jurisdiction of the State, or, as otherwise characterized, to subjects which have acquired a situs within the State for the purpose of taxation. In most jurisdictions the annual assessment of property subject to taxation is made as of some definite date, and the situs of the property determined as of that date. In pursuance of that general policy, our legislature, by the repeated references in the revenue measure, evinced very clearly an intention that in order fore personal property, other than the net proceeds of mines, to acquire a situs for the purpose of taxation it must be within the state and subject to its jurisdiction at 12:00 o'clock noon on the first Monday of March."

In re Wilson's Estate, 102 Mont. 178, 194, our Supreme Court quoted with approval the following rule:

"It is a fundamental rule of statutory construction that taxing statutes must be construed strictly."

In Vantura v. Montana Liquor Con. Bd., 113 Mont. 265, 269, the Court held as follows:

"The statute was not clear in this respect, particularly when its purpose is considered. In such a situation we are guided by the principle, that when a statute is open to two constructions, the doubt should be resolved in favor of the taxpayer." Other applicable pronouncements are as follows:

"Statutes imposing taxes are construed most strongly in favor of the taxpayer, and will not be extended by implication to the prejudice of the taxpayer beyond the clear import of the language used."

Commonwealth v. P. Lorillard Co., 105 S.E. 683, 120 Va. 74.

"A tax law cannot be extended by construction to things not described as the subject of taxation."

Boyd v. Hood, 57 Pa. 98.

"With the State practically all-

powerful in its selection of the subjects of taxation and the amount of tax which shall be levied, the helplessness of the citizens demands, for his protection, that if the Legislature intends to tax him, it shall at least be required to say so in clear and unmistakable terms."

Convers v. Northern Pac. Ry. Co., 2 F (2d) 959.

"It is a long settled and familiar doctrine, applicable to all forms of taxation, that the Legislative body must express its intention to tax in distinct and unambiguous language; the language employed cannot be extended, by implication, beyond its clear import, and well-founded doubts engendered in attempting to apply this statute must be resolved in favor of the taxpayer."

State of Ohio v. Harris, 229 F. 892.

From what has been said, it is clear a motor vehicle is assessable for taxation purposes only on the first day of January in any year, if it is privately owned and has a situs in Montana for taxation purposes on that day, except as provided by Chapter 157, Laws of 1945.

I express no opinion regarding the applicability of Chapter 157, Laws of 1945, repealed February 13, 1947, by Chapter 45, Laws of 1947.

Therefore, it is my opinion a motor vehicle, whether old and used or wholly new and unused, not taxable in Montana on January 1st is not taxable thereafter in the current year as a condition for original registration.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General