

Opinion . No. . 56

**Taxation—Migratory Personal
Property—Motor Vehicles—County
Assessors**

- Held:** 1. Chapter 85, Session Laws of 1951, applies only to "migratory" personal property. Migratory personal property is that personal property which is brought into the State after the regular assessment day, and which remains in this State for not less than thirty days, but which is to be moved out of the State before the next regular assessment day.
2. Chapter 219, Session Laws of 1951, imposes a graduated "sales" tax upon all new passenger motor vehicles which are brought into the State after January 1, 1952, but which are not classified as "migratory" personal property.
3. A used motor vehicle, that is, one which is not brand new, is taxable under Chapter 85, Session Laws of 1951, if it is classified as "migratory" personal property. If the used motor vehicle is not classified as "migratory" personal property then it is not subject to assessment and taxation until the next succeeding assessment day.
4. The County Assessor may require the taxpayer to submit satisfactory proof of the intended prospective use of the vehicle so that the Assessor may ascertain if the property should be classified as "migratory."

January 3, 1952.

Mr. Archie E. Simon, Chairman
State Board of Equalization
Helena, Montana

Dear Mr. Simon:

You have requested my opinion on the proper interpretation to be placed upon Chapters 85 and 219, Laws of 1951, insofar as they pertain to the taxation of motor vehicles in this State.

Chapter 85, supra, is according to its title an act to provide for the assessment, levy and collection of taxes on all migratory personal property

brought, driven or coming into this state after the regular assessment date of such property. Chapter 219, supra, is the highway revenue bill which provides, among other fees, for a tax on new passenger motor vehicles on which no property tax has been paid and which the purchaser thereof seeks to license in the State of Montana.

Section 1 of Chapter 85, supra, provides in part as follows:

"Any migratory personal property, including livestock, brought, driven or coming into this state at any time during the year and which shall remain in the state for a period of not less than thirty (30) days, shall be subject to taxation and shall be assessed for all taxes, levied or leviable for that year in the county in which the same shall thus be and remain, in the same manner and to the same extent, except as hereinafter otherwise provided, as though such property had been in the county on the regular assessment date; * (Emphasis supplied)**

Section 3 of Chapter 219, supra, provides in part as follows:

"That in consideration of the right to use the highways of the State of Montana, and from and after January 1, 1952, there shall be imposed upon all new passenger motor vehicles for which a license is sought, and which have not been otherwise assessed and not subject to assessment and taxation in Montana, a motor vehicles sales tax *" (Emphasis supplied)**

The Section then provides for a graduated tax to be based on the F. O. B. factory list price of the motor vehicle.

Both of these acts were passed at the last legislative assembly. The question arises as to what tax will be imposed upon a new passenger motor vehicle which is brought into the State of Montana after January 1st, which is "tax day" for motor vehicles. Section 53-114, Sub-section 5, Revised Codes of Montana, 1947.

Will the new automobile be subject to an ad valorem tax thirty days after it is brought into the State, or will it be subject to the so-called "sales tax"

based on the F. O. B. price of the vehicle?

Statutes enacted at the same session of the legislature which deal with the same general subject are to be read in *pari materia*, and both should be given effect if possible. *State v. Fransham*, 19 Mont. 273, 48 Pac. 1; *McElwee v. McNaughton*, 19 Mont. 474, 48 Pac. 1118.

The first question that arises in construing the two acts together is whether or not automobiles are subject to taxation under Chapter 85. Automobiles are personal property and Chapter 85 applies to personal property. Further, the exemption in the Act of automobiles owned by persons transporting bona fide migratory agricultural workers is evidence that the Legislature intended Chapter 85 to apply to automobiles. However, if we say that all new automobiles brought into the State after "tax day" are taxable under Chapter 85 then Section 3 of Chapter 219 is meaningless. If Chapter 85 applied to all personal property I believe that such a construction would be inescapable.

However, Chapter 85 by its express terms is applicable only to "migratory personal property." What did the legislature mean by the use of these words? "Migratory" is defined to mean making a migration or migrations, such as moving habitually or occasionally from one region or climate to another, as comparable to roving or wandering or nomadic. *Di Guillo v. Rice* (Cal. Super.) 70 Pac. (2d) 717, 720, 27 Words and Phrases 170. Hence, the Legislature apparently intended Chapter 85 to apply to that property which is moved into and then out of the State of Montana. Chapter 85 itself does not define what is meant by the word, but reading the Act as a whole it becomes apparent that the legislature intended that the property would have to acquire a somewhat permanent situs in the State of Montana as the tax is to be applied only to property which remains in this State for a period of not less than thirty (30) days. The legislature did not contemplate that migratory personal property would include that property brought into the State after "tax day" but which would acquire a permanent situs in the State extending beyond the next assessment day. This is clear from reading Section 4 of the Act in which the Legislature provided that if

any of the property assessed and taxed after the first Monday in March of any year shall remain in the same ownership and shall appear on the next assessment roll then the amount of the tax paid on such identical property shall be credited upon the tax to be paid on such property for such next succeeding year.

Hence, I believe that it is clear that the legislature intended that Chapter 85 apply to personal property brought into this State after the regular assessment day and which remains in the State for a period not less than thirty days but which will be removed from the State before the next succeeding assessment day. Therefore, if a new passenger motor vehicle is brought into the State after January 1st, and if the owner of such vehicle intends to keep the automobile within the State until the next assessment day, then that automobile would not be considered "migratory personal property" and hence would not be subject to assessment and taxation under Chapter 85, but this automobile would be taxable under the provisions of Section 3 of Chapter 219.

If the owner of such new passenger automobile intends to move the automobile out of the State before the next assessment day then it would be "migratory personal property" and subject to assessment and taxation under Chapter 85 and not under Chapter 219.

If a used automobile is brought into the State after January 1st, then it is taxable under Chapter 85 if it is "migratory", and if it is not "migratory" then it will not be subject to assessment until the succeeding year.

It must be readily admitted that a law such as Chapter 85 is difficult to administer because it must depend on the intent of the owner which is a subjective rather than an objective criterion. Yet, it is not the function of the executive or judicial branches of government to question the wisdom of legislature, but rather they must administer and enforce the law as it is written. The taxing officials as an administrative procedure should require the taxpayer to submit proof as to the intended use of the property so as to enable them to ascertain if the property is migratory.

It is my opinion that the interpretation given to Chapters 85 and 219, Session Laws of 1951, above reconciles the

two acts and gives effect to both in accordance with the legislative intent. My opinion may be briefly summarized as follows:

1. Chapter 85, Session Laws of 1951, applies only to "migratory" personal property. Migratory personal property is that personal property which is brought into the State after the regular assessment day, and which remains in this State for not less than thirty days, but which is to be moved out of the State before the next regular assessment day.

2. Chapter 219, Session Laws of 1951, imposes a graduated "sales" tax upon all new passenger motor vehicles which are brought into the State after January 1, 1952, but which are not classified as "migratory" personal property.

3. A used motor vehicle, that is, one which is not brand new, is taxable under Chapter 85, Session Laws of 1951, if it is classified as "migratory" personal property. If the used motor vehicle is not classified as "migratory" personal property then it is not subject to assessment and taxation until the next succeeding assessment day.

4. The County Assessor may require the taxpayer to submit satisfactory proof of the intended prospective use of the vehicle so that the Assessor may ascertain if the property should be classified as "migratory."

Very truly yours,
ARNOLD H. OLSEN
Attorney General