

Opinion No. 23

**Taxation — Assessment Date — Auto
Registration — Automobile License
Plates — Counties**

HELD: A person who brings a car into the state and his home county after the assessment date, January 1, and purchases an adjoining county license plate cannot avoid the payment of taxes in his home county and cannot operate his motor vehicle therein with any license plate bearing the number assigned to another county.

July 1, 1955

Mr. Henry I. Grant, Jr.
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Grant:

Your request for my opinion pertaining to taxation of automobiles is hereby acknowledged.

The facts as related in your letter of request are:

On January 1st the car in question was in North Dakota, arriving in the State of Montana after January 1st. The purchaser, a resident of Columbus, Montana, who owns property here, gives Columbus as his residence, sends his children to school here, and pays his real estate taxes here, purchased the car from a dealer in an adjoining county. The car was licensed in the adjoining county and driven back to Stillwater County and is being operated on the license plates issued in the adjoining county. A new car tax was paid in the adjoining county of \$26.96.

Upon this state of facts was predicated the following question:

May a person who brings a car into the state after January 1, 1955, for a dealer and purchases it from said Montana dealer after January 1, 1955, purchase an adjoining county license plate and thereby avoid payment of the taxes in Chapter 195 of the Session Laws of 1953, and operate the car in his

own county and likewise under a "foreign license plate"?

It was your opinion that this cannot be done, and to that conclusion I subscribe.

Section 53-114, R.C.M., 1947, as amended by Chapter 195, Laws of 1953, states in part:

"Application For Registration Of Motor Vehicles And Payment Of License Fees Thereon—Proportional Registration Of Fleets Of Vehicles Engaged In Interstate Commerce. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer of the county wherein such motor vehicle is owned or taxable, an application for registration, or re-registration, upon blank form to be prepared and furnished by the registrar of motor vehicles, executed in duplicate, which application shall contain: . . ." (Emphasis supplied)

In *Valley County v. Thomas*, 109 Mont. 345, 97 Pac. (2d) 345, which was an action by Valley County to enjoin the county treasurer of McCone County from issuing automobile licenses upon automobiles allegedly owned and taxable within Valley County, the Supreme Court held that it was the place where a motor vehicle was habitually at rest, rather than its temporary situs of rest or its situs of employment which determined the situs for the license and taxes.

In *Coburn Cattle Co. v. Small*, 35 Mont. 288, 88 Pac. 953, 955, the Supreme Court stated:

"While in some instances the meaning of the lawmakers may be somewhat obscure, we are of the opinion that what was intended was this: **That all property shall be assessed in the county which is its home . . .**" (Emphasis supplied)

Under the above rules, it cannot be said in the case to which you refer, that the motor vehicle was habitually at rest in any county other

than that of the purchaser and thus the purchaser subjects himself to re-registration of the automobile and re-licensing in the proper county.

Section 53-119, R.C.M., 1947, reads in part:

“ . . . No person shall purchase or display on such vehicle any license plate bearing the number assigned to any county as provided in section 53-106, other than the county of his permanent residence at the time of application for and issuance of said license plates . . . ”
(Emphasis supplied)

The dictates of the legislature in enacting Section 53-119, R.C.M., 1947, clearly express the intention that automobiles must bear the proper county license plates.

Further, Chapter 41, Laws of 1953, provides in part:

“Any 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 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 . . . ”

The provisions of the Revised Codes of Montana, 1947, and all amendments heretofore made thereto relating to the listing of personal property for assessment and the assessment thereof for taxation, shall apply to all such personal property brought, driven or coming into this state after the regular annual assessment date as fully as though said property had been in the state on such assessment date, as of the date such property comes to rest and becomes a part of the general property within any county of this state.” (Emphasis supplied)

In *Fremont E. & M. V. R. Co. v. County of Brown*, 18 Neb. 516, 26

N.W. 194, the Supreme Court of Nebraska held:

“The owner of a motor vehicle who pays the registration fee to the county treasurer of a county other than that in which the motor vehicle is owned or properly subject to general taxes, does so at his own risk. Because he fails to obey the mandate of the law, such payment does not excuse payment to the right county treasurer.”

It was held in, 18 Reports and Official Opinions of the Attorney General, 204, No. 190, which touches the same subject matter that:

“The county properly entitled to the registration license fee may collect from the owner who has paid to the wrong county, or may file claim for refund from the county collecting, or sue for an accounting.”

In the event the county collects the registration fee from the taxpayer, who has had his motor vehicle assessed and licensed in the wrong county, the taxpayer may make a claim for refund of the amount of tax erroneously paid to the improper county under the provisions of Section 84-4176, R.C.M., 1947.

It is apparent from the cited statutory and case law that a taxpayer cannot avoid payment of taxes to the proper county and cannot operate a motor vehicle therein with a foreign license plate. To hold otherwise would permit fees and taxes to be indiscriminately paid in any county not entitled to them.

It is therefore my opinion that a person who brings a car into the state and his home county after the assessment date, January 1, and purchases an adjoining county license plate cannot avoid the payment of taxes in his home county and cannot operate his motor vehicle therein with any license plate bearing the number assigned to another county.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.