

**Opinion No. 20**

**TAXATION; Assessments; airplanes; where assessable — SECTIONS 84-406; 53-104 AND 12-215, REVISED  
CODES OF MONTANA, 1947.**

- HELD: 1. An aircraft cannot be assessed and taxed by a county on the basis of the owner's residence only.**
- 2. For Montana tax purposes an aircraft is not a motor vehicle.**

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September 17, 1963

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

Dear Mr. Grant:

You ask whether the county can assess a twin engine aircraft under the following assumed fact.

A Montana resident owns an aircraft. He maintains his family and owns property in Montana. The aircraft is used for business purposes in Oregon and Washington. It is licensed in Oregon where it is used and kept more than fifty per cent of the time. Most of the

remainder of the time it is used in Washington. It is used in Montana to fly the owner back and forth from his Montana residence to his business operations in Oregon and Washington. Its presence in Montana does not aggregate thirty days a year.

The method and manner in which property generally is assessed is provided for by Section 84-406, Revised Codes of Montana, 1947, which provides:

“(1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and **assess all property in his county subject to taxation** except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o’clock M. of the first Monday of March next preceding, except that such procedure shall not apply to motor vehicles which are not a part of the stock of merchandise of a licensed dealer and which are required by subdivision (2) to be assessed as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid. Credits must be assessed as provided in section 84-101, subdivision 6.

“(2) The assessor must ascertain and assess 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. of the first day of January in each year, save and except that motor vehicles held for sale in the stock of any duly licensed motor vehicle dealer, shall be assessed as merchandise to such licensed dealer by whom the same were owned or claimed, or in whose possession or control the same were held at twelve o’clock M. of the first Monday of March in each year, and at the time such motor vehicles are assessed as merchandise each licensed dealer shall file with the assessor a description of each motor vehicle so assessed, including the make, year, model, engine and serial number, manufacturer’s model or letter, gross weight, and, with respect to trucks, the rated capacity thereof.”

“Nothing herein contained shall relieve the applicant for registration or re-registration of any motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.”

The emphasized portion of the above section presents the question involved here. Has the aircraft acquired a taxable situs in the county on the assessment date?

First we should determine whether this aircraft is a motor vehicle.

Section 53-104, R.C.M., 1947 defines a motor vehicle as follows:

“The word ‘motor vehicle’ as used in this act or any of the sections of this act shall be deemed to include trailers, semi-trailers, automobiles, auto trucks, motorcycles, cycle motors, and all other vehicles propelled by their own power, used upon the public highways of the state, excepting steam or gas tractors.”

Section 12-215, R.C.M., 1947, provides:

“Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.”

The definition of motor vehicle furnished by Section 53-104, *supra*, which makes it obvious that a motor vehicle does not include an aircraft, must be used under Section 84-406, R.C.M., 1947. It follows then that tax statutes unique to motor vehicles may be disregarded, and our question can be decided on the basis of whether under these facts an aircraft falls within the scope of the general taxing statutes with the Montana residence of the owner particularly in mind.

Our court in *Ford Motor Co. v Linnane* 102 Mont. 325, 331 and 332 held:

“ . . . The primary question involved is whether this personal property, brought into the state three days after the first Monday in March, is taxable for the year 1935.

“In the case of **Hayes v. Smith**, 58 Mont. 306, 192 Pac. 615, 616, this court said: ‘Whatever 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 for 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 o’clock noon on the first Monday of March. The references will be found in sections 2510, 2511, 2512, 2552, 2556, 2578, 2579, and 2601, Revised Codes, and possibly elsewhere but the foregoing are sufficient for present purposes.’”

Further, in this opinion the court held:

“It appears from the answer that the automobiles in question had not been taxed in any other state for the year 1935, and it is argued that they were escaping taxation for that year. Assuming, however, the fact as alleged to be true, it is not controlling, since it is held that one may be assessed for the same property in two different states in the same year, as it is illustrated by the case of **Coe v. Errol**, 116 U.S. 517, 6 Sup. Ct. 475, 477, 29 L. Ed. 715. Therein the court said: ‘If the owner of personal property within a state resides in another state, which taxes him for that property as part of his general estate attached to his person, this action of the latter state does not in the least affect the right of the state in which the property is situated to tax it also. \* \* \* The fact, therefore, that the owners of the logs in question were taxed for their value in Maine as a part of their general stock in trade, if such fact were proved, could have no influence in the decision of the case, and may be

laid out of view.' Admittedly, the power to tax by one state may depend somewhat upon the power of another to do so. (Southern Pac. Co. v. Kentucky, 222 U.S. 63, 32 Sup. Ct. 13, 56 L. Ed. 96; Farmers' Loan & Trust Co. v. State of Minnesota, 280 U.S. 204, 50 Sup. Ct. 98, 74 L. Ed. 371, 65 A.L.R. 1000). **A state may not tax personal property which has a permanent situs in another state, even though the owner of the property resides within the borders of the first-mentioned state.** (Farmers' Loan & Trust Co. v. State of Minnesota, supra.)

"Although on the first Monday of March, 1935, the trainload of automobiles was being transported from the city of Chicago to the state of Montana, it had not yet reached the borders of this state. Property being transported in interstate commerce is beyond the reach of state taxation, even though its owner resides within the state seeking to make a levy. The question, then, of the power of the state to tax is determined, not by the residence of the owner, but by the nature and effect of the particular state action with respect to a subject then under the sway of a paramount authority. (Bacon v. Illinois, 227 U.S. 504, 33 Sup. Ct. 299, 57 L. Ed. 615.)"

The residence of the taxpayer thus appears not to control.

Assessment of property is done after situs is acquired. (See Yellowstone Bank v. Board of Equalization 137 M. 198, 204) In determining situs Section 84-6008 R.C.M., 1947, must be considered. It provides:

"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, as though such property had been in the county on the regular assessment date; provided that such property has not been regularly assessed for the year in some other county of the state, and provided further that nothing herein contained shall be construed into authority to assess or

levy an additional tax against any merchant or dealer within this state on goods, wares or merchandise brought into the county to replenish the stock of such merchant or dealer, so long as such addition does not materially increase the inventory or stock which has been duly assessed to such merchant or dealer as of the regular assessment date; provided further, that this act shall not apply to motor vehicles brought, driven or coming into this state by any nonresident migratory bona fide agricultural workers temporarily employed in agricultural work in Montana where said motor vehicles are used exclusively for transportation of agricultural workers." (emphasis supplied)

Since situs cannot be acquired in less than thirty days and since the facts of your question assume that the aircraft remains in the state less than thirty days it is my opinion that it cannot be assessed in Montana.

Accordingly, I hold that for tax purposes an aircraft is not a motor vehicle, and an aircraft can not be assessed and taxed by a county on the basis of the owner's residence only.

Very truly yours,

FORREST H. ANDERSON  
Attorney General