

VOLUME 31

Opinion No. 24

**TAXATION; Motor Vehicles; combiners' trucks entering state after assessment date—TAXATION; Personal Property Taxes; migratory personal property—Sections 53-114, 53-129 and 84-6008 through 84-6011, R.C.M. 1947.**

**HELD: Custom combiners' trucks which enter the state after the regular assessment date are not subject to personal property taxation until they have been in this state for thirty days.**

November 16, 1966

Mr. John C. Alley  
Chairman  
Board of Equalization  
Capitol Building  
Helena, Montana

Dear Mr. Alley:

You have asked my opinion on the following questions:

"1. Are custom combiners' trucks, which are used to haul combines and grain, that are brought into the State of Montana subsequent to the regular assessment date assessable under the provisions of Section 84-6008 through 84-6011, R.C.M. 1947?

"2. If said vehicles are assessable under the provisions of Sections 84-6008 through 84-6011, R.C.M. 1947, are they assessable at the time they are registered and license plates secured for them, which registration and licensing are required under the provisions of Sections 53-129(1) and 53-114(3), R.C.M. 1947?"

First, there is no doubt that the property is taxable. In Volume 25, Report and Official Opinions of the Attorney General, Opinion 83, page 138, it was held that foreign motor vehicles, used in a gainful occupation in Montana, and remaining in this state for more than 30 days are subject to personal property tax under the provisions of Sections 84-6008 through 84-6014, R.C.M. 1947. See also, Volume 28, Report and Official Opinions of the Attorney General, Opinion 9, page 15.

The statutes are not clear regarding when the property is assessable. However, in *Swartz v. Berg*, \_\_\_\_\_ Mont. \_\_\_\_\_, 441 P. 2d 736, 23 St. Rep. 175, the court stated that the assessment date is fixed by section 84-6009, R.C.M. 1947, which is the date the property comes to rest and becomes a part of the general property within any county.

Sections 53-114, R.C.M. 1947, provides for the registration and payment of license fees and the assessment and payment of personal property taxes on motor vehicles in general. Under section 53-114(5), (6), R.C.M. 1947, motor vehicles are assessable for taxation as of the first day of January of each year and the payment of personal property taxes assessed against a vehicle for the current year of registration is a condition precedent to the issuance of Montana license plates. However, those subsections of 53-114, *supra*, cannot be construed to apply to the vehicles under consideration.

Section 53-129, R.C.M. 1947, specifically applies to the registering and licensing of a foreign vehicle operated on Montana highways while the owner is engaged in a gainful occupation or business enterprise in the state of Montana. Section 53-129, *supra*, was originally enacted as section 7 of Chapter 121, Laws of Montana, 1929. The Chapter required the registration and licensing of all foreign motor vehicles, including foreign vehicles operated on the highways for compensation

or profit. The act provided that foreign vehicles operated on the highways for compensation or profit shall be registered and licensed in the same manner as domestic vehicles. The act remained substantially the same in that regard until it was amended by section 1, Chapter 296, Laws of Montana, 1947. The 1947 amendment required an owner to make an application for registration and licensing to a county treasurer and it provided that the treasurer shall collect the regular license fee required for the vehicle. There was no mention of property taxes. Although the section has been amended after that, it remains essentially the same.

As evidenced by the enactment and evolution of section 53-129, R.C.M. 1947, the legislature has treated the registering and licensing of foreign motor vehicles separately from the registering and licensing of resident motor vehicles under section 53-114, R.C.M. 1947. Therefore section 53-114, *supra*, is not applicable to the vehicles in question.

Section 53-129, *supra*, does not mention taxes and it does not contain any requirement that taxes be paid on vehicles prior to licensing or registration under the section.

If the trucks do not come within any of the exceptions of section 84-6008, R.C.M. 1947, they may be assessed when registered and licensed, as that may be properly considered as the date the property comes to rest and becomes a part of the general property within any county of this state. However, this presents a problem because the property does not become taxable unless it "shall remain in the state for a period not less than thirty (30) days." (Section 84-6008, R.C.M. 1947.)

Therefore it is my opinion that these vehicles would not be taxable at the time they are registered and licensed unless they have remained in the state for not less than thirty days preceding the registration and licensing.

Very truly yours,

FORREST H. ANDERSON  
Attorney General

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