

VOLUME 32

Opinion No. 15

MOTOR VEHICLES; Taxation, situs — MOTOR VEHICLES; Situs for registration and licensing — TAXATION; Motor vehicle, situs — Section 53-114, Revised Codes of Montana, 1947.

- HELD:**
- 1. A motor vehicle must be registered, licensed, and taxed in the county in which the vehicle habitually comes to rest or in which it is kept a majority of the time.**
 - 2. The burden is upon the taxpayer to register his motor vehicle in the proper county though county officials should avoid undue hardships on the taxpayer by informing him when he attempts to register in the wrong county.**

April 3, 1968

Mr. Denzil R. Young
Fallon County Attorney
P. O. Box 620
Baker, Montana 59313

Dear Mr. Young:

You have requested my opinion in regard to the taxing and licensing of motor vehicles by counties.

The facts stated in your letter are as follows: Certain owners of motor vehicles who reside in Carter County, Montana, have licensed their vehicles in Fallon or Powder River Counties.

The questions presented are:

1. In what county must a motor vehicle owner register, license, and pay the personal property tax on his vehicle?
2. As between school districts within the same county, which district is entitled to taxes collected on motor vehicles?
3. What is the remedy when tax moneys are erroneously collected by the wrong county?

As a practical matter motor vehicles are the most mobile and transitory of all personal property. For this reason, it is sometimes necessary to examine the particular facts in each situation to determine which county is entitled to the tax and license fees.

The legislature has stated in Section 53-114, Revised Codes of Montana, 1947, that the owners of a motor vehicle shall make application for registration "in the office of the county treasurer wherein such motor vehicle is owned or taxable" and in Section 53-119, R.C.M., 1947, that "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." Clearly, the legislature contemplated taxing motor vehicles in their home counties or in the county where the vehicles are permanently situated. See Attorney General's Opinion No. 215, Volume 17, page 266.

In the Montana case, *Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939), the court held that the situs of motor vehicles for the purpose of licensing and taxation is the habitual situs of rest as distinguished from its temporary situs of rest or its situs of employment. While this habitual situs is usually the residence or domicile of the owner, under the proper set of facts the permanent or habitual situs might be somewhere else. See Opinion No. 189, Volume 18, page 203, Opinions of the Attorney General.

For example, a farmer might own a vehicle which he keeps at his home in one county during the winter and then at his farm in another county during the summer. Assuming that he keeps his vehicle at home for more than six months, it would be taxable in that county, not in the county where the farm is located. Likewise, a truck kept at the farm for more than six months, even if the farmer occasionally kept the truck at home, would be taxable in the county where the farm is located.

Once determination is made as to which county should properly tax and license the motor vehicle, a determination of which school district should receive the tax would be made in the same manner.

When one county erroneously collects taxes on motor vehicles which are assessable in another county, the proper county must collect the license fee and tax from the owner of the motor vehicle once

again. This is apparent from the wording in Opinion No. 190, Volume 18, page 204, Opinions of the Attorney General which was written after the decision in the Valley County case:

If the automobile owner fails to heed the law, he is subject to payment of the license fee and tax anew. To hold otherwise would permit fees and taxes to be indiscriminately paid in any county not entitled to the same.

Although it would be possible for one county to sue another to recover license fees and taxes erroneously paid, this remedy should be discouraged. The primary responsibility is upon the taxpayer and motor vehicle owner to register properly. Placing the burden on the county officers would helplessly entangle the registration process. Therefore, unless the taxpayer has left the jurisdiction of the proper county, suits between counties to recover tax monies erroneously paid should not occur.

Your county assessor and county treasurer should attempt to avoid any undue hardships on the motor vehicle owner by informing him when he attempts to register improperly. The ultimate burden and responsibility is upon the taxpayer, however, and he must seek his own remedy when he registers improperly.

Therefore, it is my opinion that you correctly stated the rule when you said "between school districts, vehicles should be taxed in the school district in which the vehicles habitually come to rest" or where they are kept a majority of the time. As between counties, motor vehicles should be licensed and taxed in this same manner. Thus, under the proper circumstances, the residence of the owner may not be the determining factor. Finally, the remedy for collecting improperly paid license fees and taxes on a motor vehicle is a new assessment by the proper county. While the county officials should avoid undue hardship on the taxpayer by informing him when he is apparently registering in the wrong county, the burden is upon the taxpayer to register properly.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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