



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 4, 1977

ATTORNEY GENERAL OPINION NO. 77- 70

Mr. Nick A. Tomasic
District Attorney
710 North Seventh Street
Kansas City, Kansas 66101

RE: Taxation - Motor Vehicles - Leased Vehicles

SYNOPSIS: The owner of a motor vehicle is the one who holds legal title to the vehicle, except that in the event a lease is made for thirty days or more, with immediate right of possession, the lessee is the "owner" for registration purposes. Registration must be made with the county treasurer of the Kansas county where the owner, or such lessee, resides or has his office or principal place of business. At registration, there must be presented to the treasurer proof, by a paid receipt, of payment of taxes in the preceding year. Vehicles purchased or acquired after January 1 are valued and assessed for the current year at the time of registration. If for any reason proof cannot be made of payment of taxes, the applicant must at once seek assessment and must pay preceding year taxes before being registered. Vehicles being operated in interstate commerce are subject to Kansas taxation. The Division of Motor Vehicles must assess a fleet of three or more vehicles which is operated partially in interstate and partially in Kansas, but if such fleet includes vehicles which are domiciled or based in some Kansas county, such vehicles shall be listed separately.

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Dear Mr. Tomasic:

You present a situation where a company, whose main office is located in Wyandotte County, Kansas, owns a fleet of motor vehicles which are leased to other companies or individuals, some of whom take such vehicles into other Kansas counties or into the State of Missouri and other states. The County Assessor of Wyandotte county originally placed this fleet on the Wyandotte County tax rolls, but an agent of the company filed an affidavit that some of the vehicles were not in the county on January 1 and have not since been in the county, and the Assessor struck them from the tax rolls. Later, the agent of the company applied to the Wyandotte County Treasurer for registration of the entire fleet, but was unable to furnish proof that all of the vehicles were taxed in Wyandotte County or any other Kansas county in the preceding year, and the County Treasurer has refused to accept the application. You ask our opinion.

In our opinion, the Wyandotte County Treasurer is correctly following K.S.A. 8-173 in refusing to register and issue license plates for any Kansas motor vehicle without being shown proof by the applicant that all personal property tax for the preceding year, including taxes on the vehicles, have been paid. The only proof listed is a tax receipt marked paid. An affidavit is not mentioned. The County Treasurer must follow the tax rolls furnished by the County Clerk. K.S.A. 8-174. If the applicant cannot furnish the proof of payment of taxes, no matter what the reason, the applicant must present himself to the Clerk or the Assessor, get such vehicle on the rolls, pay the taxes, and then the County Treasurer can process the application for registration. K.S.A. 8-175.

K.S.A. 8-126(n) provides that the "owner" is the person "who holds the legal title of a vehicle". But then it makes an exception to this rule: "in the event a vehicle is subject to a lease of thirty (30) days or more with an immediate right of possession vested in the lessee then such ... lessee .. shall be deemed the owner for the purpose of this act." K.S.A. 8-126(m) defines "person" as every natural person, firm, co-partnership, association or corporation.

K.S.A. 8-145 provides that all vehicle registration fees shall be paid to the County Treasurer of the

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county in which the applicant for registration "resides or has an office or place of business in the state".

Another law pertaining to the taxation of motor vehicles is K.S.A. 1976 Supp. 79-304, which provides that personal property shall be taxed in the taxing districts where the property is "located". This statute coincides with the requirement that vehicles shall be registered in the county in which the applicant for registration resides or has an office or place of business in this state. K.S.A. 79-316 would apply to the subject company if it brought cars into Wyandotte County from out of state after January 1 and prior to July 1. K.S.A. 1976 Supp. 79-306c would apply to vehicles acquired or purchased in Kansas by the subject company after January 1. We understand that the subject company is not a dealer, as well as a leasing agency, for then another set of statutes would be applicable, for the period of time that vehicles are in the inventory of the dealer.

It follows, from this fabric of tax and registration laws for motor vehicles, that the Wyandotte County company you mention must apply for registration in Wyandotte County of all its motor vehicles which it owned on January 1, and which are based in Kansas. At the time of applying for registration that company must show proof to the Wyandotte County Treasurer that it had paid in Wyandotte County taxes on such vehicles in the preceding year. If such company leases some vehicles to "persons" who reside or have an office or place of business in another Kansas county, and such lease is for thirty days or more and the lessee has immediate right to possession, and such company has not already registered and licensed such vehicles in Wyandotte County, then such lessee must register the vehicle in the county where the vehicle is located.

When reporting for registration the entire fleet "located" in Wyandotte County, it is possible for the company to claim that some of its vehicles have been taxed in another Kansas county to the lessee in such counties. That is specifically provided for in K.S.A. 8-173(b). The company can show proof that taxes have been "otherwise assessed" and paid in another county. But, again, the only proof is the receipt for the payment of such taxes. An affidavit will not suffice.

Some of the lessees of vehicles are said to drive into Missouri or other states, and such other states have

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taxed such vehicles. If the vehicle is domiciled or based in a Kansas county, then the vehicle has a Kansas tax situs, and the company or its lessee must pay Kansas taxes before registering the vehicle and getting a Kansas license tag. It is not unconstitutional for two states to tax in the same year the same personal property. Dicarlo Masonry Co. v. Higgins, 178 Kan. 222, 284 P.2d 640 (1955).

Valuation date for assessment purposes is January 1. The Wyandotte county company is liable for listing and having taxed in Wyandotte County all motor vehicles to which it held title and which are located in Wyandotte County on January 1, K.S.A. 1976 Supp. 79-304, or which it brought into Kansas between January 1 and July 1, K.S.A. 79-316, or which it purchased or acquired in Kansas prior to September 1. K.S.A. 1976 Supp. 79-306c.

But the situation becomes more complicated when fleets of three or more vehicles are leased to out-of-state lessees, on a long term lease, and the vehicles are driven back and forth to and from Kansas. We understand that this is the case here. The Wyandotte company leases on a long term basis several hundred vehicles to a national concern in Kansas City, Missouri, which in turn rents such vehicles to customers who may drive the vehicles into many, if not all, the other states, including Kansas. What is the Kansas tax situation?

Tangible personal property, not having a tax situs in Kansas and not being physically located in Kansas, cannot be taxed in Kansas. Dicarlo, supra, at page 225, 84 C.J.S. 222. Also such vehicles are being used to transport persons and property interstate, and this places them in interstate commerce. Any discriminatory tax placed on interstate commerce is an "undue burden" and unconstitutional. Kansas Tobacco-Candy Distributors v. McDonald, 214 Kan. 67, 73, 519 P.2d 1110 (1974) 15 C.J.S. 747, Sec. 101(2) Commerce, State and local Taxation. See also K.S.A. 1976 Supp. 79-201f.

We have in Kansas an act which provides for taxing interstate motor carriers regulated by the Kansas Corporation Commission. K.S.A. 79-6a01 et seq., passed in 1955. Motor carriers are taxed on the basis of miles traveled in Kansas as compared to miles traveled everywhere. It also required an "interstate license". The Kansas Supreme Court upheld the law on the taxation, but declared the "license" as discriminatory and violating Art. 1, Sec. 8, clause 3 of the Constitution of the United States. Felton Truck Line v. State Board of Tax Appeals, 183 Kan. 287, 327 P.2d (1958).

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Also, in 1955 a special act was passed in Kansas for the proportional registration and taxation of a non-motor carrier fleets (more than 3 vehicles) engaged in interstate commerce by the Division of Vehicles. This act was codified as K.S.A. 8-149a thru 8-149f. These laws were amended following a report of the Kansas Commission in Interstate Cooperation, 8th Biennial, in 1958. The tax again is based on miles traveled in Kansas as compared to miles traveled everywhere.

It is our opinion, that as to those vehicles leased by the subject company to out-of-state lessees, K.S.A. 8-149a et seq. should be followed, if such vehicles are used in interstate commerce, and come back and forth in Kansas. K.S.A. 8-173(b) recognizes such method of taxing and a vehicle may be registered in a county and license tags issued when the Treasurer is presented with "(b) Evidence that such vehicle was assessed for taxation purposes by a State Agency."

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw