

MUNICIPAL CORPORATION:

Motor vehicle tax cannot be imposed on a resident who resides in the corporate limits but who stores his car outside of the corporate limits.

4-26

April 22, 1935



Honorable William Barton  
Representative  
58th General Assembly  
Jefferson City, Missouri

Dear Sir:

This Department wishes to acknowledge your letter of April 16, wherein you state as follows:

"Has village with population between 400 and 500, by ordinance, power and authority to place motor vehicle tax on resident of such village who resides in corporation limits but who stores car in garage outside of corporation limits?"

Section 7780c R.S.Mo.1929, provides in part, that:

"No such municipal license tax shall be collected from a resident of such municipalities of motor vehicles used exclusively outside of such municipalities \* \* \* \* \*".

Dillon on Municipal Corporations, Volume 4, Section 1388, page 2407, provides, in part, that,

"Among the most usual of the express limitations upon the power of municipal taxation is the one confining its property within the corporation."

Cooley on Taxation, Volume 1, Section 95, page 223, provides, in part, that,

"A municipality cannot tax property situated outside its territorial limits."

In the case of City of Plattsburg v. Clay 67 Mo. App. 497, 1. c. 500, the court said:

"Under the agreed case the situs of these cattle of the defendant was not within the city of Plattsburg but in Clinton County, and without such city limits. The authorities then are uniform and overwhelming that such personal property is not to be taxed for municipal purposes."

Cooley on Taxation, Volume 1, Section 93, page 221, in setting out reasons for such a rule, states as follows:

"Those cases in which it has been held incompetent for a \* \* \* \* \* municipality to levy taxes on persons or property not within its limits have generally indicated the want of jurisdiction over the subject of tax as the ground of invalidity, but such a burden would be inadmissible, also, for the reason that as to any property or person outside the district in which the tax was levied the want of legal interest in the tax would preclude its being subjected to the burden."

From the foregoing, we are of the opinion that a village, town or city cannot enact an ordinance placing

a tax on motor vehicles stored or used exclusively outside of its territorial limits.

A motor vehicle tax is generally regarded not as a tax on property nor on the person for the ownership of the vehicle, but on the privilege of using the vehicle on the streets. In other words, a motor vehicle tax is generally regarded as a privilege tax. Certainly it cannot be said that a resident who has his vehicle stored or uses it exclusively outside of the city limits exercises such a privilege. As stated in Berry on Automobiles, Section 106, page 88, thus,

"This law does not impose a tax on motor vehicles and motorcycles as property, nor is it a tax on the person for the ownership of the vehicle. It is a tax for using the vehicle upon public roads. It is in the nature of a toll for the use of the highway; not the vehicle but the privilege of using the vehicle, is taxed."

Again, in the case of Ex parte Andrews 23 S. W. (2nd) 95, l. c. 96, the court said;

"The statute in making this requirement may be in part a police regulation, but it is also a revenue measure. And there is no doubt as to the particular privilege taxed; it is the privilege of operating and driving a motor vehicle 'upon the highways of this state.' \* \* \*

\* \* \* \* \*

It seems entirely clear that the privilege so authorized to be taxed is one in all respects like the one taxed by the state itself - the privilege of operating and driving motor vehicles upon the streets and thoroughfares of the municipality. "

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If it can be shown, of course, that a resident uses the streets but merely stores his car outside of the corporate limits as a subterfuge to avoid payment of the tax, then he is clearly liable for the payment of such tax. But, as previously stated, if he does not use the streets and has his motor vehicle stored outside the corporate limits, such a tax cannot be imposed on him by ordinance.

Respectfully submitted,

Wm. ORR SAWYERS  
Assistant Attorney General

APPROVED:

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ROY McKIPTRICK  
Attorney General.

WOS:  
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