

TAXATION: Property of Woods Brothers located in Moniteau County on June 1st, subject to Missouri taxes.

11-6
November 4, 1935.

Honorable Roy L. Kay
Prosecuting Attorney
Moniteau County
California, Missouri



Dear Sir:

We acknowledge your request for an opinion dated October 10, 1935, wherein you state as follows:

"The Woods Brothers Construction Company, a foreign corporation, is engaged in River Improvement work, under a contract with the Federal Government, on the Moniteau county side of the Missouri River. It has several boats, pile drivers and other floating equipment used in the performance of its work on the Moniteau county side of the Missouri River. This property was located on the 1st day of June, 1935, in Moniteau county, that is to the Moniteau county side of the center of the channel of the river.

"There can be no question of its being personal property. If assessed at the domiciliary residence of the corporation, which appears to be the fact, is it also subject to taxation in Moniteau County.

"If it is then does the 'Full Faith and Credit clause of the U. S. Const.' bar Missouri from taxing the property for State and local purposes, if assessed in the State of residence?"

We assume for the basis of this opinion that the boats, pile drivers and other floating equipment were

found within the jurisdiction of Moniteau County on June 1, 1935, and therefore subject to Section 9746, R. S. Mo. 1929, which provides that:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

We assume further that the method and manner of making assessments in Missouri as set out in Section 9756, R.S. Mo. 1929, was properly carried out by the assessor, which states in part that:

"The assessor or his deputy or deputies shall between the first days of June and January * * * proceed to take a list of the taxable personal property in his county * * * and shall require such persons to make a correct statement of all taxable property owned by such person * * *. Such lists shall contain * * * interest held in steamboats, keelboats, wharfboats, and other vessels * * * and every other species of property not exempt by law from taxation."

61 C. J., p. 201, Sec. 172, declares that boats and vessels are personal property and states as follows:

"Boats and vessels are personal property and are taxable like all other such property within the jurisdiction of the state, if within the terms of the tax statute invoked, there being nothing in their floating character and habitual change of location to exempt them from taxation."

Having determined the character of the property, the question arises whether, same having been taxed

at the domiciliary residence of a corporation, it may again be assessed and taxed by the State of Missouri without violating the Full Faith and Credit Clause of the United States Constitution.

61 C. J., p. 224, Sec. 210, answers the above question in the affirmative, stating in part that:

"While the registration of a vessel at a particular port may, it seems, fix the situs for taxation there in the absence of a situs elsewhere, registration or enrollment at a particular port does not fix the situs absolutely or conclusively, and while a vessel registered or enrolled and having its home port in one state is not subject to taxation in another state where it may happen to be temporarily and transiently as an incident to the commerce in which it is engaged, a vessel which is employed exclusively or for an indefinite length of time, or permanently moored, in one state may be taxed in that state, although it is registered or enrolled in another state, and the owner is a non-resident. * * * The determination as to whether or not a vessel is taxable in a state other than that of the domicile of the owner does not depend on whether or not it has been taxed in the state of domicile."

To the same effect is the language found in 26 R. C. L., Sec. 247, p. 281, which states in part that:

"A vessel is not taxable in a port of a state other than that in which her owner resides to which she plies and at which she is temporarily staying while loading or unloading

her cargo or even when she is laid up for the winter when through the rigor of the climate navigation is closed. When, however, a vessel is kept and used wholly within the limits of a state other than that in which her owner resides, she acquires a situs in such state for the purposes of taxation which controls the situs of the owner's domicile, and this is so even if the vessel is employed in interstate commerce, if she is so employed wholly within the limits of a state. A local situs for purposes of taxation may be acquired by a seagoing steam dredge engaged for a long period of time on a dredging contract in a state other than that in which the owner resided."

The reason for such a rule is well expressed in the case of *Northwestern Lumber Co. v. Chehalis County*, 64 Pac. 906, 1. c. 911 (Wash.), wherein the court says:

"Sound reasons exist for the right of the state to tax these vessels that are permanently here transacting local business. They receive the full protection of the local government, and, if mere registry in another port is conclusive against the right to tax here, a boat can operate in our local waters, confined entirely to local business, and, if owned elsewhere, may evade all taxation in this state. Such construction should not be adopted unless imperatively demanded by superior authority. Under the revenue law of this state, personal property is taxed at its situs, and without reference to the residence of the owner."

Attention must be directed to the fact that a situs for the purpose of taxation is only acquired by this state when the vessel of the non-resident is employed

exclusively or for an indefinite length of time or permanently moored in this state. The case of North American Dredging Co. v. Taylor, 106 Pac. 162, 1. c. 163, 164, discusses this question, citing numerous authorities. It states that:

"It is the general rule that vessels engaged in state or interstate traffic with no established situs, but going in and out of a port upon a fixed run, or as the necessities of the business engaged upon may demand, or when engaged upon no fixed schedule, but sailing from one port to another as a carrier of state, interstate, or international traffic, shall be assessed at the home port, or at the domicile of the owner. Northwestern Lumber Co. v. Chehalis County, 25 Wash. 95, 64 Pac. 909, 54 L. R. A. 212, 87 Am. St. Rep. 747; Ayer & Lord Tie Co. v. Kentucky, 202 U. S. 409, 26 Sup. Ct. 679, 50 L. Ed. 1082; Commonwealth v. Am. Dredging Co., 122 Pa. 386, 15 Atl. 443, 1 L.R.A. 237, 9 Am. St. Rep. 116; California Shipping Co. v. City & County of San Francisco, 150 Cal. 145, 88 Pac. 704; Olson v. City & County of San Francisco, 148 Cal. 80, 82 Pac. 850, 2 L. R. A. (N. S.) 197, 113 Am. St. Rep. 191; Johnson v. De Bary-Baya Merchants Line, 37 Fla. 499, 19 South. 640, 37 L. R. A. 518; Am. Mail S. S. Co. v. Crowell (N. J. Sup.) 63 Atl. 752; People ex rel. Pacific Mail S. S. Co. v. Com'rs, etc., 58 N. Y. 242. However, a vessel may be assessed without reference to the home port or the residence of the principal owner or agent when it is put to such use as to impress it with a local character. National Dredging Co. v. State, 99 Ala. 462, 12 South. 720; McRae v. Bowers Dredging Co. (C. C.) 90 Fed. 360; Galveston v.

J. M. Guffey Petroleum Co. (Tex. Civ. App.) 113 S. W. 585; State v. Higgins Oil & Fuel Co. (Tex. Civ. App) 116 S. W. 617; Old Dominion S. S. Co. v. Virginia, 198 U. S. 299, 25 Sup. Ct. 686, 49 L. Ed. 1059, Id., 102 Va. 576, 46 S. E. 783, 102 Am. St. Rep. 855. * * *

" * * * There is nothing in the nature of this particular property to take it out of the general principle. The fact that it is floating property, and may be moved from place to place and port to port by water, furnishes no more reason for exempting it from taxation here than would exist for the exemption of property which did not float, and could be moved from place to place only over land."

"There must be some reasonable limit to the rule that overcomes the ordinary rule of situs when applied to such property, and we think it must be found in the answer to the question whether the presence in Pierce county of the dredger was temporary or merely indefinite. If the former, it would probably not be taxable. If the latter, it would be, so long as it was there at a time when the levy was made and the lien attached. Otherwise, the property might remain an indefinite time running over the period of one or a dozen contracts, or so long as it found profitable employment, and yet be exempt from taxation, although during the whole time the property would receive the protection of the local laws. If the intention merely were allowed to control, we

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opine that property of this character would never be taxed, unless the conscience of the owner moved him to list it at the home port or at his domicile, which under the facts of this case he would not be bound to do. Am. Mail S. S. Co. v. Crowell (N. J. Sup.) 68 Atl. 752."

CONCLUSION.

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The Woods Brothers Construction Company being engaged in river improvement work under a contract with the Federal Government, it is quite evident that the property will be within the jurisdiction of this state for an indefinite length of time; hence if the property was found within the jurisdiction of Moniteau County as of June 1, 1935, and properly assessed, we are of the opinion that it is taxable in this state even though it is also taxed at its domiciliary residence.

Respectfully submitted

WM. ORR SAWYERS
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APPROVED:

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(Acting) Attorney General.

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