

MOTOR VEHICLES) Motor vehicles of Defense Plant Corporation not
LICENSES (subject to license fee. Motor vehicles leased
FEDERAL AGENCIES) or rented by Pratt-Whitney liable for tax. Fee
for title chargeable against Defense Plant Corp.
or Pratt & Whitney.

October 11, 1943



Mr. V. H. Steward
Commissioner of Motor Vehicles
Jefferson City, Missouri

Dear Sir:

We have yours of recent date wherein you make the following statement and request:

"This Department requests an opinion from your Office as to whether or not the Defense Plant Corporation, Kansas City, Missouri, and the Pratt & Whitney Aircraft Corporation, Kansas City, Missouri, are exempt from obtaining license plates and paying the license fee for the motor equipment that they use and operate in connection with the work and activities of their Corporation, and also as to whether or not they are required to pay the statutory \$1.00 fee for certificate of title."

The Missouri Statutes do not expressly exempt the United States Government and its Agencies from the payment of the Motor Vehicle license fees on cars owned and operated by the Government and its Agencies. However, since the ruling of the Supreme Court of the United States (1819) in the case of *McCullough v. State of Maryland et al*, 4 Law Ed. 579, the rule of implied exemptions from taxes on the Government and its Agencies has been recognized in various degrees. The rule is stated in 33 Am. Jur., page 334, Sec. 14, in this language.

"A state has no power to tax the means and instrumentalities which the Federal Government employs to carry on its proper functions."

The Supreme Court of the United States in 1928 in the case of *Panhandle Oil Co. v. State of Mississippi*, 72 Law Ed. 857, 277 U.S. 218, applied this rule and held that the State of Mississippi could not impose a tax measured by the quantity

sold upon the privilege of one of its citizens of selling gasoline to the Federal Government for the use of its Coast Guard Fleet or Veterans Hospital.

The courts have modified the above rule to some degree. For example in *Farmers and Mechanics Savings Bank of Minneapolis v. Minnesota*, 58 Law Ed. 706, the rule was stated that in some case a state may in some cases tax the property of a government instrumentality, but it could not tax the operation of such instrumentality employed by the Government of the Union to carry its powers into execution.

In the case of *Union Pacific R.R. Co. v. Peniston* 85 U.S. 38, 21 Law Ed. 787, 793, in applying this rule the Supreme Court of the United States said; l.c. 793:

"It is therefore, manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they *have undertaken (*37 to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

So in your case the motor vehicle tax being on the operation of the motor vehicle on the highways would be a tax on the operation of equipment. If such equipment belongs to the Federal Government or its agency in the performance of governmental functions it would be in violation of the foregoing rule.

The United States Supreme Court in 1941 in the case of *State of Alabama vs. King and Boozer et al*, 140 A.L.R. 615; 314 U.S. 1; 86 Law Ed. (adv. 1), 62 Section 43, held that a contractor with the United States Government on a cost-plus-fixed-fee contract was liable for the payment of the Alabama retail sales tax on lumber which he purchased to execute his contract. The wording of Article III of the contract then under consideration was similar to the wording in Defense

Plant Corporation which you have submitted. In the Alabama case supra the court in the above opinion dated in 1941 in stating the extent to which the rule of exemption as announced in the earlier cases had been modified said, l.c. 618, Vol. 140 A.L.R.:

* * * "The Government, rightly, we think, disclaims any contention that the Constitution, unaided by congressional legislation prohibits a tax enacted from the contractors merely because it is passed on economically, by the terms of the contract or otherwise, as a part of the construction cost to the Government. So far as such a nondiscriminatory state tax upon the contractor enters into the cost of the materials to the Government, that is but a normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity. So far as a different view has prevailed, see *Panhandle Oil Co. v. Mississippi* and *Graves v. Texas Co.* supra, we think it no longer tenable." (Cases cited).

With these principles in mind we think that if the motor vehicles in question are owned and operated or operated by a lessee as an agent and instrumentality of the Federal Government in the execution of a public governmental function that the motor vehicle license tax may not be imposed.

Examining the correspondence accompanying your request we find that the motor vehicles in question are now owned by the Defense Plant Corporation, and that they were purchased from the Pratt & Whitney Aircraft Corporation, which was engaged in a cost-plus-fee contract with the Government for manufacturing government planes. The file also reveals that these motor vehicles while owned by the Defense Plant Corporation may be operated by Government employees in the future on Government contracts (letter dated August 31, 1943). The file also shows (letter dated September 6, 1943 from Defense Plant Corporation to Secretary of State) that these contracts are executed by the United Aircraft Corporation of Missouri as agent for Defense Plant Corporation as owner with the contractor to carry out a cost-plus-fixed-fee contract. This

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contract by Article III as revealed in said letter reveals that the owner furnishes or pays the cost of tools, equipment and machinery to carry out the contract. This file, we think clearly reveals that the Defense Plant Corporation in the execution of these contracts is acting as an agent of the United States Government in executing a Government function and that as such it falls within the rule of exemption hereinbefore discussed. However, as to Pratt & Whitney's liability for the license on these cars, we think the license tax would be chargeable if Pratt & Whitney leases them for more than ten days. Sec. 8367, R.S. Mo. 1939, defines the term "Owner":

" 'Owner'. The term owner shall include any person, firm, corporation or association, owning or renting a motor vehicle, or having the exclusive use thereof under lease, or otherwise, for a period greater than ten days successively. * * *"

Pratt & Whitney is not such a Government Agency as to be exempt from this license tax.

As to the charge for the transfer of certificate of ownership, we do not think this rule applies, because this is a service charge and not a tax.

CONCLUSION

From the foregoing it is the opinion of this Department that motor vehicles owned and operated by the Defense Plant Corporation are not liable for the motor vehicle license tax. We are further of the opinion that motor vehicles leased and operated by Pratt & Whitney from the Defense Plant Corporation for a period of more than ten days are liable for the payment of the motor vehicle tax. And we are further of the opinion that both the Defense Plant Corporation and Pratt & Whitney are liable for the payment of the fee for the certificate of title to any car which they may own.

Respectfully submitted,

Tyre W. Burton
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

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