

MOTOR VEHICLE:  
REGISTRATION:  
LICENSE AND  
FEE:

Payment of prescribed registration fees under Sec. 301.060, Laws Mo. 1951, is required and a certificate of ownership to a motor vehicle must first be obtained as a prerequisite to obtaining a certificate of registration under Sec. 301.010(19) RSMo. 1949. Under the provision of the definition of owner in Sec. 301.010(18) Laws Mo. 1951, page 695, 697, the Director of Revenue is not authorized to register a motor vehicle in the name of any person except the owner under the definition of said section

JOHN M. DALTON  
XXXXXXXXXX



September 23, 1953

XXXXXXXXXX

J. C. Johnsen

Mr. David A. Bryan  
Supervisor, Motor Vehicle Registration  
Division  
Department of Revenue  
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request of recent date for an official opinion of this office, in view of the length of the five page request letter it is deemed advisable to quote first the body of the letter then quote the questions immediately preceding the opinion replies thereto. The body of the letter of your opinion request is as follows:

"It is respectfully requested that an opinion be given to each of the specific questions submitted in this letter relative to the authority of the Director of Revenue under the administration of Chapters 301 and 144 R.S. Mo. 1949. In order to reduce the number of questions to a minimum and to avoid repetition a fact situation typical of transactions handled by this department is given followed by the questions arising out of the transaction.

"It has always been the position of this department and presumably the intent of the Legislature in enacting our Vehicle Registration Act that the person, firm, partnership, or corporation immediately responsible for the operation of a vehicle should be the one in whose name the vehicle is licensed and registered. Therefore, no certificate of title is given unless at the same time the vehicle is registered and all registration fees are paid. However, it is conceivable that the lawful owner and purchaser is not the one who is going to operate the vehicle in Missouri, but still desires a certificate

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of title without having to register the vehicle. This type transaction usually occurs when a corporation organized and chartered in a state other than Missouri purchases vehicles from a Missouri dealer in order to let the Missouri dealer take advantage of additional sales and thus help him increase his quota or where such a corporation wants to lease these vehicles to another person, firm, partnership or corporation. Because the purchaser feels that he is entitled to a certificate of title upon payment of the sales or use tax but without payment of the registration fees, the following questions as to the authority of the Director are submitted:"

Your first question is as follows:

"1. A foreign corporation organized and chartered in a state other than Missouri purchases vehicles in Missouri from a Missouri dealer intending to either operate the vehicles in the state of domicile or to lease them to another company, but not intending to operate them on Missouri highways:

"(a) Can the director issue a certificate of title in the name of the foreign corporation, who is the lawful owner and legal title holder, upon payment of the Missouri sales or use tax to the director, but without payment of the license or registration fee?

"(b) Would the answer to 1(a) be changed in any way if, in addition to the facts outlined above, the foreign corporation, while chartered and organized in a state other than Missouri, also maintained a branch office at a permanent address in Missouri and was licensed to do business in Missouri?

"(c) Assuming that the answer to 1(a) is 'yes', if the vehicles are immediately leased to a person, firm, partnership, or corporation to be operated by the lessee upon the highways of this state, is the lessee exempt from payment of the sales or use tax when he makes

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application for a certificate of title and registration on the theory that the sales tax has been previously paid?"

It must first be presumed that what is meant by a certificate of title in your letter is now called a certificate of ownership. This is a common term and the Supreme Court cases on this same subject refer to a certificate of title in regard to the same section providing for this certificate of ownership. It possibly arose from the use of the word title in the original enactment of these sections. A certificate of ownership is provided for in Section 301.190, RSMo 1949, quoted in full for reference here and further reference throughout this opinion. Said section reads:

"1. No certificate of registration of any motor vehicle or trailer, or number plate therefor, shall be issued by the director of revenue unless the applicant therefor shall make application for and be granted a certificate of ownership of such motor vehicle or trailer, or shall present satisfactory evidence that such certificate has been previously issued to the applicant for such motor vehicle or trailer. Application shall be made upon a blank form furnished by the director of revenue and shall contain a full description of the motor vehicle or trailer, manufacturer's or other identifying number, together with a statement of the applicant's source of title and of any liens or encumbrances on the motor vehicle or trailer."

"2. The director of revenue shall use reasonable diligence in ascertaining whether the facts stated in such application are true, and, if satisfied that the applicant is the lawful owner of such motor vehicle or trailer, or otherwise entitled to have the same registered in his name shall, thereupon issue an appropriate certificate, over his signature and sealed with the seal of his office, procured and used for such purpose. The certificate shall contain a complete description, manufacturer's or other identifying number, and other evidences of identification of the motor vehicle or trailer, as the director of revenue may deem necessary, together with a statement of any liens or encumbrances which the application may show to be thereon."

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"3. The fee for each original certificate so issued shall be one dollar, in addition to the fee for registration of such motor vehicle or trailer. The certificate shall be good for the life of the motor vehicle so long as the same is owned or held by the original holder of the certificate and shall not have to be renewed annually."

It may appear from the context of the above and particularly from subparagraph "3" which provides that "the fee \* \* \* shall be \$1.00 in addition to the fee for registration of such motor vehicle or trailer \* \* \*;" that it was intended by this section that the certificate of ownership was to be issued only with the registration of a motor vehicle.

We have a further provision of law, however, in seeming conflict with the provision above and that is the underlined portion of Section 301.020, RSMo. 1949, quoted below, which is in part as follows:

"Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, except as herein otherwise provided, shall file, by mail or otherwise, in the office of the director of revenue, an application for registration on a blank to be furnished by the director of revenue for that purpose, containing:"  
(Underscoring ours.)

This above may be taken to mean that unless a motor vehicle is to be operated upon the highways of this state, it need not be registered and licensed. Can a certificate of ownership then be had for the motor vehicle without license payment? There are two interpretations possible. One, that "in addition to" means that the registration fee shall be paid simultaneously, the other would mean only that "in addition to" shows the dollar charge is not covered by the fee for registration and license.

It is provided in regard to the operation of motor vehicles upon the highway in subparagraph 2 of Section 301.080, Laws Mo. 1951, page 695-701, reads in part as follows:

"\* \* \*When ownership of a non-registered vehicle, other than a commercial motor vehicle, which has not been previously operated on the public highways during the current registration year, is transferred the registration fee to

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be paid by the transferee shall be computed as provided above for new vehicles, providing a satisfactory affidavit of such non-operation is filed with the motor vehicle department. \* \* \*

Thus it is provided by the above for a certificate of ownership independent of registration. This last is cited for the reason that there is a seeming conflict in the law if the fee for a certificate of title and the fee for registration and license must be paid simultaneously. The answer to question 1(a) must therefore be that a lawful owner may obtain a certificate of ownership without the payment of the fee for a license to operate the vehicle upon the highways of this state. Since the answer to 1(a) then is yes it would remain yes if the foreign corporation mentioned in question (a) had a place of business in Missouri and was licensed to do business in Missouri so long as the vehicles so titled were not operated in Missouri.

Regarding question 1(c) of your request in accordance with the attached opinion defining "owner" dated April 17, 1953, and because no certificate of ownership or registration of a vehicle to an unqualified lessee as described in your question, hence the necessity for payment of sales or use tax would not arise.

In regard to the question which is designated as question 2 beginning in the first paragraph on page 3 of your request letter we quote the question here, which is as follows:

"It appears that a common business practice among owners of vehicles in this state is to enter into a written agreement with another person, firm, partnership, or corporation for the leasing of the vehicles for periods ranging from six months to several years. The position taken by this department has been to issue to the lessee a certificate of title and allow him to register the vehicle in his own name since the lessee is the one responsible for operating the vehicle during the term of the lease. Since the lessee appears to be entitled to have a certificate of title and registration in his name, even though he is not the lawful owner under Section 301.190, RSMo. 1949, and since the sales or use tax provisions appear to apply only to "owners" and not lessees the following questions as to how these provisions can be reconciled are submitted:

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"2. Assuming the following situation: Lessor of a vehicle is a Missouri resident and the holder of the legal title to the vehicle; a certificate of title has been issued in his name, plates have been issued to him all registration fees for the current year have been paid, and Missouri sales tax was paid when he purchased the vehicle; thereafter, he leases the vehicle to a lessee, also a Missouri resident, under a contract form of lease for a recited consideration of \$1.00 for a period of one year; among other terms the lease permits the lessee full use of the vehicle and contains covenants by the lessee that the vehicle will be returned to the lessor in the same condition at the expiration of the lease, except for the usual wear and tear:

"(a) Should the Director issue a certificate of title to the lessee upon his application even though such a lessee is apparently not the 'owner' as defined in Chapter 301 RSMo. 1949?

"(b) Assuming there is authority for issuing a certificate of title to the lessee is a sales or use tax payable by the lessee even though the lessor paid a sales or use tax when he purchased the leased vehicle?

"(c) If the answer to 1(b) is 'yes' should the Director of Revenue base his tax upon the total value of the vehicle or should the Director attempt to determine the value of the lease to the lessee?"

The answer to question 2(a) is no, in accordance with the attached opinion as to the definition of the word "owner" given with the answer to question 1(c), that being that there is no authority for the issuance of such a certificate of ownership as described as it would have to be to other than the lawful "owner."

Since there is no authority for the issuance of such a certificate of title there is no transaction for which a use tax could be collected under the circumstances set out in question 2(b).

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The answer to question 2(c) is also unnecessary since there can be no motor vehicle use tax due, there being no transaction where the duty arose to pay it.

Your third question including the paragraph immediately preceding it is as follows:

"Another common practice among business firms, especially large corporations with more than one place of business, is to purchase vehicles in the name of the company for the use of one of its subsidiaries, or branches, or for the use of its officers, agents, or employees. Since the subsidiary, branch, officer, agent, or employee is not the 'owner' but is responsible for the vehicle's operation under some kind of arrangement with the lawful owner, which often allows him complete control, it would appear from the apparent purpose of the Registration Act that he is entitled to have the vehicle registered in his name and a certificate of title issued by the Director. The following questions relative to this type of transaction are submitted:

"3. Assuming the following situation: A resident Missouri corporation purchases several vehicles from a dealer in Missouri and pays the Missouri sales tax on the purchase; certificate of title is issued by the Director of Revenue in the corporate name and all registration fees are paid; thereafter, these same vehicles are assigned to a subsidiary of the corporation located in a different city and operated under a different name, and as a result of a mutual understanding, the subsidiary is to have complete control and management of the vehicles while they are assigned to it;

"(a) Should the Director issue a certificate of title to the subsidiary in its own name even though it is understood that the subsidiary is not the 'owner' of the vehicles?

"(b) If authority does exist for issuing a certificate of title in the name of the subsidiary, must a sales or use tax be paid to the director before title can be issued even though there is no actual sale, gift, or agreement and it is shown that the parent corporation paid a Missouri sales tax on the original purchase?

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"(c) Would the answers to 2(a) and 2(b) be changed in any way if, instead of assigning the vehicle to a subsidiary, it was assigned to an officer, agent, or employee of the corporation for his personal and business use while residing in another city?"

In regard to this question it must first be stated that directions in regard to the registration of motor vehicles contained in Chapter 301 RSMo. 1949 and the amendments of 1951 on that subject are found in Section 301.190, RSMo 1949, subparagraph 1, previously quoted, in answer to question 1(a) in this opinion. It is to the effect that no certificate of registration is to be issued except upon an application and the granting of a certificate of ownership. Paragraph 2 of that same section will be re-quoted here for its reference:

"2. The director of revenue shall use reasonable diligence in ascertaining whether the facts stated in such application are true, and, if satisfied that the applicant is the lawful owner of such motor vehicle or trailer, or otherwise entitled to have the same registered in his name, shall, thereupon issue an appropriate certificate over his signature and sealed with the seal of his office, procured and used for such purpose.  
\* \* \*."

The latter portion of the above is omitted by us.

These sections referred to appear to prohibit a registration (by other than a lawful owner) rather than to either provide for it or condone such a transfer, or the issuance by the director of a certificate of ownership.

In answer to question 3(a) then there appears to be no reason why an assignment from one corporation to another corporation is any different than a transfer between natural persons. As was said by Judge C. B. Faris in the case of Commerce Trust Co. v. Woodbury, 77 Fed.(2d) 478, at l.c. 487:

"(1,2) Few questions of law are better settled than that a corporation is ordinarily a wholly separate entity from its stockholders, whether they be one or more. In re Collins (C.C.A.) 75 F.(2d) 62; Wilson v. Creeks(D.C.) 52 F.(2d)

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692; *Majestic Co. v. Orpheum Circuit, Inc.* (C.C.A.) 21 F.(2d) 720; *Owl Fumigating Corporation v. California Cyanide Co.* (D.C. 24 F.(2d) 718, loc. cit. 719; *Pullman's Palace-Car Co. v. Missouri Pacific Ry. Co.*, 115 U.S. 587, 6 S. Ct. 194, 29 L. Ed. 499. Likewise, we think it must be conceded that neither ownership of all of the stock of one corporation by another, nor the identity of officers in one with officers in another, creates a merger of the two corporations into a single entity, or makes one either the principal or agent of the other. *Owl Fumigating Corporation v. Cyanide Co.* (D.C.) 24 F.(2d) 718; *Corsicana Bank v. Johnson*, 251 U.S. 68, 40 S. Ct. 82, 64 L. Ed. 141; *Marsch v. Railroad*, 230 Mass. 483, 120 N.E. 120; *Richmond, etc. Co. v. Richmond, etc., Ry. Co.* (C.C.A.) 68 F. 105, 34 L.R.A. 625. But notwithstanding such situation and such intimacy of relation, the corporation will be regarded as a legal entity, as a general rule, and the courts will ignore the fiction of corporate entity only with caution, and when the circumstances justify it, and when it is used as a subterfuge to defeat public convenience, justify wrong, or perpetrate a fraud."

It should then be clear that a transfer between corporations is a transaction that should be consummated with every formality even though one of the corporations may own every share of the stock of the other corporation since they still remain as separate legal entities.

It would be well here to go into the distinct legal meaning of the word subsidiary. It is believed that the best definition of that word is contained in *Baker v. Fenley et al.* 128 S.W.(2d) 295, 298, 233 Mo. App. 998, 1003:

"\* \* \*In relation to a company, he defines the word as 'a company of the shares of stock in which another company has at least a majority, giving it control.'"

Considering the above, and the definition of owner referred to hereinabove as contained in a previous opinion rendered to your Division, and which is attached, in answer to question 1(c) it

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must be said that if the so-called subsidiary is not the owner as contained in the definition given in the statutes, Section 301.010, the Director should not issue a certificate of title. The answer to question 3(b) then is that since authority does not exist for issuing a certificate of title in the name of the subsidiary there could not be a transfer upon which a motor vehicle use tax would accrue and the answer to 3(c) is that there still cannot be a certificate of ownership issued to any officer, agent, employee or subsidiary corporation when it is understood that the transferee does not become the owner of the vehicle under the definition of owner.

Question 4, including the paragraph immediately preceding it, is as follows:

"A great amount of difficulty has been experienced in attempting to reconcile Section 301.190 RSMo. 1949, which apparently authorizes the Director to issue certificates of title and registration of vehicles in the name of persons, firms, partnerships, and corporations who are not lawful 'owner' of the vehicles as that term is defined in Section 301.010 (18) Laws, 1951, page 695, with the sections relating to the collection of the sales or use tax, Sections 144.070 and 144.440 RSMo. 1949. It does not appear that the sales or use tax sections contemplate the issuance of certificates of title to anyone other than an 'owner', thus raising the following question:

"4. Assuming that under Section 301.190 RSMo 1949 the Director of Revenue may issue a certificate of title to one who is not the lawful 'owner' as defined in Section 301.010 (18) RSMo 1949, but is otherwise entitled to have the same registered in his name, must such an applicant pay sales or use tax to the Director even though Sections 144.070 and 144.440 RSMo. 1949 relating to the collection of the sales or use tax appear to apply only to 'owners' and the sales or use tax has been previously paid by the lawful owner?"

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In answer to the above question it must first be said that with the former definition of owner contained in Section 301.010, RSMo 1949, Subsection 16, was as follows:

"'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;"

Then Section 301.190 could have been construed as authorizing the Director to issue certificates of title and registration of vehicles to persons other than the holder of the legal title to the motor vehicle. It may be said, however, that the change to the new definition of owner as now contained in subparagraph 18 of the Laws of Mo. 1951, page 695, has changed the meaning of Section 301.190, as quoted on page 6, in its application, at least in regard to the authority of the Director to issue a certificate of registration to any one but the properly designated owner. It is presumed that in accordance with the old definition of owner the words "appropriate certificate" was used in the second subparagraph of the said section 301.190 because there could only be one issuance of the permanent certificate as provided for by this chapter 301 for each motor vehicle. Under the former definition the owner could register the motor vehicle and the lessee could also register it. The present definition of "owner" as mentioned above in Laws Mo. 1951, page 695, is discussed in the attached opinion heretofore mentioned. This precludes, we believe, the issuance of a certificate of ownership to any other than those defined as owners under the statute. Where there is no transfer, no motor vehicle sales or use tax is to be paid. Whether or not sales tax is to be charged upon the rental of the motor vehicle is a separate and distinct problem not involved here. However, in the event a certificate of ownership is issued to one who qualified under the definition as "owner" then a use tax would have to be paid as a prerequisite to obtaining a title and registering as provided in paragraph 2, Section 144.440, Laws Mo. 1951, page 854, 858.

#### CONCLUSION

It is therefore, the opinion of this office that the Director of Revenue may, under provisions of Chapter 301, RSMo. 1949, and 1951 amendments thereto, issue a certificate of ownership to a motor vehicle without the necessity of the registration of such

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motor vehicle when it is not to be operated on the streets or highways of this state. The residence of the corporation or individual seeking a certificate of ownership to a motor vehicle does not affect the privilege of obtaining such a certificate. The Director of Revenue is not authorized to issue a certificate of ownership to a lessee unless the lessee has a right of purchase upon performance of conditions with immediate right of possession, under the provisions of Chapter 301, RSMo. 1949 and 1951 amendments thereto.

This opinion which I hereby approve was written by my assistant, Mr. James W. Faris.

Yours very truly,

JOHN M. DALTON  
Attorney General

JWF:mw