TAXATION:
ASSESSMENTS:
AUTOMOBILES:
PERSONAL PROPERTY:
MOTOR VEHICLES:
LEASED MOTOR VEHICLES:
CORPORATIONS:

Motor vehicles situated or held in Livingston Co. which are owned by a domestic or foreign corporation doing business in this state or which are leased to a corporate lessee doing business in this state or which are leased to an individual residing in Livingston Co., are subject to assessment or taxation in Livingston Co. even though taxes have been paid on such motor vehicle in another state. Such motor vehicles are assessable in Livingston Co. to the corporate lessor doing business in this state or to the corporate lessee doing business in this state or the individual lessee residing in Livingston Co.

October 23, 1963

Honorable Don Chapman, Jr.
Prosecuting Attorney
Livingston County
Chillicothe, Missouri

OPINION NO. 59

Dear Mr. Chapman:

This is in answer to your request for an official opinion which reads as follows:

> "Several traveling salesmen who live in Livingston County have cars that are leased by them or their companies from leasing corporations outside of the State of Missouri. These particular cars display the license plate of the state where the leasing corporation is incorporated. We have been told that in most cases that Ad Valorem taxes are collected on these cars in the state where the leasing corporation is incorporated. Our County Court would like to know if these particular cars are assessable in Livingston County. I would appreciate an official opinion on this matter."

FILED
59

In answering your question, we first refer to the following statutes:

Section 137.075, RSMo 1959:

> "Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

Section 137.080, RSMo 1959:

> "Real estate and tangible personal property shall be assessed annually at the assessment which commences on the first day of January."

Section 137.090, RSMo, Cum. Supp. 1961:

> "All tangible personal property of whatever nature and character situate in a county other than the one in which the owner resides shall be assessed in the county where the owner resides, except that houseboats, cabin cruisers and automobile trailer houses used for lodging shall be assessed in the county where they are located and tangible personal property belonging to estates, which shall be assessed in the county in which the probate court has jurisdiction; provided, that no tangible personal property shall be simultaneously assessed in more than one county."

Section 137.095, RSMo 1959:

> "The real and tangible personal property of all corporations operating in any county in the State of Missouri and in the city of St. Louis, and subject to assessment by county or township assessors, shall be assessed and taxed in the county in which the property is situated on the first day of January of the year for which the taxes are assessed, and every general or business corporation having or owning tangible personal property on the first day of January in each year, which is situated in any other county than the one in which the corporation is located, shall make return to the assessor of the county or township where the property is situated, in the same manner as other tangible personal property is required by law to be returned."

From your opinion request we understand that the salesmen who are the lessees of the automobiles reside in Livingston County and that the automobiles which are the subject of the lease are situated or garaged in Livingston County. This tax situs is important in determining the county in which the automobiles are to be assessed. Automobiles are tangible personal property. Section 137.090 provides that the property should be assessed in the county where the owner resides. Section 137.095 provides that the property of corporations operating in any county of the State of Missouri should be assessed in the county where the property is situated.

From these facts and from these statutes we must then conclude that if the automobiles are situated in Livingston County and are owned by a corporation operating in any county in the State of Missouri, the place where they should be assessed is in Livingston County. If the salesmen are deemed to be the owners or holders of the property for tax purposes, the county in which the automobiles should be assessed would, again, be Livingston County because the salesmen reside in Livingston County. Under either situation the county in which the assessment should be made would be in Livingston County.

In determining whether the tax could be assessed against the salesmen who are the lessees of the automobiles, we refer you to Section 137.075, supra. That section makes every person owning or holding tangible personal property liable for taxes thereon. Thus, the salesmen who are the lessees would be liable for the taxes if it is determined that they are the holders of the automobiles within the meaning of that statute.

In determining that the lessee is the holder of the automobile within the meaning of the statute, the case of State v. Haphe, 31 SW2d 788, is helpful. In that case the Supreme Court said, l.c. 790, 791:

> "(2, 3) From the foregoing it appears that every person owning or holding property on the 1st day of June is liable for the taxes thereon for the ensuing year, that it is the duty of every person to list with the assessor all taxable property owned by him, or under his care, charge, or management, and that personal taxes constitute a debt against the person assessed with such taxes, the person

> named in the tax bill. If the person who holds or has under his care, charge, and management personal property is liable for the taxes thereon, such taxes may be assessed against him or in his name; and, when so assessed, they constitute a personal debt for which a personal judgment against him may be recovered. Whether the care, charge, and management of personal property devolves upon one as trustee, administrator, executor, or curator, or as agent of a nonresident principal, is of no consequence; he is made liable for the taxes on the property simply because he has charge and control of it, and not because of the capacity in which he holds it. And when the taxes are assessed against one so holding property, the debt is his and not that of the estate or principal for whom he holds.
>
> " . . . Both the person 'owning' and the person 'holding' personal property are liable for taxes thereon, and such taxes may be assessed against either or both. . . ."

State v. McGee, 44 SW2d 36, l.c. 38, quoted with approval from State v. Haphe, supra.

In accordance with these authorities, we therefore conclude that the salesmen who are the lessees of the automobiles are liable as the holders of such automobiles for taxes assessed against such automobiles in Livingston County.

We also hold that a corporate lessee doing business in Missouri is a holder of personal property and liable for taxes on such leased automobiles.

We further hold that corporations operating in any county in the State of Missouri which are the lessors of any such automobiles are liable for the taxes assessed thereon in Livingston County. Such liability is imposed by Section 137.-075, supra, even though such section imposes the liability on "every person." The term "person" is not defined in Chapter 137.

However, paragraph (7) of Section 1.020 provides that the word "person" may extend and be applied to corporations, and this definition would control in Chapter 137 in the absence of contrary provisions in Chapter 137.

In addition, the case law is to the effect that taxes may be assessed against foreign corporations as well as domestic corporations. City of St. Louis v. Wiggins Perry Co., 40 Mo. 580, was a suit against the defendant, a foreign corporation, for taxes on personal property. In that case the Missouri Supreme Court said, l.c. 587:

> " * * * there can be little doubt that the effect of the statutes of this state is such as to make this corporation, though chartered abroad, a resident of this state not only for the purpose of suing and being sued, by ordinary process, or by attachment, but for all the purposes of ownership of personal property and of taxation, if the same be actually situated within the city limits."

This ruling has been cited and quoted with approval in State ex rel. Henning v. Williams, 131 SW2d 561, l.c. 564, and State ex rel. Northwestern Mutual Fire Association v. Cook, 160 SW2d 687, l.c. 690.

Inherent however in this problem is the question whether Missouri can tax personal property which has been taxed to the lessor in another state. In State ex rel. American Cent. Ins. Co. v. Gehner, 9 SW2d 621, 623, the Supreme Court, en Banc, said, l.c. 623:

> "Each state is sovereign, and, where it has a right to impose a tax, it cannot be deterred from imposing it by the fact that some other state has seen fit to tax the same property. It is not a double taxation. 37 Cyc. 755; Judy v. Beckwith, 137 Iowa 24, 114 N.W. 656, 15 L.R.A. (N.S.) 142, 15 Ann. Cas. 890. In the latter case a copious note cites numerous cases illustrative of the rule. It is not unconstitutional or in conflict with any rule of law."

Hence, it clearly appears that Missouri validly can and does tax such leased automobiles whether or not the lessor pays a tax in another state.

CONCLUSION

Motor vehicles situated or held in Livingston County which are owned by a domestic or foreign corporation doing business in this state or which are leased to a corporate lessee doing business in this state or which are leased to an individual residing in Livingston County, are subject to assessment or taxation in Livingston County even though taxes have been paid on such motor vehicle in another state. Such motor vehicles are assessable in Livingston County to the corporate lessor doing business in this state or to the corporate lessee doing business in this state or the individual lessee residing in Livingston County.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Wayne W. Waldo.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

WWW:BJ; JGS:ml