

1977 S.C. Op. Atty. Gen. 272 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-339, 1977 WL 24678

Office of the Attorney General

State of South Carolina

Opinion No. 77-339

October 31, 1977

*1 The question of the taxable situs of personal property used in a business is a factual question, and if it is determined that the vehicles are permanently kept outside of York County, then they cannot be taxed by York County, although they may have South Carolina license tags.

TO: York County Auditor

QUESTION

You have inquired:

An opinion is requested on the following: A corporation chartered under the laws of the State of North Carolina maintains offices in York County and owns and leases tractor trailer trucks to another North Carolina corporation. This corporation operates from its place of business in Mecklenburg County, North Carolina. The trucks carry South Carolina license tags and the owner pays personal property taxes on the trucks in Mecklenburg County, North Carolina. The question is whether or not the trucks are taxable to York County.

STATUTE

Section 12-37-890 of the Code of Laws of South Carolina, 1976.

DISCUSSION

Section 12-37-890 states in part:

'All * * * and other vehicles used in any business * * * shall be returned for taxation and taxed in the county, city and town in which it is situated.'

As a very general rule the principle of *mobilia sequuntur personam* applies to the taxation of personal property and states that a sovereign may be justified in taxing property of its subjects. Exception however may apply where property acquires a situs outside of the state.

The word 'situated' as used in the statute has been defined by our Supreme Court to mean the taxable situs of property. [Colonial Life & Acc. Ins. Co. v. South Carolina Tax Commission](#), 233 S. C. 129, 103 S. E. 2d 908. This word has been further stated to mean a more or less permanent location or situs. [Brock and Company v. Board of Supervisors, Los Angeles County](#), 8 Calif. 2d 286, 65 P. 2d 791, 110 A.L.R. 700; [Pilot Freight Carrier, Inc. v. State Board of Assessment](#), 263 N. C. 345, 139 S. E. 2d 633; [Reeves v. Island Creek Fuel and Transport Co.](#), 313 Ky. 400, 230 S. W. 2d 924.

Numerous opinions have been issued by this office concerning the situs at which property is taxable. In most of the cases it was found that business property is taxable at the place of the business, however, we have recognized that the property may acquire a situs at a place other than the business address where it is permanently situated at such other place. The facts here

presented do not advise of the permanent location of the vehicles, however, as taxes have been paid to Mecklenburg County, North Carolina, such may be an indication that a situs has been acquired there.

The licensing in South Carolina of the vehicles evidences that the vehicles may not have acquired a situs at a place other than the address of the owner, but such does not conclusively establish tax situs.

The question raised concerning double taxation may be argued in this way. It is recognized that a state has authority to tax property temporarily in another state but not permanently located there. But when tangible personal property is permanently located in a state other than the state of the owner's domicile in such circumstances as to acquire a situs there for purposes of taxation, it is taxable there. If the state of the domicile affords no substantial protection to the property, it has no jurisdiction to tax the property. [Curry v. McCannless](#), 307 U. S. 357, 83 L. Ed. 1339, 59 S. Ct. 900, 123 A.L.R. 162; [Lawrence v. State Tax Commission](#), 286 U. S. 276, 76 L. Ed. 1102, 52 S. Ct. 556, 87 A.L.R. 374.

*2 You must decide if the vehicles in question have a permanent situs in Mecklenburg County, North Carolina, and if so the vehicles cannot be taxed in South Carolina.

CONCLUSION

The question of the taxable situs of personal property used in a business is a factual question and if it is determined that the vehicles are permanently kept outside of York County, then they cannot be taxed by York County although they may have South Carolina license tags.

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