



HENRY McMASTER
ATTORNEY GENERAL

December 15, 2010

Cheryl H. Morgan, Auditor
Lancaster County Auditor
PO Box 2016
Lancaster, SC 29721

Dear Ms. Morgan:

We received your letter requesting an opinion of this Office concerning the registration and taxation of motor vehicles operated in South Carolina but owned by a nonresident. You provided two scenarios and asked whether the vehicles needed to be registered in South Carolina under the following circumstances:

- (1) A Lancaster County resident and homeowner drives a vehicle with a North Carolina license plate that is titled and registered in his father's name in Charlotte. You suggested that under S.C. Code § 12-37-890, the car has a tax situs of the Lancaster County home since the car is there 365 days a year. Specifically, you asked if the "vehicle should be registered [in SC] since it is here over 150 days as required by S.C. Code § 56-3-150."
- (2) A local school district employee drives a vehicle all year with a Pennsylvania license plate. This individual's brother, who is working over seas, owns the car. You asked if this vehicle should be registered in South Carolina since it is in Lancaster County every day of the year.

From the information provided in the request letter, this Office assumes that the vehicles display a current North Carolina and Pennsylvania license plate, respectively, and that those driving the vehicles can produce a valid registration.¹

¹ See, S.C. Code § 56-3-150(A).

Law/Analysis

We begin our analysis with the presumption that the vehicles must be registered and licensed in this State because S.C. Code § 56-3-110 provides that "[e]very motor vehicle . . . driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter [3 of Title 56]" However, there are certain exemptions from the registration and licensing requirements. See, Ops. S.C. Atty. Gen., August 25, 2006; September 10, 2001. For example, S.C. Code § 56-3-150 provides an exemption for nonresidents as follows:

- (A) A foreign privately owned and operated passenger **vehicle of a nonresident**, otherwise subject to registration and license as provided by this chapter, **may be operated within this State without being registered and licensed** pursuant to this chapter, subject to the conditions that at all times when operated in this State the vehicle:
 - (1) is duly registered or licensed in the state, territory, district, or country of residence of the owner; and
 - (2) has displayed on it a valid registration card and registration or license plate or plates.

- (B) The **vehicle of a nonresident must be registered and licensed** pursuant to this chapter upon the earlier of a **nonresident's**:
 - (1) Subsequent establishment of domicile in this State; or
 - (2) Operation of the vehicle in this State for an accumulated period exceeding **one hundred and fifty days**.

S.C. Code § 56-3-150 (emphasis added).

In both scenarios mentioned above, nonresidents own the vehicles, so the exemption in S.C. Code § 56-3-150 applies. According to the request letter, both vehicles are properly registered in North Carolina and Pennsylvania respectively, satisfying S.C. Code § 56-3-150(A). Therefore, the residents of Lancaster County would not be required to register the vehicles in South Carolina.

However, S.C. Code § 56-3-150(B) limits the exemption for nonresidents. If the *nonresident* establishes domicile in South Carolina or operates the vehicle in this state for over 150 days, the vehicle must be registered. The request letter explains that the *vehicles and the drivers* were in the state for over 150 days, but S.C. Code § 56-3-150(B) hinges on the actions of the nonresident, not the driver or vehicle itself. In an opinion of this Office dated September 10, 2001, we explained that "**the vehicle must be registered upon the nonresident's operation of the vehicle for one hundred fifty days**. 'Non-resident' appears to be an element of both subsection (1) and (2)" of S.C. Code § 56-3-150(B). Op. S.C. Atty. Gen., September 10, 2001 (emphasis added). According to the request

letter, neither of the nonresidents have operated the vehicle in the State for more than 150 days. Thus strictly construing the plain language of the statute, the limitation in S.C. Code § 56-3-150(B) is not applicable.

While the nonresident owners are not required to register the vehicles pursuant to S.C. Code § 56-3-150, the vehicles are likely subject to ad valorem tax pursuant to S.C. Code § 12-37-890. See, Op. S.C. Atty. Gen., August 25, 2006.

S.C. Code § 12-37-890 states as follows:

... All other personal property shall be returned for taxation and taxed at the place where the owner thereof shall reside at the time of listing the same, if the owner reside in this State; if not, at the residence of the person having it in charge.

S.C. Code § 12-37-890. This statute provides for the taxation of property located at the "residence of the person having it in charge" even when the owner is not a legal resident of this state.

In prior opinions of this Office, we have concluded that "taxation of personal property is not wholly dependent upon the owner being a legal resident of South Carolina." Ops. S.C. Atty. Gen., September 10, 2001; December 2, 1969. "[E]ven though the owners paid taxes on the vehicles in their home states, the vehicles were nonetheless subject to taxation by South Carolina's local governmental entities by virtue of their 'more or less permanent' location in this state." Id.

The determination of tax situs is a question of fact,² and this Office cannot make determinations of fact as "investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court." Ops. S.C. Atty. Gen., September 14, 2006; August 25, 2006; April 6, 2006; October 31, 1977. However, according to the request letter, both Lancaster County residents appear to have the vehicles "in [their] charge"³ more or less permanently, although the owners live in other states.⁴ It is the opinion of this Office that under S.C. Code § 12-37-890, the vehicles would have a tax situs in Lancaster County for ad valorem taxation.

Conclusion

Consistent with prior opinions, the two vehicles mentioned in the scenarios above would not need to be registered in South Carolina as they fall under the exception of S.C. Code § 56-3-150(A). Even

² Ops. S.C. Atty. Gen., August 25, 2006; October 31, 1977.

³ S.C. Code § 12-37-890.

⁴ Op. S.C. Atty. Gen., December 2, 1969 ("taxation of personal property is not wholly dependent upon the owner being a legal resident of South Carolina.")

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though the Lancaster County residents have driven the vehicle for over 150 days in this State, the nonresident owners have neither established domicile in this State nor operated the vehicles in this State for over 150 days.⁵

However, it is the opinion of this Office that a court would likely find that under S.C. Code § 12-37-890, the vehicles would have a tax situs in Lancaster County for ad valorem taxation because "taxation of personal property is not wholly dependent upon the owner being a legal resident of South Carolina." Ops. S.C. Atty. Gen., September 10, 2001; December 2, 1969.

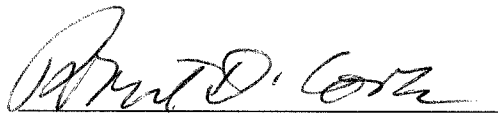
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Deputy Attorney General

⁵ See, S.C. Code § 56-3-150(B).