



HENRY McMASTER
ATTORNEY GENERAL

August 25, 2006

The Honorable Cyrus Spradley
Aiken County Auditor
Post Office Box 94
Aiken, South Carolina 29802

Dear Mr. Spradley:

We issue this opinion in response to your request concerning where vehicles operating in South Carolina, but owned by an out of state business should be registered. In your letter, you posed the following six questions in regard to this issue.

Question 1: A business that is located in Georgia owns a vehicle that is registered to the business at the Georgia address (Augusta). An employee of the business reports to the place of business each day and drives the vehicle during the day in the conduct of business related activities. This employee lives in South Carolina and brings the vehicle to his residence each night where it remains over night until the next business day.

Question 2: The individual in Question 1 also uses the vehicle for some personal use in addition to business use.

Question 3: A business that is located in Georgia owns a vehicle that is registered to the business at the Georgia address (Augusta). An employee of the business drives the vehicle each day in the conduct of business related activities, but never reports to the office in person but by other means, (telephone, email, etc.) This employee lives in South Carolina and brings the vehicle to his residence each night where it remains until the next business day.

Question 4: The individual in Question 3 also uses the vehicle for some personal use in addition to the business use.

Question 5: A business located in Wisconsin owns a vehicle that is registered at the business address in Wisconsin but is located in South

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Carolina with an employee. This employee reports to a construction site in South Carolina each day and uses the vehicle for company related activities at the construction site and for personal use at other times. This employee will be located in South Carolina for up to 12 months. The vehicle remains at his place of residence at night and on the weekend and holidays the employee travels by plane to his home state. The vehicle remains here.

Question 6: In Question 5 the business leases an office in Augusta Georgia for temporary headquarters. The employee does not report to this office in person but reports to the construction site in South Carolina each day.

Furthermore, you ask us to explain how section 12-37-2630 relates to the questions above and in particular "how the word 'situated' relates to each of the examples."

Law/Analysis

The South Carolina Motor Vehicle Registration and Licensing Act governs the licensing and registration of motor vehicles in South Carolina. S.C. Code Ann. §§ 56-3-10 et seq. (2006 & Supp. 2005). Section 56-3-110 of the South Carolina Code (2006), contained in this act, provides the general requirement for registration of vehicles in South Carolina.

Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter.

S.C. Code Ann. § 56-3-110. However, section 56-3-120 of the South Carolina Code enumerates a list of exemptions from the general registration requirement. This list includes an exception for nonresident vehicles.

The following vehicles are exempt from registration and licensing under this chapter:

- (1) a vehicle driven, operated, or moved upon a highway pursuant to the provisions of this chapter relating to nonresidents or under temporary permits issued by the department as authorized;

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S.C. Code Ann. § 56-3-120. Section 56-3-150 of the South Carolina Code (2006) further explains this exception, in pertinent part, 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 fifty days.

...

In each of your examples, an employee uses a business-owned vehicle, at least in part, within the State of South Carolina. Thus, pursuant to section 56-3-110, we find the vehicle is "driven, operated or moved upon a highway in this State." Accordingly, we begin our analysis with a presumption that vehicle must be registered and licensed in this State.

However, in each scenario you describe, the owner of the vehicle is a business located outside of South Carolina. Thus, under section 56-3-150(A), the vehicles owned by these businesses likely constitute "foreign privately owned and operated passenger vehicles of a nonresident." Furthermore, you indicate these vehicles are "duly registered or licensed in the state, territory, district, or country of residence of the owner" and they display "a valid registration or license plate or plates." S.C. Code Ann. § 56-3-150(A). Thus, we believe these vehicles are exempt from registration unless section 56-3-150(B) requires registration. In all of the scenarios you presented, you gave no indication that the nonresident business owner subsequently established domicile in this State. Thus, looking to section 56-3-150(B)(2), we must resolve whether the business operated "the vehicle in this State for an accumulated period exceeding one hundred and fifty days."

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To our knowledge, our courts have yet to address issues concerning vehicle registration when a nonresident business owns a vehicle operated by an employee in South Carolina. However, in a prior opinion issued to you in 2001, this Office considered a similar issue of whether a vehicle used by a resident of Aiken County, but owned by a Tennessee resident and registered in Tennessee, must be registered in South Carolina. Op. S.C. Atty. Gen., September 10, 2001. In that opinion, we examined sections 56-3-110 and 56-3-150. Id. Based on this examination, we determined pursuant to section 56-3-150(A), the vehicle is not required to be registered in South Carolina because it is owned by a nonresident and is duly registered in another state. Id. Furthermore, we determined section 56-3-150(B) does not apply because “the non-resident, who lives in Tennessee, has not operated the vehicle in South Carolina for [the one hundred and fifty-day period]. Thus, strictly construing the plain language of the statute, the second sentence of Section 56-3-150 would not apply.” Id.

This Office maintains the policy that we will not overrule a prior opinion, unless it is clearly erroneous or unless the applicable law changed. Op. S.C. Atty. Gen., September 8, 2005. The Legislature amended this provision in 2002 via Act No. 275, section 1. 2002 S.C. Acts 2713. The amendment added subsections (C), (D), (E), and (F), requiring a nonresident owner/operator to respond in writing to a county auditor’s inquiry regarding the ownership and registration of the vehicle. Id. In addition, the act amended subsection (A), which we provided above. Id. However, these amendments, to what is now subsection (A), relate to format, and we do not believe they impact our prior opinion. Although the Legislature changed the applicable law since the issuance of our 2001 opinion, we do not find that these changes affected our determination of this matter. Furthermore, we do not find our previous interpretation section 56-3-150 clearly erroneous.

In keeping with our 2001 opinion, a court may conclude because the owner of the vehicle does not operate the vehicle in South Carolina, registration pursuant to section 56-3-150 is not triggered and the vehicle is exempt from registration. However, in our review of the situations presented in your letter, they may be distinguished from that presented in our 2001 opinion. The primary difference is that in our prior opinion an individual or individuals owned the vehicle. Whereas, in the situations you describe, businesses, possibly corporations, partnerships, or other entities, own the vehicles. Given that businesses, particularly those that are incorporated, act through their employees, a court may conclude the business, through its employee, operated the vehicle for the requisite one hundred and fifty days, thus triggering the registration requirement. Nonetheless, whether or not a business operated the vehicle in South Carolina is a question of fact to be determined by a court. Because this determination involves factual issues, this Office is without jurisdiction to ultimately conclude whether the businesses in your examples are required pursuant to section 56-3-150(B) to register the vehicles in South Carolina. Op. S.C. Atty. Gen., July 19, 2006.

You also inquire as to how section 12-37-2630 of the South Carolina Code impacts the examples presented in your letter. Section 12-37-2630 of the South Carolina Code (2000) is contained under the provisions of the Code dealing with the assessment of property taxes on motor vehicles. This section provides:

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When a motor vehicle is first taxable in a county the owner or person having control of the vehicle shall make a property tax return of it prior to applying for a license. The return shall be made to the auditor of the county in which the owner or person having control of the motor vehicles resides. If the motor vehicle is used in a business the return shall be made to the auditor of the county in which the motor vehicle is situated, that being the county and city of principal use of the vehicle. The return shall be signed under oath and shall set forth the county, school district, special or tax district and municipality in which the vehicle is principally used.

In interpreting this statute we are mindful of the cardinal rule of statutory construction that the statute must be read to ascertain and effectuate the intent of the Legislature. Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Croft v. Old Republic Ins. Co., 365 S.C. 402, 412, 618 S.E.2d 909, 914 (2005). Moreover, "[i]n construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." South Carolina State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

You ask how section 12-37-2630 impacts the scenarios presented in your letter. The plain language of section 12-37-2630 instructs one applying for a motor vehicle license to first file a property tax return pertaining to that vehicle. Section 12-37-2610 of the South Carolina Code (2000), also contained in the provisions of the Code pertaining to property taxes assessed on motor vehicles and enacted the same year as section 12-37-2630, addresses the tax year for motor vehicles. This provision includes the following sentence: "No license may be issued for motor vehicles until the ad valorem tax is paid for the year for which the license is to be issued." Accordingly, if a court finds the vehicles in question must be registered in South Carolina, we believe this statute along with section 12-37-2610, require payment of any property tax due prior to the registration of these vehicles. However, we believe the other portions of this statute apply regardless of whether or not the vehicle must register in South Carolina, assuming the vehicle is subject to ad valorem taxation in South Carolina.

Prior opinions of this Office determined vehicles may be subject to taxation regardless of their registration status in this State. In an opinion issued in 1991, we answered a request asking whether or not a motor vehicle not licensed under section 56-3-110 of the South Carolina Code is subject to taxation. Op. S.C. Atty. Gen., June 17, 1991. We stated: "We do not know of any exemption of the property from taxation and hence an unlicensed motor vehicle with a tax situs in this state is subject to taxation." Id.

In our 2001 opinion to you, we also addressed whether or not a vehicle not required to register in South Carolina is nonetheless subject to taxation in South Carolina. Op. S.C. Atty. Gen.,

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September 10, 2001. After concluding the nonresident owner was not required to register the vehicle pursuant to section 56-3-150, we concluded the vehicle, however, was subject to ad valorem tax pursuant to section 12-37-890 of the South Carolina Code. We based this determination on the fact that the vehicle acquired a tax situs in Aiken County because the vehicle was more or less permanently within the control of an Aiken County resident. Id.

Section 12-37-890 of the South Carolina Code (2000) provides, in pertinent part: "All . . . vehicles used in any business, . . . shall be returned for taxation and taxed in the county, city and town in which it is situated . . ." Several opinions of this Office discuss the meaning of the term "situated" as used in this statute. In a 1977 opinion discussing the meaning of this term with regard to section 12-37-890, we stated:

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.

Op. S.C. Atty. Gen., October 31, 1977. In that opinion, we concluded the determination of tax situs is a question of fact, which could not be determined in an opinion of this Office. Id. However, we noted that state licensing of the vehicles does not conclusively determine tax situs. Id.

Thus, based on section 12-37-890 and our prior opinions cited above, a vehicle used in a business may be subject to taxation in South Carolina despite not being registered in South Carolina. Furthermore, a vehicle registered in South Carolina may not be subject to taxation here if its tax situs is established elsewhere. Section 12-37-2630 states: "When a motor vehicle is first taxable in a county the owner or person having control of the vehicle shall make a property tax return of it prior to applying for a license." (emphasis added). If a vehicle is subject to registration in South Carolina and has a tax situs in South Carolina, we believe section 12-37-2630 requires payment of property taxes prior to registration. However, we believe regardless of whether the vehicle is registered in South Carolina, this provision instructs motor vehicles used in business that have tax situs in South

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Carolina to file a property tax return with the auditor of the county in which the vehicle is situated (meaning the place in which it established tax situs).

As we concluded in our prior opinions, the determination of tax situs is a question of fact and thus, it cannot be resolved in an opinion of this Office. Op. S.C. Atty. Gen., March 28, 2006 (“[O]nly a court and not this Office in an opinion may make factual determinations.”). However, using the guidelines above, we believe a court would begin with the presumption that the tax situs is where the business is located, which in your first four examples and in your last example is Georgia. In your fifth example, the business is located in Wisconsin. However, because the vehicles in each example are located, for at least a portion of time, in South Carolina, we believe a court would consider, despite the businesses’ location outside of South Carolina, whether the vehicles are primarily situated in South Carolina.

In your first example, the vehicle is only garaged at the employee’s residence overnight. In a prior opinion, we concluded a business located outside of a city’s municipal limits, but which parked its trucks overnight on a regular basis at the city’s town hall, did not establish tax situs for the trucks within the city for tax purposes. Op. S.C. Atty. Gen., December 11, 1974. Based on this opinion, a court is unlikely to find the vehicle in your first example established tax situs in South Carolina. Your second example, however, presents a closer question because the vehicle is also used by the employee, presumably in South Carolina, for personal use. Thus, we believe a court would closely scrutinize this example to determine, given the facts and circumstances, whether the vehicle is situated in South Carolina or Georgia.

In your third example, the business continues to be located in Georgia. The employee does not report to that Office, but rather drives the vehicle during the day for business purposes. We liken this example to one addressed in an opinion issued in 1984 in which we considered the tax situs of vehicles owned by a business and used by employees to travel to and from their residences to the location of clients. Op. S.C. Atty. Gen., July 10, 1984. Although we commented that our determination was not free from doubt, we determined the vehicles had a tax situs at the employee’s residence. *Id.* In the example you presented, you did not indicate whether the employee’s daily travel is within South Carolina or Georgia. Nevertheless, a court would likely find the tax situs of the vehicle in your third and fourth examples to be the employee’s residence.

In your fifth example, the vehicle has no contact with Wisconsin, the location of the business, and appears to be located in South Carolina on a more or less permanent basis for the next twelve months. Therefore, we believe a court could find the tax situs of this vehicle to be South Carolina. However, whether a court would find the employee’s residence or the construction site constitutes the tax situs is unclear and only the court could resolve this issued considering the facts. Finally, in regard to your sixth and final example, because the vehicle does not report to the office in Georgia and is located on a daily basis in South Carolina, a court would likely find its tax situs in South Carolina. However, again a court would need to determine whether the employee’s residence or the construction site is the exact tax situs of the vehicle.

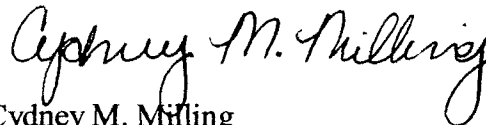
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These determinations as to the tax situs of the vehicles in your examples certainly are not free from doubt. We reiterate that they involve the resolution of significant factual issues and therefore, only a court may make a final determination as to their tax situs. However, presuming it finds the tax situs is within South Carolina, we believe section 12-37-2630 would apply to instruct the owner or person having control of the vehicle as to where to file a property tax return. In addition, if such a vehicle is also required to register in South Carolina, this provision requires that the property tax return must be filed prior to registration.

Conclusion

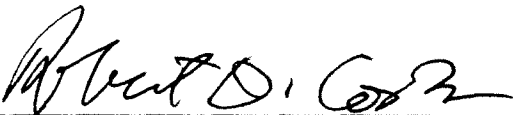
Although nonresident owners and operators of vehicles are generally exempt from registering their vehicles via section 56-3-150 of the South Carolina Code, a court through its examination of the facts and circumstances surrounding the examples you present, could find these businesses operated the vehicles for a period exceeding one hundred and fifty days, thus requiring registration pursuant to section 56-3-150(B)(2). However, we reiterate that such a determination must be left for a court to decide. Furthermore, you inquire as to what impact section 12-37-2630 of the South Carolina Code may have on the examples you presented. We conclude, if a court finds the owner must register the vehicle in South Carolina and finds that the vehicle has a tax situs in South Carolina, it must pay any property taxes due prior to licensure. However, we also note that regardless of whether the vehicle must register in South Carolina, the businesses in your examples nonetheless may be subject to ad valorem taxation in South Carolina. Therefore, this provision also may instruct those businesses as to where to file a property tax return within the State.

Very truly yours,



Cydney M. Milling
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REVIEWED AND APPROVED BY:



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