

1976 S.C. Op. Atty. Gen. 47 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4248, 1976 WL 22868

Office of the Attorney General

State of South Carolina

Opinion No. 4248

February 6, 1976

***1 A leased vehicle used in business acquires a situs for taxation under Section 65–1643 at the place where it is situated. A leased vehicle with no business use, but furnished solely for the personal use of corporate officers who garage the same at their place of residence, acquires a taxable situs at the place of residence.**

Attorney at Law

You have inquired as to whether a leased automobile that is used by a manufacturing corporation which is located outside of a municipality is subject to taxation by the municipality because a corporate officer is allowed to use the vehicle and garage it at his home within the municipality.

Section 65–1643 provides where property is taxable. It 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. 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 resides in this State; if not, at the residence of the person having it in charge. * * *.’

You state the facts as follows:

‘Caroco, Inc., a manufacturing corporation is located outside of the town limits of the Town of Chesterfield. Its principal officers, Mr. Joe Asner and Mr. Steve Asner live in the Town of Chesterfield. Caroco, Inc. is a sewing operation and Messrs. Asner have leased who Lincoln automobiles from a leasing company in the name of the business, Caroco, Inc. These automobiles are used as personal automobiles and are situate in the Town of Chesterfield overnight. It may be that they are used for business purposes, but they are also used as personal automobiles and are only at the plant during working hours.’

The word ‘situated’ has been defined by the 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 term has further been stated to mean a more or less permanent location or status. *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.

This office has issued numerous opinions concerning the situs at which property is taxable. Each of these opinions resolved the question of situs on the basis of the facts presented as to the use of property. If property is used in a business, Section 65–1643 provides that it is taxable at the place where it is situated. Property which is not used in a business is taxable at the place where the owner thereof resides in this State. If the owner does not reside in this State, then it is taxable at the residence of the person having charge of it. In most cases it has been found from the facts that business property is taxable at the address of the business. Property may, however, acquire an actual situs at a place other than the address of the business if it is permanently situated there and be taxable at such location.

***2** It appears that these two vehicles are business property, either as leased vehicles of the lessor or vehicles used in business by Caroco. If they are leased by Caroco for business purposes and used for such purposes, it is doubtful that they would be

taxable by the Town of Chesterfield as the personal use may be incidental to the business use. If, however, it is determined that their primary use is personal and not business, then the Town of Chesterfield could, in our opinion, collect the tax as leased property of the lessor with a situs in the Town. In either case, it is necessary that a factual determination be made of their primary use, which we feel that we are unable to make as we do not have a complete picture of the facts.

In summary, the taxable situs of personal property must be determined by its use. If the two automobiles that are leased by Caroco are primarily leased for business purposes, it is our opinion that the incidental use and storage of the vehicles by the corporate officers in the Town of Chesterfield will not constitute a basis for taxation of such vehicles by the Town. If, however, it is determined that the vehicles have no business use but are furnished solely for the personal use of the corporate officers, then the two vehicles are, in our opinion, taxable by the Town.

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