

1973 S.C. Op. Atty. Gen. 356 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3667, 1973 WL 21118

Office of the Attorney General

State of South Carolina

Opinion No. 3667

December 4, 1973

***1 Automobiles not used in a business are to be taxed at the residence of the owner. Ownership is not necessarily determined by the mere fact that title to the automobile is in the name of a corporation.**

Clerk-Treasurer
City of Walterboro

This is in reply to your request for the opinion of this office on the question of whether certain automobiles are subject to property taxation by the City of Walterboro. The vehicles are listed on the county tax rolls as owned by a corporation which has its principal place of business just outside the city limits. The stock of the corporation is owned by two individuals who reside in Walterboro. You state that you 'have reason to believe that the vehicles * * * are in fact being used by the families of these individuals for personal rather than business reasons.'

The situs of taxation of personal property located in this State is set by Section 65–1643 of the Code. That Section provides that '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 * * *.'

Previous opinions of this office have held that if an automobile is used in a business, the situs for property taxation is the business; if the same is not used in the business, its taxable situs is the owner's residence. See 1963–64 OAG No. 1761, p. 274; 1966–67 OAG No. 2305, p. 124 and a recent opinion of October 24, 1973.

You have stated that the vehicles in question are not used in the corporation's business but are instead used for personal reasons. Because the vehicles are not used in business, they are to be returned and taxed at the residence of the owner.

It is, therefore, necessary to determine the ownership for tax purposes of the vehicles described. As a general rule, the property of a corporation belongs to the corporation and not to its shareholders. See *Fletcher, Cyclopaedia Corporations, Volume 1, Section 31*. However, as stated in *Henn's Handbook of The Law of Corporations* at page 209, this rule is not without exception and shareholders have been treated as the owners of corporate property. This doctrine is sometimes spoken of as disregarding the corporate veil. No case has been found directly in point, however, the cases collected at Section 45.1 of *Fletcher, supra*, hold that the doctrine is applicable in the field of state taxation where the corporate form is used to circumvent revenue and tax laws. See *People v. Clauson*, 41 Cal. Rptr. 691 and *Great Oak Building & Loan Association v. Rosenheim*, 341 Pa. 132, 19 A. 2d 95.

It is the opinion of this office that ownership for property tax purposes is not necessarily determined by the mere fact that a corporation may hold title to the property. Title would, however, create a strong presumption of ownership which would have to be rebutted by facts sufficient to show ownership in another person. The cases cited from other jurisdictions support the view that a shareholder can be treated as the owner of the property. The question is a factual one which, in our judgment, should be treated on a case by case basis. It is suggested that you consult with your city attorney on the question of what proof would be necessary to determine ownership.

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