

August 21, 1967

Opinion No. 289
Answer by Letter-Derman

Honorable Michael Kinney
State Senator
604 Chestnut Street
St. Louis, Missouri



Dear Senator Kinney:

This is in answer to your recent request for an opinion of this office concerning the question of whether automobiles owned by a Missouri Corporation with its registered agent and office in the City of St. Louis, which are garaged overnight by its employees who live in St. Louis County are to be returned for property taxation in the City of St. Louis, or St. Louis County.

Section 137.095, RSMo 1959, provides that all tangible personal property of business and manufacturing corporations:

"* * * shall be taxable in the county in which such property may be situated on the first day of January of the year for which such taxes may be assessed, and every business or manufacturing corporation having or owning tangible personal property on the first day of January in each year, which shall, on said date, be situated in any other county than the one in which said corporation is located shall make return thereof to the assessor of such county or township where situated, in the same manner as other tangible personal property is required by law to be returned." * * *

In Buchanan County v. State Tax Commission, Mo. Sup., 1966, 407 S.W.2d 910, the Court stated that the provisions in Section 137.095 that tangible personal property "* * * shall be taxable in the county in which such property may be situated" * * * "is not the same as providing that the property shall be taxable where "physically present" on that day. The court in discussing the meaning of the word "situated" said, l.c. 914:

" * * * In its application to personal property, the word 'situated' used in a statute authorizing or directing the taxation of property, connotes a more or less permanent location or situs. Brock & Company v. Board of Supervisors of Los Angeles County, 8 Cal.2d 286, 65 P.2d 791, 110 A.L.R.700. See also Colonial Life & Accident Insurance Co. v. South Carolina Tax Commission, 233 S.C. 129, 103 S.E.2d 908, 919; Appeal of Pilot Freight Carriers, Inc., 263 N.C. 345, 139 S.E.2d 633; Assessors of Sheffield v. J. F. White Contracting Co., 333 Mass. 306, 130 N.E.2d 696. Yellow Mfg. Acceptance Corporation v. Rogers, 235 Mo.App. 96, 142 S.W.2d 888, pertained to a statutory requirement that a mortgage be recorded 'where the property mortgaged was situated at the time of executing such mortgage.' After quoting from the Brock case, supra, the court stated that the word 'situated' as used in the statute 'clearly implies some element of permanency.' When used in statutes referring to the taxation or mortgaging of personal property, the word 'situated' has been held to require more than a mere temporary presence. Montague Bros. Inc. v. W. C. Shepherd Co., 231 N.C. 551, 58 S.E.2d 118; Assessors of Sheffield v. J. F. White, supra. It has also been held that temporary presence is not sufficient, General Exchange Insurance Corporation v. Dudley, Tex. Civ.App., 128 S.W.2d 452, and that the word 'situated' refers to the place where the personal property is regularly kept, Rapid City Nat. Bank v. Spouse, 73 S.D. 493, 44 N.W.2d 437, with a more or less permanent location or situs. Universal C.I.T. Credit Corp. v. Walters, 230 N.C. 443, 53 S.E.2d 520, 10 A.L.R.2d 758. * * *"

Under the holding of this case, the automobiles in question are not necessarily taxed at the place where they were physically located on January 1, but may be taxed only where they had acquired a more or less permanent location or situs on that date. This question is factual as well as legal and any judgment determining the situs of the automobiles and in which jurisdiction they were "situated" on January 1, 1966, must be made upon all the facts in each individual case.

Such a determination could be made only by a judicial proceeding in individual cases wherein all interested parties could develop all the necessary facts. This office is not qualified to make such a determination in individual cases. Thus, we may only advise the persons or company involved to discuss the matter with the taxing

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authorities in both the City and the County, and, if a satisfactory solution, is not reached to seek a judicial determination of the problem.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

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