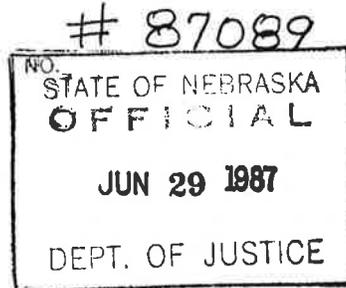


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



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A. EUGENE CRUMP  
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DATE: June 24, 1987

SUBJECT: Tax Situs of Motor Vehicles Under Neb.Rev.Stat.  
§§77-1202 and 77-1240 (Reissue 1986)

REQUESTED BY: Larry D. Bird  
Boone County Attorney

WRITTEN BY: Robert M. Spire, Attorney General  
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the interpretation of Neb.Rev.Stat. §§77-1202 and 77-1240 (Reissue 1986) relating to the tax situs of motor vehicles. In particular, your inquiry concerns the appropriate determination of the tax situs of trucks and pickups owned by farmers maintaining their residences in cities and villages within the county who drive such vehicles out to their farming operations on a regular basis. The specific question which arises in this situation is whether vehicles of this nature should be subjected to taxation within the city or village where the farmer resides, or whether such vehicles should be taxed where the farm is located.

Initially, we note that, prior to the passage of LB 817 in 1986, the tax situs of motor vehicles of this nature would have been determined under Neb.Rev.Stat. §77-1204 (Reissue 1984) (repealed 1986), which provided:

When the owner of livestock or other personal property connected with the farm does not reside thereon, the same shall be listed and assessed in the county, township or precinct where the farm is situated. If the farm is situated in several townships or precincts, it shall be listed and assessed in the township or precinct in which the principal place of business on such farm shall be.

In two previous opinions, our office concluded the key inquiry in determining the tax situs of a particular truck or pickup under this statute concerned whether such vehicle constituted "personal property connected with a farm" so as to qualify for taxation at

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Mr. Larry D. Bird  
June 24, 1987  
Page -2-

the site of the farm in the event the owner resided elsewhere. Report of Attorney General 1949-50, 269; Report of Attorney General 1951-52, 442.

As was noted, however, §77-1204 was repealed in 1986. Laws 1986, LB 817, §15. Therefore, as there no longer exists any specific statutory provision governing the tax situs of personal property connected with farming operations, including motor vehicles, it is necessary to apply the general statutory provisions pertaining to the tax situs of motor vehicles in Neb.Rev.Stat. §§77-1202 and 77-1240 (Reissue 1986) to determine the appropriate situs of trucks and pickups owned by farmers under the circumstances previously discussed.

Section 77-1202 establishes the general rule for personal property tax situs, as well as certain exceptions. This section provides, in part:

Personal property, except as is required by law to be listed and assessed otherwise, shall be listed and assessed in the county, precinct, township, city, village, and school district where the owner resides. (Emphasis added).

Section 77-1202 further provides specific reference to tax situs of motor vehicles:

Motor vehicles, cabin trailers and mobile homes, aircraft, and other personal property connected therewith shall be listed and taxed in the county, precinct, township, city, village, and school district where such property is stored and kept for the greater portion of the calendar year. (Emphasis added).

In addition, Neb.Rev.Stat. §77-1240 (Reissue 1986), also relating to the personal property taxation of motor vehicles, provides:

For the purpose of this section, the tax situs of each motor vehicle shall be in the county, precinct, township, city, village, and school district where such property is principally stored and kept, . . . .

On the basis of the foregoing statutory provisions, it is apparent that the Legislature has determined that, for purposes of personal property taxation, a motor vehicle is to be taxed at the location where the vehicle is "principally stored and kept" for the greater portion of the calendar year. In our view, the key issue to be addressed in responding to your question concerns the interpretation of the meaning of the phrase "principally stored

Mr. Larry D. Bird  
June 24, 1987  
Page -3-

and kept", as this language establishes the statutory test for determining the appropriate tax situs of motor vehicles under Nebraska law.

In Kellogg Co. v. Herrington, 216 Neb. 138, 144, 343 N.W.2d 326, 330 (1984), the Nebraska Supreme Court set forth the following rules of statutory construction:

"A statute is not to be read as if open to construction as a matter of course." County of Douglas v. Board of Regents, 210 Neb. 573, 577, 316 N.W.2d 62, 65 (1982). "Where words of a statute are plain and unambiguous, no interpretation is necessary to ascertain their meaning, and in the absence of anything to indicate to the contrary, words will be given their ordinary meaning." Hill v. City of Lincoln, 213 Neb. 517, 521, 330 N.W.2d 471, 474 (1983). Moreover, "[i]t is not within the province of a court to read a meaning into a statute that is not warranted by the legislative language. Neither is it within the province of the court to read anything plain, direct, and unambiguous out of a statute." Gaughen v. Sloup, 197 Neb. 762, 765, 250 N.W.2d 915, 917 (1977). In the construction of a statute which is clear and unambiguous, courts cannot supply missing language, and it is not within the court's power to read into a statute meaning which the clear language does not warrant. See, Omaha Public Schools v. Hall, 211 Neb. 618, 319 N.W.2d 730 (1982).

Applying these principles to the question of the interpretation of the phrase "principally stored and kept", we believe this language, given its plain and ordinary meaning, refers to the principal or main location where a particular motor vehicle is placed or housed while not in use. The word "principally" is defined to mean "primarily", "chiefly", or "mainly". Webster's Third New International Dictionary 1803 (1981). "Stored" is the past participle of the verb "store", which is defined, in part, to mean ". . . to leave or deposit in a store, warehouse, or other place for keeping. . . ." Webster's Third New International Dictionary 2252 (1981). Finally, "kept" is the past participle of the word "keep", which is defined as ". . . to cause to remain in a given place, situation, or condition. . . ." Webster's Third New International Dictionary 1235 (1981).

Furthermore, cases have recognized a distinction between references to "storing" and "use", Northern Pacific Railway Co. v. Henneford, 9 Wash. 2d 18, 113 P.2d 545 (1941), and the words "kept" and "used". People v. Emilson, 233 Mich. 279, 206 N.W. 545 (1925). Thus, it is our opinion that the foregoing factors, taken in conjunction, lead to the conclusion that the phrase

Mr. Larry D. Bird  
June 24, 1987  
Page -4-

"principally stored and kept" refers to the location where a motor vehicle is predominantly placed or housed during the year while not in use.

With respect to your particular question concerning the tax situs of trucks and pickups owned by farmers who maintain their residences in cities or villages in the county, but drive such vehicles to their farms on a regular basis, we believe that these vehicles normally will be subject to taxation within the city or village where the farmer resides, as this would appear to be the principal location where the vehicle is placed or kept for the majority of the year while not in use. In the event a dispute arises as to the principal place where a particular truck or vehicle is deemed to be "stored and kept" for tax purposes, the place for listing and assessing of the vehicle should be determined by the county board pursuant to Neb.Rev.Stat. §77-1216 (Reissue 1986), in accordance with the meaning of the phrase "principally stored and kept" as defined in this opinion.

Very truly yours,

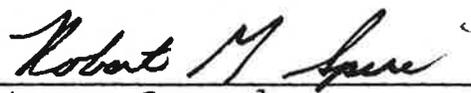
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APPROVED:

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