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OFFICIAL OPINION NO. 20

July 31, 1974

Mr. Ralph W. Van Natta, Commissioner
Bureau of Motor Vehicles
Room 401 State Office Building
Indianapolis, Indiana 46204

Dear Commissioner Van Natta:

This is in response to your request for my official opinion on the following questions:

- "1. Are trucks of a declared gross weight of 7,000, 9,000, and 11,000 pounds which are owned by an out-of-state resident and which have Indiana dual registration as well as registration in the registrant's domicile state subject to Indiana excise tax?
- "2. If trucks of a declared gross weight of 7,000, 9,000, and 11,000 pounds which carry Indiana dual registration are subject to Indiana excise tax, how shall the excise tax monies be distributed?"

ANALYSIS

The dual registration referred to in your questions is provided by the Indiana Code of 1971, Section 9-1-4-21, formerly Burns' Ind. Stat. Ann., (1974 Supp.), Section 47-2620, and states in part as follows:

"(c) A nonresident or a resident who is the owner of a vehicle, required to be registered by this article, operated upon the public highways for the transportation of persons or property for compensation, or carrying on intrastate business within this state and owning and regularly operating in such business any vehicle, required to be registered by this article, within this state, or operated over a regularly scheduled route or having a fixed terminus shall be required to register each such vehicle and pay the same fees therefor as is required by this chapter [9-1-4-1—9-1-4-10,

9-1-4-11.5—9-1-4-60]: Provided, That any such non-resident or resident may operate intrastate, or combined interstate and intrastate within this state any trailer or semitrailer which is properly registered and licensed in any other state, which trailer or semitrailer does not have a fixed terminus or permanent base within this state, and is at the time, being drawn or propelled by a tractor or truck which is properly registered and licensed by the state of Indiana. And further Provided, That where any vehicle as described is properly registered and licensed in any state, district, or country other than the state of Indiana, it shall be exempt from obtaining a registration certificate and plate in Indiana, if the owner thereof has complied with the provisions of the laws of the state, district or country in which the same is registered, when and to the extent that the state, district or country in which such privilege is registered grants such exemptions and privileges to such vehicles owned by residents of this state and registered under the laws of this state.”

Thus, a commercial truck, if operating from one point in Indiana to another, must obtain an Indiana registration plate for this purpose unless its state of origin has executed a reciprocity agreement with the State of Indiana.

The excise tax statutory definitions are found in the Indiana Code of 1971, Section 6-6-5-1, formerly Burns' (1974 Supp.), Section 47-3601, and provide in part as follows:

“(a) Vehicle—Any vehicle subject to annual registration as a condition of its operation on the public highways pursuant to the motor vehicle registration laws of the state of Indiana, except:

“(5) vehicles subject, under the motor vehicle registration laws of the state of Indiana, to registration as trucks, except trucks the declared gross weight of which does not exceed eleven thousand [11,000] pounds, trailers, semitrailers, tractors, and buses.”

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Thus, trucks of a declared gross weight not exceeding 11,000 pounds which are owned by an out-of-state resident and have an Indiana "dual" registration are included within the definition of "vehicle" as found in the Indiana Code of 1971, Section 6-6-5-1, Burns' Section 47-3601, *supra*. "Dual" registration of nonresident vehicles will fall under this definition because such vehicles are subject to annual registration even though they are nonresident vehicles, because the registration to which they are subject expires annually and has in all other respects the same benefits and restrictions as resident vehicle registration. The registration is considered annual and would be included within the statutory definition of the Excise Tax Act.

The Indiana Code of 1971, Section 6-6-5-6, formerly Burns' (1973 Supp.), Section 47-3606, provides as follows:

"Except as otherwise provided herein, the excise tax hereby imposed upon vehicles shall be payable for each registration year, by the owners thereof in respect to vehicles required to be registered for such registration year as provided in the motor vehicle laws of the state of Indiana. Except as provided in section 7 [6-6-5-7], such excise tax shall be due on or before the regular annual registration date in each year on or before which the owner is required under the motor vehicle registration laws of the state of Indiana to register vehicles and such excise tax shall be paid to the bureau at the time the vehicle is registered by the owner as provided in the motor vehicle registration laws of the state of Indiana. *Each vehicle subject to taxation under this act [6-6-5-1—6-6-5-16] shall be registered by the owner thereof as being taxable in the county of the owner's residence.* The payment of the excise tax imposed by this act shall be a condition to the right to register or re-register the vehicle and shall be in addition to all other conditions prescribed by law." (My emphasis.)

Although trucks owned by out-of-state residents and which have Indiana dual registration are subject to the excise tax, the taxes collected would not be handled and distributed to

the counties as provided in the Motor Vehicle Excise Tax Act. This is indicated by the fact that the Indiana Code of 1971, Section 6-6-5-9, formerly Burns' (1974 Supp.), Section 47-3609, states in part as follows:

"The bureau in the administration and collection of the annual license excise tax imposed by this act [6-6-5-1—6-6-5-16] *may* utilize the services and facilities of license branch offices established by the bureau in its administration of the motor vehicle registration laws of the state of Indiana and such branch offices may be so utilized in accordance with such procedures, in such manner and to such extent as the bureau shall deem necessary and proper to implement and effectuate the administration and collection of the excise tax imposed by this act." (My emphasis.)

This would not preclude the bureau from the direct collection of excise taxes when a nonresident vehicle is involved. The Indiana Code of 1971, Section 8-14-1-1, formerly Burns' Section 36-2815 provides in part as follows:

"(a) 'Motor vehicle highway account' means the account of the general fund of the state known as the 'motor vehicle highway account' to which is credited collections from motor vehicle registration fees, licenses, driver's and chauffeur's license fees, gasoline taxes, auto transfer fees, certificate of title fees, weight taxes or *excise taxes and all other similar special taxes, duties, or excises of all kinds on motor vehicles, trailers, motor vehicle fuel or motor vehicle owners or operators.*" (My emphasis.)

Thus, the funds collected from vehicles owned by an out-of-state resident and which have Indiana dual registration are included within the "motor vehicle highway account."

CONCLUSION

It is, therefore, my Official Opinion that trucks of a declared gross weight of 7,000, 9,000, and 11,000 pounds, which are owned by an out-of-state resident and which have Indiana dual registration as well as a registration in any state, dis-

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trict, or country other than the State of Indiana are subject to Indiana excise tax. The funds received from the imposition of the tax would become a part of the "motor vehicle highway account."