

**OPINION
70-215**

March 12, 1970 (OPINION)

Mr. Charles Bosch
Motor Vehicle Registrar

RE: Motor Vehicles - Destroyed Vehicles - Credit

By your letter of February 26, 1970, you have requested an opinion from this office with regard to an interpretation of the word "destroyed" as it is found in Section 39-04-44 of the North Dakota Century Code. You state that in the past you have allowed a credit on the license fee or tax only for those vehicles destroyed in an accident by fire. You indicate that occasionally owners of motor vehicles request a credit where the motor in their vehicle ceases to function and the car is of insufficient value to warrant a new motor, or when the vehicle is in generally such poor condition that is is junked.

Section 39-04-44 of the North Dakota Century Code, as amended, provides as follows:

CREDITS ON DESTROYED VEHICLE. Any owner of a motor vehicle licensed or taxed in this state, if such vehicle is permanently destroyed, may deduct from any license fee or tax thereafter due from such owner during the same year or following year upon another motor vehicle an amount equal to the unused portion of the fee or tax paid upon the vehicle so destroyed, computed pro rata by the month, one-twelfth of the annual fee or tax paid for each month of the year remaining after the month in which such vehicle was so destroyed.

The word "destroyed" with regard to its legal consequences has been interpreted as being the result of an act which renders an object useless for its intended purposes, even though such object is not literally demolished or annihilated. Thus, if one accepts this definition as being applicable to the above statute, a motor vehicle would be considered destroyed if an act renders it useless for purposes of transportation, even though it still possesses a physical existence. The Legislature has not specified by what means a vehicle must be destroyed before license fee or tax credit can be given. However, it can be reasonably assumed that such destruction must result from an act other than that which occurs in the ordinary operation of the motor vehicle and which arises from origins other than mechanical failure or deterioration of the vehicle.

It is noted that a vehicle must be permanently destroyed before a credit may be allowed under the statute. This would indicate that something more is required than mere proof that a vehicle has been rendered useless for its intended purposes. It would indicate that the vehicle must be in such condition that it would appear to be impractical to repair the vehicle in the future, and that the owner does not contemplate repair of the vehicle. Although no hard and fast rule can be provided for evaluating whether a vehicle has been permanently destroyed, one criterion for such evaluation would be the

submission of proof that the cost of placing the vehicle in the condition it was in immediately prior to the act causing its destruction would exceed the market value of the vehicle immediately prior to the destructive act. In situations where such convincing proof cannot be provided, the determination of whether the destruction of a vehicle is permanent would rest with the judgment of the Motor Vehicle Department.

It is therefore our opinion that if proof is submitted that a vehicle has been affected by an act other than mechanical failure or deterioration arising from the ordinary operation of the vehicle, which renders it useless for transportation purposes, and that the condition of the vehicle is such that it is impractical to restore it to operable condition, and that the owner of such vehicle does not intend to restore it to operable condition, regardless of the practicality of doing so, then such vehicle could be considered to be permanently destroyed within the meaning of Section 39-04-44 and a credit can accordingly be given as provided by statute.

HELGI JOHANNESON

Attorney General