

**LETTER
70-436**

February 10, 1970 (OPINION)

Mr. Byron L. Dorgan
State Tax Commissioner

RE: Taxation - Motor Vehicle Use Tax - Refund

This is in response to your letter of January 21, 1970, in which you ask whether motor vehicle excise tax refunds may be made under the following circumstances.

A person purchased an automobile in the state of Minnesota from a dealer in that state and took delivery of same in the state of Minnesota. Automobiles sold by retail dealers in the state of Minnesota are taxable under the Minnesota sales tax law but the Minnesota dealer in question did not comply with the Minnesota law and did not collect Minnesota sales tax at the time the sale was consummated. The person purchasing the vehicle immediately brought the vehicle into the state of North Dakota for use on the streets and highways of this state and applied for a North Dakota title and license for the vehicle. The North Dakota Motor Vehicle Registrar, pursuant to sections 57-40.3-02 and 57-40.3-07 of the North Dakota Century Code, collected North Dakota motor vehicles excise tax from the purchaser prior to issuance of a title or license for the vehicle in question. The purchaser at the time had not previously paid a tax on the vehicle in the state of Minnesota and, thus, the credit or reciprocity, as provided for in section 57-40.3-09 of the North Dakota Century Code, was not claimed by the vehicle owner.

The Tax Commissioner in the state of Minnesota has now audited the Minnesota dealer and is assessing Minnesota sales tax to the Minnesota dealer on the automobile sale. The dealer in turn is billing the purchaser for the tax which he should have collected at the time of the sale. The purchaser has now asked whether a refund of North Dakota motor vehicle excise tax would be made to him upon proper application by him and proof that he has subsequently paid a tax in the state of Minnesota. You explain that you have received a number of inquiries regarding refunds under this factual situation.

The North Dakota motor vehicle excise tax is imposed on the purchase price of any motor vehicle acquired either in or outside of the state for use on the streets and highways of this state. The law prohibits the Motor Vehicle Registrar from issuing a title or license for a motor vehicle unless and until the applicant pays the North Dakota motor vehicle excise tax to the Motor Vehicle Registrar.

Section 57-40.3-09 of the North Dakota Century Code allows credit-reciprocity for tax paid to other states which allow similar credit for the payment of North Dakota tax. This section is quoted as follows:

CREDIT FOR EXCISE TAX PAID IN OTHER STATES - RECIPROCITY. If any motor vehicle has been subjected already to a tax by any other state in respect to its sale or use in an amount less

than the tax imposed by this chapter, the provisions of this chapter shall apply, but at a rate measured by the difference only between the rate fixed in this chapter and the rate by which the previous tax paid in the other state upon the sale or use was computed. If the rate of tax imposed in such other state is the same or more than the rate of tax imposed by this chapter, then no tax shall be due on such motor vehicle. The provisions of this section shall apply only if such other state allows a credit with respect to the excise tax imposed by this chapter which is substantially similar in effect to the credit allowed by this section."

Thus, the question presented is whether this section is applicable if a tax was not paid to some state by the owner of the motor vehicle prior to the time the person received a North Dakota title or license but was subsequently paid to a state after payment of the tax to the state of North Dakota.

Words used in any statute are to be understood in their ordinary sense and exemption statutes are to be construed strictly against the person claiming the exemption.

It is noted that section 57-40.3-09 of the North Dakota Century Code grants credit only if the "motor vehicle has been subjected already to a tax by any other state." The word "already" is a word of limitation referring to the time of an act or event and has reference to a past or present act but excludes a future time. See 3 Words & Phrases, pages 385, 386 and Webster's New International Dictionary Second Edition.

In addition, the term "subjected" or "subject" . . . "to a tax" is synonymous with "liable" for a tax and connotes payment of a tax, bearing the financial burden of a tax or, in any event, involves an actual assessment or levy of a tax rather than merely meaning a statutory provision sufficiently broad to impose a tax on a particular transaction. In this connection see *Houston Street Corp. v. Commissioner of Internal Revenue*, 84 F.2d. 821; *American Mfg. Co. v. Commonwealth*, 146 NE 801 and *Huey v. King*, 415 S.W.2d. 136.

It is noted that the headnote to section 57-40.3-09 of the North Dakota Century Code refers to "CREDIT FOR EXCISE TAX PAID IN OTHER STATES - RECIPROCITY." (Underlining added.) This headnote was inserted in the legislative bill prior to the enactment of this section. It is recognized that headnotes do not constitute any part of a statute. However, when headnotes are enacted as a part of a statute rather than added after the enactment, the headnote, although it will not control the meaning of words in an act, it may be used as an aid to statutory construction and is given judicial consideration in determining legislative intent. See 2 Sutherland's Statutory Construction (Third Ed.) pages 386-389.

In view of the above, it is our opinion that section 57-40.3-09 of the North Dakota Century Code permits application of a credit only if the applicant can show at the time he makes application for a North Dakota title or license that he has paid a similar tax in a state other than the state of North Dakota or that the foreign state has previously or as of that date has actually made an assessment or

levied a similar tax with respect to the vehicle in question.

Under the factual situation presented, it would appear that at the time the North Dakota motor vehicle excise tax was due and payable and was actually paid to the state of North Dakota no tax had been assessed or paid in the state of Minnesota by the applicant and, thus, the credit provision would not be applicable. As the credit provision is applicable only for tax previously paid or assessed at the time of the due date of the North Dakota motor vehicle excise tax a subsequent payment of tax in some other state does not serve as a basis for a claim for refund of motor vehicle excise tax previously paid to this state.

We would further note that section 57-40.4-01 of the North Dakota Century Code, as amended, governing motor vehicle excise tax refunds, provides that if the tax was paid in error, or for any other reason the tax was not due under the provisions of chapter 57-40.3 the tax shall be refunded. In this instance there was no error and the tax was due at the time it was paid, since no tax had been paid in the other state. Refunds can be made only under the conditions and in the manner prescribed by statute. Since there was no error insofar as North Dakota was concerned and since the tax was due at the time it was paid, it would appear the Tax Commissioner is without authority to make the refund. An error on the part of the person selling the vehicle in the other state would not alter this situation since, if the error were not noticed by the taxing officials in the other state and no tax was subsequently requested of the buyer, North Dakota was obviously required to collect the tax when the car was registered in this state.

The above result should, under normal circumstances, avoid double taxation if the state law of the state in which the motor vehicle was purchased contains a credit or reciprocity provision allowing credit for tax properly paid to the state of North Dakota. If no such credit or reciprocity exists in the law in the state of purchase, then section 57-40.3-09 of the North Dakota Century Code would under no circumstances be applicable because it specifically provides that the section is applicable only if such other state allows a similar credit.

HELGI JOHANNESON

Attorney General