

OPINION
65-375 (June 3)

June 3, 1965 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Motor Vehicle Use Tax - Administration

This is in reply to your request for an opinion on the construction of Senate Bill No. 40 which amends §57-40.1-07 of the North Dakota Century Code. This bill also provides that the Tax Commissioner is to administer the motor vehicle use tax. You refer to a report of the 1965 Legislative Research Committee, which on Page #147 sets forth the following explanation of Senate Bill No. 40:

“Senate Bill No. 40-Tax Commissioner to Administer Motor Vehicle Use Tax. This bill would provide for the administration of the motor vehicle use tax by the tax commissioner with the motor vehicle registrar to act as agent of the tax commissioner, and revenues derived to be deposited in the general fund. See Committee report on Taxation.”

Also on Page #132 of the report of the North Dakota Legislative Research Committee there appears a further discussion of Senate Bill No. 40, a portion of which is quoted as follows:

“The Committee is of the opinion that all portions of the sales-tax structure should be placed under the jurisdiction of the Tax Commissioner, and recommends a bill carrying out this recommendation. The present system of collection of the motor vehicle use tax through the office of the Registrar of Motor Vehicles would be continued to prevent any leakage of the tax, but the registrar would act as the agent of the Tax Commissioner. This bill would result in more uniform administration of the use tax, and the joint staffs and facilities of the two agencies involved, especially in field audits, should improve the collection of the use tax.

“It should also be noted that the motor vehicle use tax law has been amended to provide that the revenues received by the Motor Vehicle Registrar be paid to the State Treasurer for deposit in the general fund, instead of the motor vehicle registration fund. Presently all sales and use taxes, except the motor vehicle use tax, are deposited in the general fund. The Committee is of the opinion that the \$700,000 estimated annual income

from the motor vehicle use tax should be treated in the same manner as other sales and use taxes."

Your specific question is how the proceeds of the motor vehicle use tax are to be transmitted and to whom? More specifically, who transmits and what amount?

The original provisions of Senate Bill No. 40 amending § 57-40.1-07 of the North Dakota Century Code provided as follows:

"All moneys accruing by virtue of section 57-40.1-02, promptly upon collection, shall be ~~((paid))~~ remitted by the motor Vehicle registrar to the state ~~((treasurer))~~ tax commissioner and by him shall be paid to the state treasurer to be transferred and credited to the ~~((motor vehicle registration))~~ general fund."

Under the proposed language there would have been no difficulty as to what was intended to be accomplished. However, said bill was amended by the Committee of Finance and Taxation, Senate Journal, Page 158. The amended version as it was passed and now appears in the bill as passed reads as follows:

"57-40.1-07. DISTRIBUTION AND USE OF REVENUE.) Fifty percent of the moneys accruing by virtue of section 57-40.1-07, promptly upon collection, shall be remitted by the motor vehicle registrar to the state tax commissioner and by him shall be paid to the state treasurer to be transferred and credited to the general fund and fifty percent to the motor vehicles registration fund."

The same section prior to the 1965 Legislative Assembly merely provided that the moneys collected by the motor vehicle registrar shall be transferred and credited to the motor vehicle and registration fund. It is undisputed that one of the purposes of Senate Bill No. 40 was to transfer these collections to the General Fund; however, the Legislature deemed it advisable to transfer only 50% of said collections into the General Fund. It also appears obvious that the Legislature designated the Tax Commissioner as the administrator of the motor vehicle use tax and that the motor vehicle registrar is to act as agent of the Tax Commissioner and subjects him to proper rules and regulations promulgated by the Tax Commissioner.

When the Committee amended Senate Bill No. 40 it obviously intended to change the provisions of the proposed bill. It is possible that in amending the bill the committee did more than it had primarily attempted to do. We must, however, assume that the Legislature had a deliberate purpose in mind in amending the bill and such purpose and intent can only be obtained from the language found in the Bill as it now reads.

The present language of Senate Bill No. 40 is susceptible of two meanings: (1) Under a strained construction the result could be reached that the Tax Commissioner would only remit 50% to the State Treasurer of the 50% remitted to him by the motor

vehicle registrar. This, in effect, would result in 25% being credited to the General Fund. Such construction would be ridiculous and the reasons therefor are obvious. (2) The other construction is that 50% of the moneys collected by the motor vehicle registrar is remitted to the State Tax Commissioner who pay same to the State Treasurer to be credited to the General Fund and the other 50% is paid or credited by the motor vehicle registrar to the motor vehicle registration fund. This construction might be considered to vary from the initial purpose and intent of Senate Bill No. 40 as introduced. However, upon examining the language this appears to be the only logical conclusion that can be reached from the language itself. It must be observed that there is no provision in the section in question which provides for remitting to the State Tax Commissioner more 50%. No language in the section in question provides that 100% of the moneys collected shall be remitted to the Tax Commissioner. In eliminating the parenthetical phrases, the following would result: 50% of the moneys accruing shall be remitted by the motor vehicle registrar to the Tax Commissioner and 50% to the motor vehicle registration fund. By way of illustration, the section with the parenthetical language in parenthesis would be as follows: "50% of the moneys (accruing by virtue of section 57-40.1-02, promptly upon collection,) shall be remitted by the motor vehicle registrar to the state tax commissioner (and by him shall be paid to the state treasurer to be transferred and credited to the general fund) and 50% to the motor vehicle registration fund."

It is therefore our opinion that the moneys collected by the motor vehicle registrar under the provisions of §57-40.1-02 of the North Dakota Century Code, as amended by Senate Bill No. 40 of the 1965 Legislature, are to be remitted as follows: 50% to the Tax Commissioner, who shall pay same to the State Treasurer, who shall credit same to the general fund. The other 50% shall be credited to the motor vehicle registration fund by the motor vehicle registrar.