**OPINION**
**65-413 (July 13)**

July 13, 1965 (OPINION)

Mr Lloyd Omdahl

Tax Commissioner

RE: Taxation - Use and Motor Vehicle Tax - Application

This is in response to your letter of July 10, 1965, in which you submit additional questions on the application of the use tax and the motor vehicle tax.

QUESTION NO. 1: You specifically ask if the opinion of July 9, 1965, which concludes that trade-in allowances should be excluded before the tax is applied, was to have a retroactive application or effectiveness, i.e., whether or not the ruling applied to transactions that took place on July 1, 1965.

The opinions of July 9, 1965, and June 26, 1965, concerned themselves with the situation where the use tax came into full operation after the Sales Tax Act of 1963 expired on its own and the 1965 Sales Tax Act was referred and was thus suspended.

In direct response to Question No. 1, it is our opinion that the deduction of trade-in allowances before applying the use tax in accordance with our previous opinions applies from and after July 1, 1965. No retroactive application is to be given except as of July 1, 1965 when the condition came into being upon which the opinion was predicated.

QUESTION NO. 2: Because of the answer given to Question No. 1, there is no need to answer the question submitted as No. 2

QUESTION NO. 3: Because of the answer given to Question No. 1, no answer to Question No. 3 is needed.

QUESTION NO. 4: Should the Motor Vehicle Registrar collect a two and one-fourth percent rate to the total purchase price without deduction of any trade-in allowance that may have been granted to the purchaser by the seller?

It is noted that a separate use tax statute has been enacted as pertaining to motor vehicles which is, insofar as this question is concerned, still operative. While the provisions of section 57-40.1-02 as applied in accordance with the provisions of subsection 9 of section 54-40.1-01 had constitutional objectionable features prior to July 1, 1965, and still have, nevertheless, because same has application to purchase of motor vehicles outside of the State of North Dakota, it is our opinion that said sections continue to be the statutes which apply to such transactions.

QUESTION NO. 5: Attention is directed to subdivision b of

subsection 10 of section 57-40-01 of the North Dakota Century Code, which defines "purchase at retail" to include but not limited to "leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state."

You also call to our attention subsection 4 of section 57-40-03, as amended in 1963, which exempts from the use tax "any motor vehicle, mobile home, trailer or semi-trailer which is registered for a license under the motor vehicle laws of this state." You then ask in view of the above does the use tax imposed by House Bill No. 692 or by section 57-40.1-02 apply to an automobile purchased for retail sale purposes if the purchaser of the automobile obtains title for sale either in or outside of the State of North Dakota. You also ask: "Does the use tax imposed by chapter 57-40 apply to the rental receipts derived from the rental or leasing of the vehicle?" It is our understanding that prior to July 1, 1965, the motor vehicle registrar allowed care rental agencies to purchase vehicles without paying the sales tax or use tax if the vehicles were to be rented out. The tax was applied to the rentals as they occurred from time to time. This practice was continued after chapter 57-40.1 came into being. We are also advised that out-of-state agencies which brought vehicles into the State of North Dakota were required to pay the use tax upon having same registered with the Motor Vehicle Registrar.

After examining the provisions mentioned above and the administration thereof, and other related statutes, it is our opinion that there is no need to deviate from the practice heretofore followed in 1964 and in the first half of 1965.

QUESTION NO. 6A: Where a motor vehicle is purchased under a conditional sales contract which provides that the legal title shall not pass until the terms of the contract have been satisfied, upon satisfying these conditions is the purchaser upon presenting an application to the Motor Vehicle Registrar for a new certificate of title required to pay the use tax? In this connection you call our attention to section 39-05-01, subsections 2 and 3; section 39-05-05, 39-05-09, 39-05-16, 39-05-19, 39-05-20 and 39-05-22 of the North Dakota Century Code.

In examining these sections we are aware that the Code uses the terms "registered owner" and "legal owner", and that upon satisfying the conditions of a sales contract the registered owner would become the legal owner as such terms are used in the aforementioned sections. We do not believe that the Motor Vehicle Use Tax Act contemplates the change from registered owner to a legal owner as a transaction upon which a tax is to be paid. The legal owner is a term used as a device to protect the seller until the conditions of the sale have been met. It is, in effect, a continuance of the original transaction.

It is therefore our opinion that the purchaser (registered owner) is not required to pay the use tax when he applies for a new certificate of title upon becoming the legal owner.

QUESTION NO. 6B: Must the Tax Commissioner under chapter 57-40 or the Motor Vehicle Registrar under House Bill No. 692 collect any tax

when repossession is made where the purchaser defaults in the sales contract before a new certificate of title is issued to the original seller?

The transaction involved here stems from a conditional sales contract. The repossession is part of the original transaction and is a consummation of the original transaction which was subject to the tax. This situation is, in many instances, similar to the situation in Question 6A. In Question 6A the subsequent transfer of title was predicated upon satisfying the conditions of the sales contract. In the present question (bB) the transfer of title is predicated on not having satisfied the conditions of the original sales contract. In both instances the conditions are a continuation of the original transaction.

It is therefore our opinion that a tax need not be paid upon the repossession of a motor vehicle sold under a conditional sales contract where the purchaser defaults and where the tax was paid on the original transaction.

ATTORNEY GENERAL

Helgi Johanneson