

**OPINION  
65-419**

July 9, 1965 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Use Tax - Trade-In allowance

During a recent conference, at which you were present, questions were raised as to the specific provisions of House Bill No. 809 (chapter 421, 1965) and their application as a result of the opinion issued by this office dated June 26, 1965. The specific question raised was whether or not trade-in allowances should or should not be used in computing the tax to be paid. The instruction sheet you sent out to various retailers based on the opinion directed that trade-in allowances are not to be excluded from the tax. Because of the broad language used in the opinion, your conclusions were warranted. We also advised that we would reconsider or review the opinion if requested.

In your letter of July 6, 1965, you stated, amongst other things, as follows:

If you are of a mind to reverse your findings in relation to House Bill 809, you can be assured that I will continue to follow your opinions whether I agree with them or not. I believe that you have the responsibility to advise any public official of a change in your position if you feel you can substantiate a change or if you feel a change is warranted."

As a result of the questions raised, we have made further study of the provisions of House Bill No. 809 and other bills and find that it is necessary to modify the conclusions reached in the earlier opinion.

House Bill No. 698 (chapter 386, 1965) has been referred to the electorate and the election date has been proclaimed by the Governor. Under the provisions of Section 25 of the North Dakota Constitution, House Bill No. 698 and all of its provisions have been suspended awaiting the outcome of the special election.

In comparing the provisions of House Bill No. 698 with other bills passed, we find that there is some duplication. As to House Bill No. 698, section 24 amends section 57-40-01 of the North Dakota Century Code. More specifically, it amends the definition found in subsection 5 thereof pertaining to "purchase price." The language is as follows:

5. 'Purchase price' means the total amount without any deduction for trade-in allowances for which tangible personal property sold, leased, or rented, and includes the total amount for which advertising is sold, or the charges

made for preparing or placing advertising in media valued in money, whether paid in money or otherwise, by cash discounts allowed and taken on sales shall not be included.  
\* \* \*."

House Bill No. 809 in section 3 thereof amends subsection 5 of section 57-40-01 of the North Dakota Century Code to read as follows:

5. 'Purchase price' means the total amount without any deduction for trade-in allowances for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts allowed and taken on sales shall not be included.  
\* \* \*."

It is noted that the following language, "'Purchase price' means the total amount without any deduction for trade-in allowances for which tangible personal property is sold, \* \* \*." is the same in both House Bill No. 698 and House Bill No. 809.

The suspension of House Bill No. 698 and its provisions under Section 25 of the Constitution also suspends identical substantive provisions contained in other bills. House Bill No. 698 was the latest expression of the Legislature and was the latest Act approved by the Governor in comparison to House Bill No. 809 and 692.

Being that both of these provisions are suspended, the only law in effect which is operative is subsection 5 of section 57-40-01 of the North Dakota Century Code, as amended by the 1963 Legislature.

The following language is the law which is now operative:

5. 'Purchase price' means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts allowed and taken on sales shall not be included;  
\* \* \*."

By comparing this language with the language in section 57-39-01, subsection 6 as amended by the of the North Dakota Century Code, we find that it is similar in substance. It is as follows:

6. 'Gross receipts' means the total amount of the sales of retailers, valued in money, whether received in money or otherwise, provided, however, that discounts for any purposes allowed and taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. \* \* \*."

It is noted that the substantive language is very similar if not identical as to the material portions involved. Under this language it has consistently been the policy and rule to exclude from the tax the trade-in allowance. It is quite evident that the Legislature also deemed that the present language as found in section 57-40-01(5) of the North Dakota Century Code, as amended by the 1963 Legislature, did permit the exclusion of trade-in allowances because by the

language employed in both House Bill No. 698 and House Bill No. 809 specific language was used which would have no longer permitted the exclusion of trade-in allowances for tax purposes.

It is therefore our opinion that the trade-in allowance for various articles is to be excluded from the total price before applying the tax of two and one-fourth percent.

In reviewing the provisions of House Bill No. 692 (chapter 431, 1965), we find that a new Act was created by the Legislature which can be found in sections 1 through 9 of the bill. This Act, amongst other things, imposes under section 2, a tax on motor vehicles as follows:

\* \* \* There is hereby imposed an excise tax of two percent of the purchase price of any motor vehicle purchased or acquired in the State of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state." (Emphasis supplied.)

Because the sales tax in House Bill No. 698 is suspended and the 1963 Sales Tax Act expired on its own accord as of July 1, 1965, the new Act becomes operative for the reasons set out hereinafter.

In section 31 of House Bill No. 698, section 57-40.1-02 is amended as follows:

\* \* \* There is hereby imposed beginning July 1, 1965, an excise tax of two percent of the purchase price of any motor vehicle purchased or acquired outside of the State of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state, and a like rate of tax upon the purchase price of any mobile home purchased or acquired for use in this state." (Emphasis supplied.)

The same section is amended in section 10 of House Bill No. 692 and provides as follows:

\* \* \* There is hereby imposed an excise tax of two percent of the purchase price of any motor vehicle purchased or acquired outside of the State of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state, and a like rate of tax upon the purchase price of any mobile home purchased or acquired for use in this state." (Emphasis supplied.)

Upon examination it is found that these two sections are identical in substance.

It is our opinion that section 10 of House Bill No. 692 is suspended as a result of the referral of House Bill No. 698. We have then in operation the new law as created by House Bill No. 692, and section 57-40.1-02 of the North Dakota Century Code as it existed prior to the amendment contained in House Bill No. 692 and House Bill No. 698. This leaves in operation the language of section 57-40.1-02 of the North Dakota Century Code, as amended by the 1963 Legislature, which is as follows:

\* \* \* There is hereby imposed an excise tax of two and one-quarter percent of the purchase price of any motor vehicle purchased or acquired for use on the streets and highways of this state and required to be registered under the laws of this state, and a like rate of tax upon the purchase price of any mobile home purchased or acquired for use in this state."

In harmonizing the two provisions, namely, the new Act as found in House Bill No. 692 from sections 1 through 9 with section 57-40.1-02 of the North Dakota Century Code, as amended by the 1963 Legislature, we find that the 1963 amendment provides for a tax of two and one-fourth percent without making any provisions as to whether the motor vehicle is purchased within the state or outside the state. Section 2 of House Bill No. 692, which provides for a two percent tax, is applicable only to motor vehicles purchased or acquired in the State of North Dakota. By process of elimination the two and one-fourth percent tax as provided for in section 57-40.1-02 of the North Dakota Century Code, as amended by the 1963 Legislature, would apply, if at all, only to out of state purchases.

The opinion issued June 26, 1965, is hereby modified in accordance with the opinion expressed herein.

We are sure that you will appreciate the complex problems which were presented and that the answers thereto are difficult because of the duplications which were not apparent on the surface. In reaching the above conclusions we took cognizance of the fact that House Bill No. 698 in several instances provided that the entire provisions of House Bill No. 698 must be considered one program, or as often referred to, "a tax package." By concluding that the provisions found in other bills, which are substantially the same as found in House Bill No. 698, are suspended, together with House Bill No. 698, we are giving full recognition to Section 25 of the North Dakota Constitution as pertaining to the referendum procedure and avoid thwarting same.

ATTORNEY GENERAL

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