

**OPINION
66-277**

November 25, 1966 (OPINION)

Mr. Walter Christensen

State Treasurer

RE: Taxation - Motor Vehicle Use Tax - Distribution

This is in response to your request for an opinion as to the proper formula to be used in distributing the use tax on motor vehicles which is transferred to the Motor Vehicle Registration Fund.

The initial distribution or allocation of the use tax collected under the provisions of Chapter 57-40, as amended by Chapter 438 of the 1965 Session Laws is fifty percent to state general fund and fifty percent to motor vehicle registration. It is the latter fifty percent upon which you inquire.

Section 4 of Chapter 438 of the 1965 Session Laws which is now Section 39-04-39.1 of the North Dakota Century Code provides for the distribution of the fifty percent transferred to the Motor Vehicle Registration Fund. It provides as follows:

DISTRIBUTION TO LOCAL HIGHWAY FUNDS. Prior to any disbursement out of the motor vehicle registration fund, under subsections 1 and 2 of Section 39-04-39, a sum equal to the amount of use tax deposited in the motor vehicle registration fund shall be distributed by the state treasurer to the county highway funds and the special municipal highway funds of each county in such manner and in such amounts so that each county highway fund and each special municipal highway fund shall receive a total sum out of the motor vehicle registration fund equal to that which it would have received under subsection 3 of Section 39-04-39, if all of the motor vehicle use tax had been deposited in the motor vehicle registration."

It is noted that the fifty percent of the use tax which was transferred to Motor Vehicle Registration Fund is to be treated separately and is distributed before the other money in the Registration Fund is distributed. It also provides that same be distributed in accordance with the provisions of subsection 3 of Section 39-04-39.

In examining the provisions of subsection 3(a) of Section 39-04-39, it is observed that unless the basic funds (50% of the use tax on motor vehicles) exceeds the sum distributed to the counties for the fiscal year ending June 30, 1966, there will be no funds for distribution under the provisions of 3(b)(1) and (2).

It is therefore our opinion that the funds in question be distributed in accordance with the provisions of 3(a) of Section 39-04-39, and only if there are any funds in excess of the fees distributed from the motor vehicle registration fees for the fiscal year ending 30 June 1966 is any distribution to be made under 3(b)(1) and (2).

HELGI JOHANNESON

Attorney General