

OPINION
66-378

February 21, 1966 (OPINION)

The Honorable Walter Christensen

State Treasurer

RE: Taxation - Motor Vehicle Use Tax - Distribution

This is in reply to your request for a construction and interpretation of section 39-04-39.1 as enacted by Chapter 438 of the 1965 Session Laws pertaining to the distribution of the use tax deposited in the motor vehicle registration fund. This section 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 fund." (Underscoring ours.)

To more fully understand the provisions of section 39-04-39.1, it is necessary to review related legislation which pertained to the same subject matter and the events which brought about the adoption of the section in question.

The use tax referred to in the above section is the one that is imposed by chapter 57-40.1. This chapter was initially adopted by the 1963 Legislature (Chapter 405). Under section 57-40.1-02 a two and one-fourth percent of the purchase price of a motor vehicle was imposed where such vehicle was obtained for use on the streets and highways of this state. If the vehicle in question was subject to a sales tax then the purchase of such vehicle was exempt under the use tax. Section 57-40.1-02 was amended by Chapters 386 and 431 of the 1965 Session Laws. Chapter 386 was referred to the people at a special election and was defeated, consequently the 1965 amendment did not become law. This, in effect, left the tax imposed as enacted by the 1963 Legislature. Thus the use tax referred to in section 57-40.1-02 is that tax which would have been applied to the purchase price of a vehicle if the purchase was not subjected to a sales tax where the vehicle was purchased for the purpose of using same on the streets and highways in the State of North Dakota.

The result, in effect, is that the use tax referred to would be that tax which would normally be applied and collected as if the sales tax were in effect and fully operative. However, the sales tax is now

not operative but, nevertheless, the use tax referred to here is that tax which would have been applied and collected if the sales tax act were in effect.

The distribution of the use tax collected is pursuant to the provisions of section 57-40.1-07, as amended by Chapter 438 of the 1965 Session Laws. The original provisions of said Act as adopted in 1963 by Chapter 405 provided that all of the use tax collected by the motor vehicle registrar be transferred to the State Treasurer, who credited same to the motor vehicle registration fund. The original provisions of Senate Bill No. 40 (Chapter 438) which amended said act provided that all of the use tax be collected and credited to the state general fund. However, in the course of the legislative process the act was amended to its present form, which provides as follows:

57-40.1-07. DISTRIBUTION AND USE OF REVENUE. Fifty percent 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 fifty percent to the motor vehicle registration fund."

Senate Bill No. 40, Chapter 438, by the legislative processes was also amended to include the language presently found in section 39-04-39.1, which has been set out fully hereinbefore. This section makes reference to section 39-04-39. It provides that the funds deposited in the motor vehicle registration fund be distributed pursuant to the provisions of subsection 3 of section 39-04-39. Significantly, section 39-04-39 contains three major subsections, i.e., 1, 2, and 3. Subsection 3 as it appeared in the Century Code provided in part, as is material here, as follows:

3. Fifty percent to the counties of this state in proportion to the number of motor vehicle registrations credited to each county."

Prior to the 1963 Legislative Session, subsection 3 of section 39-04-39 read as stated above. Senate Bill No. 40 did not disclose that any other portions of section 39-04-39 were to be amended. For that matter the provisions of section 39-04-39.1, particularly the underscored language, can be given application only under the language of section 39-04-39, subsection 3, as it existed in the Century code prior to 1963. It is mathematically impossible to apply the provisions of section 39-04-39.1, particularly the underscored language, to the provisions of subsection 3 of section 39-04-39 as it appears in the 1963 amendment.

It becomes quite obvious that the language of section 39-04-39.1 was designed as if subsection 3 of section 39-04-39 still provided the same as it did prior to the 1963 amendment. If the provisions of section 39-04-39.1 are construed as if the language of subsection 3 of section 39-04-39 still provided the same as it did prior to the 1963 amendment. If the provisions of section 39-04-39.1 are construed as if the language of subsection 3 of section 39-04-39 were the same as it existed prior to the 1963 amendment, it would make

sense and the result would be the same as if the underscored language were disregarded after the 1963 amendment to subsection 3 of section 39-04-39. The intent becomes more apparent when it is recognized that section 39-04-39.1 came into being at the same time as Senate Bill No. 40 was amended providing for the disposition of fifty percent of the use tax to the motor vehicle registration fund and fifty percent to the state general fund, whereas the original bill provided that one hundred percent be credited to the state general fund.

It is therefore our opinion that the funds referred to in section 39-04-39.1 are those funds which are derived from the use tax collected on motor vehicles which would have been collected if the sales tax had been fully operative. Only that portion of the use tax which would have been collected had a sales tax remained operative would be collected and fifty percent of same would be credited to the state general fund and fifty percent to the motor vehicle registration fund.

It is our further opinion that the fifty percent credited and deposited in the motor vehicle registration fund is distributed pursuant to the provisions of subsection 3 of section 39-04-39 without regard to the last phrase contained in section 39-04-39.1. If the last phrase were permitted to be applied, the result would be that the moneys would be distributed as if one hundred percent had been deposited in the motor vehicle registration fund, whereas in fact only fifty percent is deposited. This is a mathematical impossibility. The sum which is to be distributed is "a sum equal to the amount of use tax deposited in the motor vehicle registration fund", which is the fifty percent collected.

After having reviewed the legislative process, it becomes apparent that the Legislature intended that fifty percent of the use tax which is deposited in the motor vehicle registration fund be distributed as provided for under subsection 3 of section 39-04-39 and that only said funds so deposited in the motor vehicle registration fund be distributed accordingly.

If the provisions of section 39-04-39.1 were construed in relation to subsection 3 of section 39-04-39 prior to the 1963 amendment, the use tax credited to the motor vehicle registration fund would be reduced by fifty percent according to the then existing provisions of subsection 3. Thus, in order to make full distribution of the use tax deposited in the motor vehicle registration fund would have required the underscored language.

However, because of the change in language to subsection 3 of section 39-04-39, the underscored language of subsection 3 becomes wholly unnecessary and if attempted to apply would be mathematically impossible.

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