

**OPINION
69-498**

May 13, 1969 (OPINION)

Mr. Byron L. Dorgan

Tax Commissioner

RE: Taxation - Travel Trailers - Liability for Tax

This is in response to your letter of April 28 in which you ask for an opinion in answer to several questions arising under Senate Bill No. 193 enacted by the 1969 Legislature.

Senate Bill 193 relates to the taxation of or the licensing of certain recreational type travel trailers. It was enacted as an emergency measure and became effective on March 29, 1969.

As to your "Question No. 1" we find it appropriate to quote from your letter as follows:

"This question is in two parts and they are set out after the following statements of background information.

"Prior to enactment of Senate Bill 193, all house trailers and mobile homes and certain sleeping trailers were subject to annual assessment and taxation by the county auditor under chapter 57-55, N.D.C.C., the mobile home tax decal law. In addition, payment of an annual ten dollar fee to the motor vehicle registrar was required by section 39-18-03 if that mobile home, house trailer or sleeping trailer were pulled on the highways during the year.

"Senate Bill 193, in section 2, amended section 57-55-01 of the mobile home tax decal law. Prior to this amendment, section 57-55-01 included an exception from the tax for collapsible or folding type trailers; the amendment by Senate Bill 193 removed this exception and added in its place an exception for a 'travel trailer,' which term is defined in the amendment. This definition of 'travel trailer' does not relate to the collapsibility or foldability of a trailer but is broader in that it is 'designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently equipped for towing,' not more than eight feet wide and not more than 4,500 pounds in weight regardless of length or not more than 29 feet in length regardless of weight.

"This travel trailer definition therefore includes some mobile homes or house trailers that were already taxed by the county auditor, or should have been, to their owners after January 1, 1969 and before March 29, 1969, under the mobile home tax decal law, but which presumably must now, since March 29, 1969, be licensed by the motor vehicle registrar pursuant to the in lieu tax schedule provided by the amendment of section 39-18-03 in section 1 of Senate Bill 193 before it can be pulled on the highways.

"The question raised by the foregoing and on which your opinion is asked are:

- a. Is a person who owned a travel trailer of the noncollapsible type prior to March 29, 1969, liable for both the full amount of the 1969 mobile home tax under chapter 57-55 and also liable in 1969 for payment of the in lieu fee provided in section 39-18-03 as amended by Senate Bill 193 if he pulls it on the highways?
- b. If the answer to the preceding question is 'no,' must the mobile home tax under chapter 57-55 on such a travel trailer be prorated for the time between January 1, 1969 and March 29, 1969, that he owned it and, if so, is he entitled to a refund from the county of the amount he paid in excess of the prorated amount of tax?"

As to part "a" of the above question, it is our opinion that the legislature did not intend to require a person who owned a travel trailer of the noncollapsible type between January 1, 1969, and March 29, 1969, to be liable for both the full amount of the 1969 mobile homes tax and the new license fee that became effective on March 29, 1969, provided in the amendment to section 39-18-03 by Senate Bill 193. This seems to be quite clearly indicated by the fact that after 1969 such a travel trailer will not be subject to the mobile homes tax under chapter 57-55 but will be subject only to the annual license fee provided for travel trailers in section 39-18-03; in view of this it would not be logical to assume that the legislature intended that both the full amount of the mobile homes tax for 1969 and the appropriate license fee for 1969, under the graduated schedule in section 39-18-03, should be collected.

In answer to part "b" of your Question No. 1, it is our opinion that a person who owned a noncollapsible type travel trailer at any time between January 1, 1969, and March 29, 1969, is liable for the mobile homes tax under chapter 57-55, North Dakota Century Code, for that calendar quarterly period. In other words, the tax computed for the full year of 1969 is prorated by reducing it to one-fourth of the full tax year, similar to the manner in which the tax is prorated on a quarterly basis under Part B of Rule No. 7 as duly promulgated by the tax commissioner for the administration of the mobile homes tax law. If the owner of such a travel trailer has paid more than the prorated amount of the tax, it is our opinion that the amount paid in excess of the prorated amount of the tax should be refunded by the county pursuant to subsection 2 of section 57-55-12 of the North Dakota Century Code as amended.

These answers to parts "a" and "b" of your Question No. 1 are based on the following analysis of the various applicable provisions:

1. These noncollapsible type trailers were, under the law in existence during the period of January 1, 1969, to March 29, 1969, subject to the mobile homes tax during that period, and the legislature in enacting Senate Bill 193 did not provide for waiver of the mobile homes tax for that period.

2. Senate Bill 193 went into effect as an emergency measure on March 29, 1969. From that day forward any person, except in the two instances hereafter noted, may be subjected to the penalty prescribed in section 39-18-07 for hauling a travel trailer of either the collapsible or noncollapsible type on the highways of this state unless (1) a certificate of title for the travel trailer has been obtained from the motor vehicle department, (2) the annual license fee provided for it in section 39-18-03 as amended by Senate Bill 193 has been paid to the motor vehicle department, and (3) a number plate obtained from the motor vehicle department is displayed on it. The two exceptions provided in section 39-18-03 to these requirements are, first that it may be hauled by a duly registered and licensed drive away transporter and, second, a travel trailer which enters this state carrying the current number plate of another state is not required to obtain a North Dakota number plate for a period of thirty days.

This annual license fee for a travel trailer is in lieu of personal property tax on the trailer (see section 39-18-03 as amended by Senate Bill 193) and in this respect is similar to the annual registration (license) fee for a motor vehicle (see section 39-04-38, N.D.C.C.). No provision, however, is made in Senate Bill 193 or elsewhere for prorating the annual license fee on a travel trailer on a monthly or other basis for the part of a calendar year remaining after the date in the calendar year in which the travel trailer first becomes subject to the annual license fee; in contrast to this, it is expressly provided in the Century Code that the annual registration or license fee for a motor vehicle may be prorated on a monthly basis for each month or fractional part of a month remaining in the calendar year in which it first becomes subject to the fee (see section 39-04-21, N.D.C.C.). Accordingly, it appears that the legislature did not intend the enactment of Senate Bill 193 to make the travel trailer annual license fee a calendar year fee subject to prorating in any way but, rather, that it should be an annual fee that is payable each year to the motor vehicle department on or before the anniversary date on which it was first licensed by the motor vehicle department under Senate Bill 193; except of course that if the travel trailer remains stationary or parked within the state for a period of one year, a license would not be required for that year (see section 39-18-03 as amended by Senate Bill 193).

3. Because of the foregoing, we do not believe Senate Bill 193 was intended by the legislature to cause an overlapping of the 1969 mobile home tax on noncollapsible travel trailers with the annual license fee on them for any part of the same period in 1969. Therefore, as already stated, a person who owned a noncollapsible type travel trailer at any time between January 1, 1969, and March 29, 1969, is liable for the mobile home tax under chapter 57-55, North Dakota Century Code, for that quarterly period; if more

than that prorated amount has been paid by him he is entitled to a refund of the excess from the county pursuant to subsection 2 of section 57-55-12, North Dakota Century Code.

In your Question No. 2 you point out that Senate Bill 193 amends section 57-55-01 to provide for payment of the mobile home tax to the county treasurer and the issuance of the trailer tax decal by the county treasurer; whereas, prior to enactment of Senate Bill 193, both of these functions were performed by the county auditor. Because of this amendment, you ask whether the county auditor should now transfer his supply of trailer tax decals to the county treasurer and whether all trailer tax payments should now be made to the county treasurer rather than to the county auditor. It is our opinion that because Senate Bill 193 does expressly provide for payment of the mobile home or house trailer tax to the county treasurer and the issuance of the trailer tax decal by the county treasurer, the county auditor should transfer his supply of trailer tax decals to the county treasurer and all mobile home tax payments should be made to the county treasurer. The county auditor, however, will continue to receive the applications for mobile home decals and to make the assessments and compute the taxes due thereon.

With respect to your Question No. 3, you point out that a travel trailer as defined in Senate Bill 193 is not subject to the annual license fee under section 39-18-03 as amended by Senate Bill 193 if the travel trailer remains stationary or parked within the state of North Dakota for a period of one year. Your question is:

"If such a travel trailer actually constitutes the permanent year around home of the owner or of others and remains stationary or parked during the entire year, should it then be taxed by the county auditor under chapter 57-55 or should it be assessed by the local assessor for property tax purposes in the same way as is other property?"

You note in connection with this question that Senate Bill 137 enacted by the 1969 Legislature repeals the personal property tax so that all personal property will be exempt from assessment beginning in 1970, but mobile homes or house trailers will not be exempt.

It is our opinion that a travel trailer which remains stationary or parked within the state of North Dakota for a period of one year and which is not licensed pursuant to 39-18-03 for that year would not be subject to taxation by the county auditor under chapter 57-55, North Dakota Century Code, the mobile home tax decal law. This is because the definition of travel trailer as set out in section 57-55-01, as amended by Senate Bill 193, expressly excludes such travel trailers from the mobile home tax decal law provisions. Only if the design of such a travel trailer were changed in such a way that it would not fall within the travel trailer definition in section 57-55-01 could such a trailer then be taxed under the mobile home tax decal law.

Accordingly, it is our opinion that the travel trailer which remains stationary or parked within the state for a period of one year and is not licensed pursuant to section 39-18-03 for that year would be subject to assessment for property taxes by the local assessor or, in

appropriate cases, by the county auditor as omitted property pursuant to chapter 57-14, North Dakota Century Code. Whether or not such a trailer would be assessable as personal property or as real estate will necessarily depend upon whether it is in fact personal property or real estate on the particular April first assessment date. Assuming that personal property will be exempt from personal property taxes effective in the year 1970 as provided in Senate Bill 137 enacted by the 1969 Legislature, an unlicensed travel trailer that has remained stationary or parked for a full year and continues to be personal property would be exempt from assessment for personal property taxes whether or not it constitutes a permanent year around home of the owner or of others.

HELGI JOHANNESON

Attorney General