

**OPINION
75-134**

May 20, 1975 (OPINION)

Mr. Byron L. Dorgan
State Tax Commissioner
State Capitol
Bismarck, ND 58505

Dear Mr. Dorgan:

This is in response to your letter of December 5, 1974, wherein you request an opinion of this office relative to taxation of sales of motor vehicles. You submit the following in your letter of inquiry:

"Prior to July 1, 1973, the motor vehicle excise tax law provided as follows in Subsection 3 of Section 57-40.3-04 N.D.C.C.:

'There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

. . .

'3. Common carrier vehicles engaged in interstate commerce.'

"Since July 1, 1973, the motor vehicle excise tax provided in Subsection 3 of Section 57-40.3-04 N.D.C.C.:

'There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

. . .

'3. Common carrier vehicles engaged exclusively in interstate commerce.'

"Prior to July 1, 1973, as well as to the present time, the sales tax chapter in Subsection 13 of Section 57-39.2-04 N.D.C.C. has provided:

'There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

. . .

13. Gross receipts from the sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota.' (Underlining for emphasis.)

"Prior to July 1, 1973, as well as to the present time, the

sales tax chapter in Subsection 3 of Section 57-40.2-04
N.D.C.C. has provided:

'This chapter hereby is declared to be an independent and separate tax law but complementary to the retail sales tax laws of this state provided for by chapter 57-39.2 and shall not apply to:

. . .

'3. The sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota.' (Underlining for emphasis.)

"In view of the above-quoted statutory language, I respectfully request a formal opinion and answer from you to the following question:

"If a common carrier vehicle is exempt from the provisions of Chapter 57-40.3 N.D.C.C. by virtue of the provisions of Subsection 3 of Section 57-40.3-04 N.D.C.C., either as that subsection provided before July 1, 1973 or as it provided after July 1, 1973, would the sale or use of a common carrier vehicle then be subject to taxation either under the provisions of Chapter 57-39.2 N.D.C.C. or under the provisions of Chapter 57-40.3 N.D.C.C. because of the restrictive scope of Subsection 13 of Section 57-39.2-04 N.D.C.C. and Subsection 3 of Section 57-40.2-04 N.D.C.C.?"

We are of the opinion that the sale or use of a common carrier vehicle is not subject to taxation either under the provisions of Chapter 57-39.2 of the N.D.C.C. or under the provisions of Chapter 57-40.3 of the N.D.C.C., if such common carrier vehicle is exempt under the provisions of the motor vehicle excise tax laws of North Dakota (Section 57-40.3-04 of the N.D.C.C.).

Both Sections 57-39.2-04(13) and 57-40.2-04(3) of the N.D.C.C. specifically exempt the gross receipts from the sale of a motor vehicle and the sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota. These are specific exemptions which apply to a certain class of motor vehicles and which, except for the exemption contained in 57-40.3-04, would be taxable under the motor vehicle excise tax laws. We cannot conceive that the Legislature would have exempted this particular class of vehicles from the motor vehicle excise tax with the intention that they be subject to tax under the sales or use tax laws. We believe the exemptions specified in the sales and use tax laws are general exemptions and refer to the taxability as a class rather than the actual taxation of the class. As noted above this particular class would be taxable under the motor vehicle excise tax statutes except for the specific exemption contained therein. We do not believe the specific exemption from the motor vehicle excise tax in turn nullifies the exemption provision of the sales and use tax statutes. To reach such a conclusion would mean that the other exemptions contained in the motor vehicle excise tax law (for motor vehicles acquired by disabled veterans, motor vehicles expressly exempt from title registration and motor vehicles transferred without

consideration to or from a person within thirty days prior to his entering into the armed services of the United States or within thirty days after discharge therefrom, provided the person certifies to the motor vehicle registrar that the transfer is made only by reason of service in the armed services) would also be subject to taxation under the sales and use tax law. Again we can find no reasonable rationale for such a conclusion.

In conclusion, it is our opinion that a common carrier vehicle which is exempt from the provisions of the motor vehicle excise tax by virtue of Section 57-40.3-04 is not subject to the sales or use tax under the provisions of Chapters 57-39.2 or 57-40.2 of the N.D.C.C.

Sincerely,

ALLEN I. OLSON

Attorney General