

**OPINION
45-250**

October 17, 1945 (OPINION)

SALES TAX

RE: Use Tax - Covered Into What Fund

This office is in receipt of your letter of October 17, 1945. I am not certain that I understand the legal question which you desire this office to answer, but, if I interpret your letter correctly, you contend that under and by virtue of chapter 167 of the North Dakota Session Laws of 1937, which is incorporated in the 1943 Revised Code under sections 57-4012 to 57-4015, both inclusive, that "a tax of two percent of the sales price of any motor vehicle purchased or acquired for use on the streets and highways of the state, requiring registration under the motor vehicle registration laws," must be paid either by the person applying for registration, or by the motor vehicle dealer, to the registrar. In other words, I understand that you contend that the two percent sales tax on motor vehicles, whether paid as a retail sales tax or as a use tax, should be collected by the registrar and that all such taxes should be paid by him to the state treasurer and credited to the motor vehicle registration fund.

Section 57-4013 of the Revised Code definitely provides, however, that: "The provisions of section 57-4012 shall not apply if the person making application for a motor vehicle license shall furnish to the motor vehicle registrar a certificate from a licensed dealer in this state, upon a form furnished by the registrar, certifying that such person has paid the retail sales tax prescribed by section 57-3902. - - -" The provisions of section 2 of chapter 167 of the 1937 Session Laws are substantially the same as those of section 57-4013 of the Revised Code.

It is, therefore, obvious when a sales tax is paid on the sale of a motor vehicle by a licensed dealer to the state tax commissioner under the retail sales tax act, it becomes a part of the sales tax fund and not of the motor vehicle registration fund; and that when a use tax is paid to the registrar, pursuant to the provisions of section 57-4012, and by him paid to the state treasurer, it must be credited to the motor vehicle registration fund.

In your letter you point out that the original retail sales tax expires at the end of the biennial fiscal period and that each legislature thereafter renewed this tax for the ensuing biennial period, but that chapter 167 of the 1937 Session Laws (sections 57-4012 to 57-4015, inclusive, of the Revised Code) contains no provision for the expiration of the motor vehicle sales tax prescribed by section 57-4012. That is true. And if the 1947 legislature, or any subsequent legislature, should fail to reenact the retail sales tax, then under the provisions of said section 57-4012, if still in force and effect, every owner of a motor vehicle will have to pay a use tax of two percent to the motor vehicle registrar at the time he first registers his motor vehicle in this state and such tax will then be credited to the "motor vehicle registration fund."

In other words - as long as the present retail sales tax is in force and effect, the tax on retail sales of motor vehicles in North Dakota will be collected from the purchaser by the licensed dealer as a sales tax - not as a use tax - and paid by the dealer to the state tax commissioner and credited by the state treasurer to the "retail sales tax fund." But if the retail sales tax is repealed, or expires, then the tax paid by the owner of a motor vehicle will be paid to the registrar as a "use tax" and will be credited to the motor vehicle registration fund. As long as existing laws are in effect, the use tax collected by the motor vehicle registrar must be credited to the motor vehicle registration fund, and the retail sales tax collected by the state tax commissioner, must be paid into the sales tax fund.

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