

**OPINION
49-183**

August 17, 1949 (OPINION)

TAXATION

RE: Motor Vehicle

I am herewith returning letter from Mr. A. R. Bergesen, Attorney at Law, Fargo, North Dakota, dated August 11, 1949, wherein he takes issue with Regulation No. 2 of your department with reference to use tax. We have your request for an opinion on this matter.

As we understand it, Mr. Bergesen has a client who owned an automobile upon which he had paid the sales tax in the state of North Dakota. He took said car to a foreign state and traded it for a new car and paid a sales tax in that foreign state upon the car that he bought. He now contends that he should be required to pay a use tax on the cash paid for the purchase of the new car and not on the credit given for the used car that he traded in.

Reference is made in Mr. Bergesen's letter to the opinion of C. F. Kelsch, assistant attorney general, dated July 15, 1940, and it is alleged that such opinion does not justify Regulation No. 2.

It may be true that the opinion of Mr. Kelsch does not go into detail on this matter, and for that reason we are going to consider the specific question raised by Mr. Bergesen.

Section 57-4012 of the 1943 Revised Code reads in part as follows:

USE TAX IMPOSED ON MOTOR VEHICLES. There is imposed an excise tax of two percent of the purchase price of any motor vehicle purchased* * *

Section 57-4013 exempts from this provision motor vehicles upon which the North Dakota sales tax has been paid.

It is to be noted that the excise tax of two percent is to be paid on the purchase price of a motor vehicle under the provisions of section 56-4012.

We, therefore, go to subsection 5 of section 57-4001 to get the definition of "purchase price", and said term is therein defined as "the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, but cash discounts allowed and taken on sales shall not be included."

Applying the definition of "purchase price" to the provisions of section 57-4012, it is our opinion that the use tax must be paid on the full purchase price of the car, for the reason that the statute reads that said tax must be paid whether the purchase price was paid in money or otherwise. Otherwise can be taken to mean a trade-in.

We, therefore, hold that Regulation No. 2 was properly promulgated and is justified by the statutory provisions above cited.

WARREN E. WARNER

Attorney General