

**OPINION**  
**59-281**

December 18, 1959           (OPINION)

**TAXATION**

**RE: Use Tax - Imposition on Motor Vehicles**

This is a reply to your request for my opinion which you made in your letter of December tenth. Your letter is quoted in full as follows:

Your opinion is respectfully requested on the question of whether the motor vehicle registrar can collect the two percent excise tax imposed by section 57-4012 in any case where the motor vehicle has been previously registered in another state before being brought into North Dakota and registered here.

The question has arisen in connection with a practice that I am advised is as follows: Out-of-state companies who are in the business of leasing motor vehicles on a fleet basis to lessees in this state for use in this state will purchase the cars in another state, have them registered under the motor vehicle laws of that state and then almost immediately thereafter deliver them to the lessee in this state, after which they first registered.

It is my understanding that such a company does not actually buy the automobiles until it has entered into a contract to lease them and that therefore at the time of purchase of the automobiles it is known by the purchasing company where those automobiles will be used by the lessee. The purpose of this arrangement apparently is to avoid payment of the two percent excise tax imposed by section 57-4012 on the theory that if the automobiles have been registered in another state it will be presumed that they are not purchased or acquired for use on the streets and highways of this state within the meaning of section 57-4012."

Section 57-4012, N.D.R.C. 1943 provides as follows:

There is imposed an excise tax of two percent of the purchase price of any motor vehicle purchased or acquired for use on the streets and highways of this state and required to be registered under the laws of this state. Such tax shall be paid by the purchaser to the motor vehicle registrar at the time that application for the first registration plate or certificate of title of such motor vehicle is made within this state. No registration plate or certificate of title shall be issued upon such application until such tax has been paid."

Section 57-4013 provides that the tax imposed by the above section shall not apply if the retail sales tax has been paid on the motor vehicle to a licensed dealer in this state. The effect of these two sections as they apply to your problem is to impose "an excise tax of two percent of the purchase price of any motor vehicle purchased or

acquired for use on the streets and highways of this state and required to be registered under the laws of this state" if the motor vehicle was purchased outside of North Dakota.

The underlined words, "purchased or acquired for use on the streets and highways of this state," are typical of use tax provisions in laws of many other states. In Iowa, for example, a two percent excise tax is "imposed on the use in this state of tangible personal property purchased . . . . for use in this state." The Iowa use tax law applies to motor vehicles as well as any other item of tangible personal property and in this respect is to be distinguished from section 57-4012 of our law which imposes a use tax only on motor vehicles. The use of other personal property in North Dakota is taxed under section 57-4002 and related sections.

The words "purchased . . . . for use in this state," as just quoted from the Iowa statute, are in legal effect similar, I believe, to the words "purchased or acquired for use on the streets and highways of this state," as they appear in section 57-4012. In *Morrison-Knudsen Co. v. State Tax Commission*, 44 N.W. 2d. 449, 51 A.L.R. 2d. 523 (Iowa, 1950), the court in construing the words "purchased . . . . for use in this state" stated that:

Our decisions have been careful to point out that the use-tax law is supplementary to the sales tax law and protects Iowa dealers who must collect and pay a sales tax by placing them on a tax equality with competing out-of-state vendors whose sales are not subject to the sales tax. Also that the principal purpose of the use tax law was to remedy the evil of out-of-state buying to escape the sales tax . . . ."

The Iowa court held that in that case the words "purchased . . . .for use in this state" meant that before the use of property could be taxed in Iowa it must have been shown that it was purchased for use in Iowa, and said, 44 N.W. 2d. 449, page 452:

Whether property is purchased for use here should be determinable at or near the time of its purchase . . . ."

In *State v. Gilliam*, 288 P. 2d. 675 (New Mexico, 1955), the New Mexico Supreme Court, in considering a similar problem and in referring to the Iowa decision in the *Morrison-Knudsen* case, said at page 674:

. . . . The Iowa court holds that the mere fact that property is used in another state prior to being brought into Iowa will not defeat the tax if actually purchased for use in Iowa and whether so purchased is a matter for determination 'at or near the time of purchase'. . . ."

To the same effect as these decisions, see *Comptroller of the Treasury v. Thompson Trailer Corporation*, 131 A. 2d. 850, 853, (Md., 1956); *Comptroller of the Treasury v. James Julian, Inc.*, 137 A. 2d. 674, 679 (Md., 1958).

I believe it is clear from these various decisions that the question of whether a motor vehicle was "purchased or acquired for use on the

streets and highways of this state" within the meaning of section 57-4012 is a question of fact to be determined from the circumstances of the purchase at or near the time of purchase. Under this type of statute, which involves an exclusion from the tax rather than an exemption from the tax, the burden is upon you as administrator of the law to establish that the purchase of the motor vehicle actually was made for use of it on the streets and highways of this state.

If your investigation of the facts or information furnished to you by the applicant for registration of such motor vehicles establishes the circumstances relating to the purchase of the motor vehicles to be the same as those you set out in your letter, then it is my opinion that such motor vehicles were "purchased or acquired for use on the streets and highways of this state" within the meaning of section 57-4012 and that you must collect the two percent excise tax imposed by that section even though the motor vehicles were previously registered in another state pursuant to its motor vehicle laws.

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