

No. 314

**MOTOR VEHICLES—REGISTRATION—PENALTY—
EXEMPTIONS**

Held: An applicant for re-registration of a motor vehicle who makes application therefor in December, after having had his car in dead storage since February 14th of the same year, having previously driven said motor vehicle on the highways of Montana, prior to placing the same in storage, is required to pay the license tax plus ten per centum penalty for registration of said vehicle.

December 11, 1941.

Mr. Edward T. Dussault
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Dussault:

You have submitted the following:

"Mr. (A) was, during all of the year 1941 and up to the present time, the registered and legal owner of a 1937 Chevrolet sedan. About February 25, 1941, he stored his said automobile in dead storage in the City of Missoula because he was subject to the Selective Service Act and on March 4, 1941 was inducted at Missoula. Because of being over 28 years of age he was on November 21, 1941 discharged. His former employer has given him his former employment, beginning December 1st, and he needs his automobile to go to and from said work. The license for his automobile costs \$10.00 and there is now added by law a \$1.00 penalty.

"Would you be kind enough to give me your opinion on the above facts?"

Section 1758.1, Revised Codes of Montana, 1935, in part, reads as follows:

"Every vehicle registration under this act shall expire on December thirty-first of each year and shall be renewed annually upon appli-

cation and payment of license fees, as provided in Sections 1959 and 1960, such renewal to take effect on the first day of January of each year."

Section 1759.1, Revised Codes of Montana, 1935, provides:

"Time for making application. Registration must be renewed annually and license fees paid annually. All registrations expire on December 31 of the year in which they are issued and application for registration, or re-registration, must be filed with the county treasurer as aforesaid not later than February 1 of each year."

Section 1759, Revised Codes of Montana, 1935, as amended by Section 1 of Chapter 72 of the Laws of Montana, 1937, in part reads as follows:

"Motor vehicles are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the State of Montana, provided that in no event shall any motor vehicle be the subject of assessment, levy and taxation more than once in each year, viz., the first day in January in each year, which shall be the time of assessment for tax purposes of motor vehicles in stock, in dealers' possession or in dead storage, as well as in use, subsequent registrations, if any, of the same vehicle in the same year not being subject to payment of taxes."

Section 1755.6, Revised Codes of Montana, 1935, reads as follows:

"Late registration of motor vehicles—penalty—exemption of new and unsold vehicles. Whenever any application is made for the registration of a motor vehicle after the thirtieth day of April, in any year, the applicant shall be required to pay, in addition to the registration fee required therefor, a penalty of ten per centum (10%) of such registration fee for having failed to secure registration of such motor vehicle prior to such date; provided, however, that no such penalty shall be required to be paid when the applicant shall present with his application:

"1. A certificate from a dealer in this state to the effect that such motor vehicle was not sold by such dealer as a used or second hand vehicle but as a new vehicle, and that it was not delivered to the purchaser by such dealer until after the thirtieth day of April in the year in which such application for registration is made;

"2. Or, a certificate from a dealer in this state to the effect that such motor vehicle was not delivered by the dealer to such purchaser until after the thirtieth day of April in the year in which application is made for registration, and that it was sold by such dealer as a used or second hand motor vehicle, but that it had been in the possession of such dealer, as a part of his stock, at all times since the thirty-first day of December, immediately preceding;

"3. Or, on affidavit of the applicant that such motor vehicle was not brought into this state until after the thirtieth day of April in the year in which application is made for registration."

Section 1760, Revised Codes of Montana, 1935, as amended by Section 1, Chapter 138, Laws of 1937, and Section 11, Chapter 138, Laws of 1937 and Section 1, Chapter 125, Laws of 1939, in part, reads as follows:

"If any dealer, or motor vehicle, or trailer, or semi-trailer is originally registered six (6) months after the time of registration as set by law, the registration fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given. . . . The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semi-trailers

or tractors, owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semi-trailers.”

Thus registration of motor vehicles expires on December 31 of each year and a renewal is necessary to take effect on the first day of January of each year and not later than February first. The question of dead storage, as indicated in your query, does not alter or make any material difference with reference to the registration in question here—inasmuch as the motor vehicle was driven on the highway of Montana prior to its storage.

Under the provisions of Section 1755.6, in order for the applicant to avoid the penalty therein prescribed, his affidavit would have to comply with the provisions of said section as hereinabove set out. Upon the statement of facts hereinabove given, the applicant would be required to pay the penalty. Under the provisions of Section 1760, as amended, certain exemptions are allowed—but the applicant here would not be entitled to any exemption under this section of the law. While the Soldiers' and Sailors' Relief Act has several provisions for exemptions for persons in the armed forces of the United States, as well as others, none seems to cover the proposition presented here.

Therefore, we are compelled to hold an applicant for re-registration of a motor vehicle who makes application therefor in December, after having had his car in dead storage since February 14th of the same year, having previously driven said vehicle on the highway of Montana prior to placing the same in storage, is required to pay the license tax plus ten per centum penalty for registration of said vehicle. The Legislature has not granted to persons in the armed forces of the United States any exemption with regard to registration and licensing of motor vehicles.

Sincerely yours,

JOHN W. BONNER
Attorney General