

or semi-trailer, in accordance with the scale provided in Section 1760, Revised Codes of Montana, 1935, as amended by Chapter 201, Laws of 1945.

A unit composed of a tractor and trailer, or semi-trailer, used to haul over the highway, must pay the license fee for the tractor, based on its capacity, plus the fee for the trailer, or semi-trailer, based on its capacity.

August 10, 1948

Board of County Commissioners
Sanders County
Thompson Falls, Montana

Gentlemen:

I have your request for an opinion on the interpretation of Section 1760, Revised Codes of Montana, 1935, as amended by Chapter 201, Laws of 1945, relative to the license fee to be charged for logging trucks operating over county roads.

Section 1759, Revised Codes of Montana, 1935, as amended by Chapter 72, Laws of 1937, requires registration and license as follows:

"Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed in the office of the county treasurer of the county wherein such motor vehicle is owned or taxable, an application for registration, or re-registration. . . .

"The applicant shall, upon the filing of said application, (1) pay to the county treasurer the registration fee, as provided in Section 1760 Revised Codes of Montana, 1935, and shall also at such time (2) pay the taxes assessed against said motor vehicle for the current year of registration. . . ."

Section 1760, as amended, sets up a schedule of the fees chargeable on the registration or re-registration of various types of vehicles as provided for in Section 1759. Those parts of Section 1760 pertinent to this opinion provide:

Opinion No. 132

License Fees—Truck, Logging Tractors — Trailers

Held: Operators hauling logs over public highways, including county roads, must pay a registration or license fee based on the capacity of the truck or of the tractor and trailer,

"Tractors and/or trucks of five (5) tons capacity and over, two hundred dollars (\$200.00); provided that tractors shall not be construed as meaning farm tractors used on farms or tractors used solely in logging operations but only such tractors as are part of a unit to haul over the highways; . . .

". . . And be it further provided that trailers used exclusively in the transportation of logs in the forest . . . shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

"Tractors, as specified in this section, shall mean any motor vehicle used for towing a trailer or semi-trailer." (Emphasis supplied).

The first paragraph above quoted indicates the legislative intent was to make it clear that farm tractors used on farms and industrial tractors (Caterpillars, etc.) used solely in logging operations, were not included in the classification. The last part of that sentence is especially significant. After specifically excluding farm tractors and tractors used solely in logging operations, the legislature further clarified the provision by saying it should be construed to mean "only such tractors as are part of a unit to haul over the highways." This classification includes all logging trucks and tractors used to haul over the highways.

Highways are defined in Section 1612, Revised Codes of Montana, 1935, as follows:

"All highways, roads, lanes, streets, alleys, courts, places, and bridges laid out or erected by the public, or now traveled or used by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such by the partition of real property, are public highways."

The legislature has nowhere made any reference to logging trucks being exempt but only mentions tractors, which evidently refers to industrial tractors other than parts of highway units, and trailers used in forests. If the legislature had intended to make an exception in favor of operators hauling logs over the highways,

trucks would surely have been included in the provision.

The second paragraph quoted from Section 1760, after providing a two hundred dollar (\$200.00) license fee for trailers with a capacity over 5 tons, makes an exception as follows:

". . . And be it further provided that trailers used exclusively in the transportation of logs in the forest . . . shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity." (Emphasis supplied).

The condition under which an operator is eligible for the \$15.00 license is that the trailer be used "exclusively in the transportation of logs in the forest" and unless the operator shows himself to come under the exception, he must pay the license provided according to the capacity of his trailer.

The legislature must have had some purpose in adding the further requirement "in the forest." If hauling logs anywhere, including over public highways, was to be included in the exception, the words, "in the forest" would have been left out. This is not the case. The legislative intent must be ascertained from the act as written. Thus, the inclusion of the qualification that in order to be eligible for the \$15.00 license the hauling must be in the forest indicates if the hauling be on the public highways, including county roads, the operator does not come under the excepting provision and must pay a license fee based on the capacity of his trailer.

In the matter of exemptions from taxation, the Montana Supreme Court has said:

"Every claim for exemption from taxation should be denied unless the exemption is granted so clearly as to leave no room for any fair doubt." (Cruse, et al v. Fischl, 55 Mont. 258, 267).

The following quotation from American Jurisprudence states the general law relative to exemptions from licenses:

"Those who seek shelter under an exemption law must present a clear case, free from all doubt, as such laws, being in derogation of the general rule, must be strictly construed against the person claim-

ing the exemption and in favor of the public." (33 Am. Jur. Licenses, Sec. 38).

We must take the law as the legislature has enacted it; if the law is harsh or works inequalities, the legislature is the only source of redress.

Therefore, it is my opinion, operators hauling logs over public highways, including county roads, must pay a registration or license fee based on the capacity of the truck or of the tractor and trailer, or semi-trailer, in accordance with the scale provided in Section 1760, Revised Codes of Montana, 1935, as amended by Chapter 201, Laws of 1945.

A unit composed of a tractor and trailer, or semi-trailer, used to haul over the highways, must pay the license fee for the tractor based on its capacity, plus the fee for the trailer, or semitrailer, based on its capacity.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General