

Opinion No. 70

Motor Vehicles—Taxation, New Passenger Motor Vehicles on Which No Property Tax Has Been Paid Are Subject to Use Tax—Registrar of Motor Vehicles, May Enter Into Reciprocal Agreements—Reciprocity, Certain Foreign Vehicles Are Exempt From Registration and Licensing in the State of Montana.

Held: 1. The fee for the use of the highways of the State of Montana imposed by Section 3 of Chapter 208, Laws of 1949, upon out-of-State trucks, trailers and semi-trailers do not apply if such vehicles are lawfully registered and licensed in a country, State or territory which has a reciprocity agreement with the State of Montana.

2. The use tax imposed by Section 3A of Chapter 208, Laws of 1949, on new passenger motor vehicles which have not been otherwise assessed and are not subject to taxation in the State of Montana applies to all such vehicles which are required to be registered and licensed in the State of Montana.

3. Section 12 of Chapter 208, Laws of 1949, exempts all motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within two miles from such limits from the operation of the act. This exemption is general and applies to all the fees and taxes imposed by Chapter 208.

November 19th, 1949.

Mr. W. A. Brown
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Brown:

You have requested my interpretation of Chapter 208, Laws of 1949, on the following matters:

"1. Section 3 of this Act provides for a fee for temporary licenses for Trucks, Trailers and Semi-Trailers. Your opinion is desired whether or not these fees are applicable to such owners and operators from states that have Reciprocity Agreements with the State of Montana.

"3. Your opinion is desired in reference to Section 12. What evidence or kind of affidavit is necessary for operators of Motor Vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within two miles from such limits to be exempt from the provisions of this Act. Also in reference to the provisions of this Section 12, is it necessary for operators or owners of Motor Vehicles, operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within two miles from such limits, to pay the fees as imposed by Section 3 of said Chapter 208, the Use Vehicle Tax, and Section 3A of said Act on new passenger Motor Vehicles purchased on and after January in any year?"

Chapter 208, Laws of 1949, imposes a tax on Trucks, Trailers and Semi-Trailers, and Automobiles operating over and upon the highways of the State of Montana and requires the owners or operators of such vehicles to procure a license in compliance with the provisions of Chapter 208. Chapter 208, also provides for a use tax on new passenger motor vehicles on which no property tax has been paid in the State of Montana. Section 1 of Chapter 208, contains a table of fees to be paid by operators of Trucks, Trailers, and Semi-Trailers, such fees being based upon the tonnage capacity of the vehicles.

The first paragraph of Section 3, Chapter 208, *supra*, sets forth the fees to be imposed upon automobiles. The remaining paragraphs of Section 3, Chapter 208, are those which are pertinent to your first question, and are as follows:

"Owners or operators of out-of-town Trucks, Trailers and Semi-Trailers which are not registered and licensed in the State of Montana under the provisions of Section 1759, Revised Codes of Montana, 1935, as amended, if no annual license is applied for under the provisions of this act, shall apply for a temporary license based upon the following table:

"A Truck, Trailer or Semi-Trailer carrying a payload of five (5) tons for ten (10) days, five dollars (\$5.00);

"A Truck, Trailer or Semi-Trailer carrying over five (5) tons and up to and including ten (10) tons for ten (10) days, ten dollars (\$10.00);

"A truck, Trailer, or Semi-Trailer carrying ten (10) tons or more for ten (10) days, twenty dollars (\$20.00) or all Trucks, Trailers or Semi-Trailers may secure a license for three (3) months for twenty-five per cent (25%) of the regular tax set forth in Section 1 of this act; or for six (6) months for fifty per cent (50%) of the regular tax set forth in said Section 1."

Section 11 of Chapter 208, *supra*, provides as follows:

"Reciprocity shall be granted, notwithstanding anything to the contrary herein, in accordance with Section 1760.7 as amended by Chapter 93 of the laws of the Twenty-six Legislative Assembly of Montana of 1939, and as amended by Chapter 296 of the laws of the Thirtieth Legislative Assembly of Montana of 1947."

Section 1760.7, Revised Codes of Montana, 1935, as amended by Chapter 93, Laws of 1939, and as last amended by Chapter 296, Laws of 1947, permits the Registrar of Motor Vehicles to make reciprocal agreements with other countries, states or territories to exempt foreign vehicles from registration and licensing in the State of Montana. Chapter 296, *supra*, is as follows in part:

"Before any foreign licensed motor vehicles shall be operated on the highways of this State for hire, compensation or profit, or before the owner thereof uses the vehicle while engaged in gainful occupation or business enterprise, in the State of Montana, including highway work, the owner of such vehicle shall make application to a County Treasurer for registration, upon an application form furnished by the Registrar of Motor Vehicles. Upon satisfactory evidence of ownership submitted to such County Treasurer, the Treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle . . . providing, however, that the Registrar of Motor Vehicles is authorized and empowered to enter into reciprocal agreements with any coun-

try, State or territory, exempting from registration and licensing in Montana the foreign licensed Motor Vehicle, Trailer or Semi-Trailer of a resident of such country, State or territory when lawfully registered and licensed therein, when the law of such country, State or territory extend the same privilege to, or authorize like reciprocal agreements with respect to Motor Vehicles, Trailers and Semi-Trailers registered and licensed in the State of Montana and operated by a resident of this State upon the highways of such country, State or territory; . . . "

In view of the provisions of the above quoted Section and Section 11 of Chapter 208, Laws of 1949, I answer your first question by holding that owners or operators of out-of-State Trucks, Trailers and Semi-Trailers need not procure the licenses imposed by Section 3 of Chapter 208, supra, if such vehicles are lawfully registered and licensed in a country, State or territory which has a reciprocal agreement with the State of Montana as provided for in Chapter 296, Laws of 1947.

While the language of Section 3, Chapter 208, supra, by and of itself might possibly lead to the conclusion that the reciprocity provided by Section 1760.7, supra, as amended, should only apply to the registration fees imposed by Section 1760, Revised Codes of Montana, 1935, as amended, and not to the fees imposed by Chapter 208, supra, such conclusion is completely rebutted by the provision of Section 11, Chapter 208, supra, to the effect that reciprocity shall be granted in accordance with Section 1760.7, supra, as amended, notwithstanding anything to the contrary contained in Chapter 208. Moreover Section 1760.7, as last amended by Chapter 296, Laws of 1947, provides that the reciprocal agreements shall exempt the vehicles from "registration and licensing in Montana." Certainly the licenses required by Chapter 208, supra, are such as fall within the broad category of "licensing in Montana."

Your second question inquires as to whether the use tax imposed upon new passenger motor vehicles by Section 3A of Chapter 208, supra, should be collected on new cars purchased without the State of Montana by a Montana resident, when the owner is required to secure a Montana registration and license. Section 3A of Chapter 208, supra, is as follows:

"That in consideration of the right to use the highways of the State of Montana and from and after the passage and approval of this act, there shall be imposed upon all new passenger motor vehicles for which a license is sought and which have not been otherwise assessed and not subject to assessment and taxation in Montana, a use tax as follows: If purchased between January 1, and April 1, in any year, a tax of thirty-two dollars (\$32.00); if purchased between April 1, and July 1, in any year, a tax of twenty-four dollars (\$24.00); if purchased between July 1 and October 1, in any year, a tax of sixteen dollars (\$16.00); and if purchased between October 1 and December 31, in any year, a tax of eight dollars (\$8.00). The tax herein provided for shall not be imposed or col-

lected from the purchaser of any new passenger motor vehicle on which a property tax as now provided by law, has been imposed and paid."

The Section above quoted makes the payment of the use tax imposed contingent upon the seeking of a license for a new passenger motor vehicle which has not been otherwise assessed and taxed in the State of Montana. The imposition of the use tax is not made dependent upon the place of purchase of the automobile, whether within the State of Montana or outside thereof. The test is whether or not such vehicle must be registered with and a license procured from the State of Montana, and whether such vehicle has been previously subjected to a property tax within this State.

Your third question is as to the evidence or kind of affidavit that is necessary for operators of motor vehicles to gain the exemption set forth in Section 12 of Chapter 208, supra. Section 12 is as follows:

"Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within two miles from such limits shall be exempt from the provisions of this act."

The evidence or kind of affidavit to be required of persons seeking the exemption allowed by Section 12, supra, is entirely a matter of administrative policy and practice and it is not the function of this office to set such policy. By Section 6 of Chapter 208, supra, the duty of providing the administrative policy necessary to carry out the provisions of the act is placed upon the Montana Highway Commission.

You also inquire whether or not vehicles which qualify under Section 12 of Chapter 208 must pay the fees imposed by Section 3 of Chapter 208, the use vehicle tax, and by Section 3A of Chapter 208 on new passenger motor vehicles purchased on and after January in any year. My answer is that the payment of such fees is not required. The language of Section 12, Chapter 208, could not be more explicit and unambiguous. It is stated therein that certain motor vehicles "Shall be exempt from the provisions of this Act." Therefore, every vehicle that qualifies under Section 12 is exempt from each and every Section of Chapter 208.

It is my opinion:

1. The fees for the use of the highways of the State of Montana imposed by Section 3 of Chapter 208, Laws of 1949, upon out-of-State Trucks, Trailers and Semi-Trailers do not apply if such vehicles are lawfully registered and licensed in a country, State or territory which has a reciprocity agreement with the State of Montana.

2. The use tax imposed by Section 3A of Chapter 208, Laws of 1949, on new passenger motor vehicles which have not been otherwise assessed and are not subject to taxation in the State of Montana ap-

plies to all such vehicles which are required to be registered and licensed in the State of Montana.

3. Section 12 of Chapter 208, Laws of 1949, exempts all motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within two miles from such limits from the operation of the act. This exemption is general and applies to all the fees and taxes imposed by Chapter 208.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.